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**UNITED STATES DISTRICT COURT  
DISTRICT OF ARIZONA**

**Johnson Bank,**  
**Plaintiff,**  
**vs.**  
**Greenplex Investments, LLC, et al.,**  
**Defendants.**

**2:12-cv-2423 JWS**  
**ORDER AND OPINION**  
**[Re: Motions at Docket 38, 39, 49]**

**I. MOTIONS PRESENTED**

At Docket 38 Stockholder, LLC (“Stockholder”), by and through its state court-appointed receiver and attorney, David M. Reaves, filed a motion to intervene. Stockholder argues that it has a protectable interest in some of the defendants in the case—Recorp Management, Inc. (“Recorp Management”), Recorp Investments, Inc. (“Recorp Investments”), and Recorp Partners, Inc. (“Recorp Partners”; collectively the “Recorp Defendants”)—as a result of an unrelated state court case filed in Maricopa County Superior Court by IMH Special Asset NT 161, LLC, and IMH Special Asset 168, LLC (collectively “IMH”) against some of the defendants here (“IMH Action”). It would like to intervene so that it can file a motion to vacate the judgment here and have the opportunity to evaluate the claims against the Recorp Defendants and obtain possession of the Recorp Defendants’ stock certificates, which are in the possession of

1 Johnson Bank as a result of the execution of judgment in this case. At docket 39, MCA  
2 Financial Group, Ltd. ("MCA"), by and through Keith Bierman, joined in Stockholder's  
3 motion to intervene and moved to intervene as well. MCA was appointed receiver by  
4 the state court judge in the IMH Action over all assets owned or controlled by two of the  
5 defendants in this case, David Maniatis ("Maniatis") and the DPM-TT Trust ("DPM-TT"),  
6 Johnson Bank filed a response in opposition to both motions to intervene at  
7 dockets 43 and 44. Stockholder and MCA filed a joint reply and supplemental motion to  
8 intervene under seal at docket 48. At docket 49, Johnson Bank filed a motion to strike  
9 both the reply to the extent it is filed on behalf of Stockholder and the supplemental  
10 motion. Johnson bank argues that Stockholder did not file a reply on time and its  
11 attempt to avoid the missed deadline by filing jointly with MCA should not be allowed,  
12 and that there is no authority for the supplemental motion. Stockholder and MCA  
13 respond to the motion to strike at docket 50. Johnson Bank replies at docket 51. Oral  
14 argument was not requested and would not assist the court.

## 15 II. BACKGROUND

16 In October of 2012, Plaintiff Johnson Bank ("Johnson Bank") filed a complaint in  
17 Arizona state court against numerous defendants, including Maniatis, DPM-TT, and the  
18 Recorp Defendants. The case was removed to this court in November of 2013.  
19 Johnson Bank's complaint alleged that in 2005 one of the defendants, Greenplex,  
20 executed two promissory notes in favor of Johnson Bank. As partial security for  
21 payment of the notes, certain defendants, including DPM-TT and Maniatis, executed  
22 commercial guarantees in which they guaranteed payment of all Greenplex's  
23 indebtedness to Johnson Bank.

24 The complaint alleged that Greenplex failed to pay both notes in full. Johnson  
25 Bank entered into a forbearance agreement with some of the defendants, including  
26 Maniatis and DPM-TT. The forbearance agreement provided that in exchange for  
27 delaying the exercise of its default rights, Johnson Bank would secure an interest in  
28 certain water rights held by some of the defendants. Johnson Bank alleged that in the

1 forbearance agreement Maniatis promised it 75% of any proceeds resulting from the  
2 sale, transfer, development, or assignment of additional water rights held by entities  
3 Maniatis owned either individually or through Recorp Investments or Recorp Partners.  
4 The complaint alleged that the defendants defaulted on the forbearance agreement.

5         On March 26, 2013, a stipulated judgment was filed. Judgment against some of  
6 the defendants, including Maniatis and the Recorp Defendants, was entered on  
7 March 29, 2013. Johnson Bank asserts that it recorded the judgment, and on April 18,  
8 2013, through a writ of execution, the U.S. Marshals seized certain stock certificates  
9 held by defendants.

10         About four months later, on August 22, 2013, Stockholder filed its motion to  
11 intervene. In the motion, Stockholder asserts that it has an interest in the case based  
12 on a post-judgment stipulation in the unrelated IMH Action that was intended to satisfy  
13 the judgment IMH had obtained in December of 2012 against Maniatis, individually and  
14 as trustee of DPM-TT, and Faucher as trustee of DPM-TT (“IMH Debtors”) after it was  
15 unsuccessful in its attempt to collect through a writ of execution.

