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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Tonya Lee Mims,

10 Plaintiff,

11 v.

12 United States of America,

13 Defendant.
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No. CV-16-00585-PHX-JAT (BSB)

**ORDER DENYING MOTION TO
INTERVENE**

15 Pending before the Court is a Motion to Intervene under Federal Rule of Civil
16 Procedure 24(a) (Doc. 10), made by Scott Homes II, LLC, Rancho Cabrillo Parcel F
17 Homeowners Association, Inc., KDB Finance, LLC, and Timberline Village Corporation
18 (collectively “Movants”). Movants seek to intervene in Plaintiff Tonya Mims’ Motion to
19 Return Property under Federal Rule of Criminal Procedure 41(g).

20 Plaintiff filed a motion requesting the return of three items previously seized
21 during the criminal proceedings against her: (1) an external hard drive, (2) a computer
22 tower, and (3) a file folder containing household documents.¹ (Doc. 1). Movants claim
23 Plaintiff’s property likely contains sensitive information regarding Movants, and is
24 therefore protectable under the Crime Victim’s Rights Act, 18 U.S.C. § 3771(a)(8).

25 ¹ The United States responded with no objection to Mims’ motion (Doc. 8), and
26 this Court ordered the Government to return the property (Doc. 9). Movants then filed
27 this Motion to Intervene, requesting the Government release the property to them. (Doc.
28 10 at 2). This Court modified its previous order and ordered that the property be retained
pending its decision on the Motion to Intervene. (Doc. 11).

1 Federal Rule of Civil Procedure 24(a)(2) allows a party to intervene in an action as
2 of right when the party “claims an interest relating to the property or transaction that is
3 the subject of the action, and is so situated that disposing of the action may as a practical