16         The post-judgment stipulation on which Stockholder relies was filed under seal  
17 with the state court on February 21, 2013, and was approved that same day. Pursuant  
18 to the stipulation, IMH agreed it would forbear collection efforts against the IMH Debtors  
19 during a negotiation period ending on June 26, 2013. As part of the terms, the IMH  
20 Debtors were to identify all LLCs, partnerships, and corporations in which they had a  
21 membership interest or held stock. The deadline for doing so was March 11, 2013. For  
22 each LLC and partnership, the IMH Debtors agreed to the issuance of a charging order  
23 against such interest in favor of IMH. As for the corporate stocks, the stipulation stated  
24 that the “order approving this stipulation shall transfer [any corporate shares held by the  
25 IMH debtors] to a limited liability company . . . created by [IMH]” and that during the  
26 negotiations period, Maniatis and a court-appointed receiver over the limited liability  
27 company “shall enter into a management agreement whereby Maniatis will continue to  
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1 operate the corporations on a day to day basis.”<sup>1</sup> Stockholder was created on March 5,  
2 2013, to own and control the stock as required by the stipulation.

3 The IMH Debtors did not turn over information about their corporate holdings by  
4 March 11, 2013, and did not deliver stock to Stockholder. On March 28, 2013, IMH  
5 filed a motion under seal in the IMH Action to enforce the post-judgment stipulation.  
6 The IMH Debtors objected, arguing that the stipulation did not transfer actual ownership  
7 of its stock to Stockholder or IMH. In the meantime, on March 29, 2013, Johnson Bank  
8 obtained judgment against Maniatis, DPM-TT, and the Recorp Defendants in the action  
9 at hand and collected through a writ of execution.

10 On June 12, 2013, the judge in the IMH Action entered an order finding that the  
11 IMH Debtors breached their obligations under the post-judgment stipulation by not  
12 disclosing all of their relevant assets. She also concluded that the IMH Debtors  
13 breached the stipulation by settling with Johnson Bank on behalf of the Recorp  
14 Defendants in this action “despite the transfer of [IMH Debtors’] stock in those  
15 corporations to [IMH].”<sup>2</sup> That same day, she issued an order transferring IMH Debtors’  
16 stock in the Recorp Defendants to Stockholder. Stockholder seeks to intervene in order  
17 to review the claims against the Recorp Defendants and to obtain the shares of stock in  
18 the Recorp Defendants that are held by Johnson Bank as a result of the judgment here.

19 On August 22, 2013, the state court judge appointed MCA, by and through Keith  
20 Bierman, as general receiver over the IMH Debtors to secure IMH’s judgment against  
21 Maniatis and DPM-TT. Pursuant to the order, MCA is entitled to take immediate  
22 possession of all property belonging to Maniatis and DPM-TT. MCA then filed its own  
23 motion to intervene on August 28, 2013.

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27 <sup>1</sup>Doc. 38-1 at p. 3.

28 <sup>2</sup>Doc. 38-5 at p. 3.

1 **III. STANDARD OF REVIEW**

2 Under Rule 24 of the Federal Rules of Civil Procedure, an applicant may seek  
3 intervention by right or by permission.

4 A party seeking to intervene as of right must meet four requirements: (1) the  
5 applicant must timely move to intervene; (2) the applicant must have a  
6 significantly protectable interest relating to the property or transaction that is  
7 the subject of the action; (3) the applicant must be situated such that the  
disposition of the action may impair or impede the party's ability to protect  
that interest; and (4) the applicant's interest must not be adequately  
represented by existing parties.<sup>3</sup>

8 "Failure to satisfy any one of the requirements is fatal to the application."<sup>4</sup> In  
9 determining whether a party has satisfied these four requirements, a court should be  
10 "guided primarily by practical and equitable considerations."<sup>5</sup> Courts generally construe  
11 Rule 24(a) liberally in favor of intervention.<sup>6</sup>

12 If the party does not meet the requirements for intervention as of right, that party  
13 may still seek permissive intervention. Under Rule 24(b), if based on a timely motion,  
14 "the court may permit anyone to intervene who . . . has a claim or defense that shares  
15 with the main action a common question of law or fact."<sup>7</sup> However, before granting  
16 permissive intervention, "the court must consider whether the intervention will unduly  
17 delay or prejudice the adjudication of the original parties' rights."<sup>8</sup>

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<sup>3</sup>*Arakaki v. Cayetano*, 324 F.3d 1078, 1083 (9th Cir. 2003).

23 <sup>4</sup>*Perry v. Proposition 8 Official Proponents*, 587 F.3d 947, 950 (9th Cir. 2009).

24 <sup>5</sup>*Arakaki*, 324 F.3d at 1083.

25 <sup>6</sup>*See Sw. Ctr. for Biological Diversity v. Berg*, 268 F.3d 810, 818 (9th Cir. 2001).

26 <sup>7</sup>Fed. R. Civ. P. 24(b)(1)(B).

27 <sup>8</sup>Fed. R. Civ. P. 24(b)(3).

1 **IV. DISCUSSION**

2 **A. Stockholder’s motion to intervene**

3 The court first considers the issue of timeliness. As noted above, a movant is  
4 not entitled to intervention by right or by permission unless the court concludes that the  
5 motion to intervene is timely. The court must consider three factors in determining  
6 whether a motion to intervene is timely: “(1) the stage of the proceeding at which an  
7 applicant seeks to intervene; (2) the prejudice to the other parties; and (3) the reason  
8 for and length of the delay.”<sup>9</sup> As to the first factor, Stockholder filed its motion to  
9 intervene about five months after the court entered judgment in this case. Intervention  
10 after final judgment is typically disfavored.<sup>10</sup> As to the second factor, because  
11 Stockholder has indicated that it will seek to vacate the judgment in this case upon  
12 intervention in order to reassess the claims asserted against the Recorp Defendants,  
13 the court finds that allowing intervention would prejudice the current parties by  
14 prolonging the matter and threatening the settlement.<sup>11</sup> As to the third factor,  
15 Stockholder has not adequately explained its delay in filing the motion to intervene.  
16 Delay is measured from the time the potential intervenor knew or had reason to know  
17 that his interests might be adversely affected by the outcome of the litigation.<sup>12</sup>  
18 Maniatis and DPM-TT were at all times defendants in this action. IMH should have

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20 <sup>9</sup>*Cal. Dep’t of Toxic Substances Control v. Commercial Realty Projects, Inc. (Cal. Toxic)*,  
21 309 F.3d 1113, 1119 (9th Cir. 2002). The timeliness factors are the same under intervention by  
22 right or by permission, although, the timeliness element is analyzed more strictly for permissive  
23 intervention. *League of United Latin Am. Citizens v. Wilson*, 131 F.3d 1297, 1308 (9th Cir.  
24 1997).

25 <sup>10</sup>*Calvert v. Hawkins*, 109 F.3d 636, 638 (9th Cir. 1997); see also *Alaniz v. Tillie Lewis*  
26 *Food*, 572 F.2d 657, 659 (9th Cir. 1978) (“Since the motion was filed after the consent decree  
27 was approved, the first factor weighs heavily against appellants.”).

28 <sup>11</sup>See *Cal. Toxic*, 309 F.3d at 1119 (upholding the district court’s determination that post-  
judgment intervention would prejudice the parties because it would “prolong the litigation,  
threaten the parties’ settlement, and further delay the clean up and development of [the  
property at issue]”).

<sup>12</sup>*Id.* at 1120.

1 known about this action and known that its interest in recovering from Maniatis and  
2 DPM-TT could be adversely affected in late 2012 and early 2013 when it was unable to  
3 execute judgment against Maniatis and DPM-TT. At the latest, IMH and Stockholder,  
4 which was created by IMH on March 5, 2013, should have known that their interests  
5 were at risk when Maniatis and DPM-TT failed to disclose their assets and turn over  
6 corporate stock as they were obligated to do under the post-judgment stipulation in the  
7 IMH Action. Also, from the supporting documents filed, it is clear that Stockholder knew  
8 of its claimed interest in the Recorp Defendants in March of 2013. Stockholder offers  
9 no explanation as to why it did not move to intervene earlier if it considered itself the  
10 rightful owner of the Recorp Defendants. Indeed, Stockholder does not assert that it  
11 had no knowledge of Maniatis, DPM-TT, or the Recorp Defendants' involvement in the  
12 dispute here. Given the post-judgment nature of Stockholder's motion, the prejudice  
13 that intervention would create, and the unexplained delay, the court concludes that  
14 Stockholder's motion to intervene is untimely. It need not consider the other elements  
15 of Rule 24.<sup>13</sup>

16 **B. MCA's motion to intervene**

17 For much the same reasons discussed above, MCA's motion to intervene suffers  
18 from timeliness problems. As with Stockholder's motion, it was filed about five months  
19 after judgment was entered, and intervention at this late stage would certainly cause  
20 prejudice to the parties. Unlike Stockholder, however, MCA argues that it has a reason  
21 for its delay; namely, it did not have an interest in the case until August 22, 2013, when  
22 the state court judge in the IMH Action appointed it as receiver over Maniatis and DPM-  
23 TT in order to secure IMH's judgment against Maniatis and DPM-TT and investigate  
24 transfers and transactions made by them. It argues that it filed its motion to intervene  
25 within four days of its appointment and so it is timely. The court disagrees. MCA was

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27 <sup>13</sup>*United States v. Washington*, 86 F.3d 1499, 1503 (9th Cir. 1996) ("If the court finds  
28 that the motion to intervene was not timely, it need not reach any of the remaining elements of  
Rule 24.").

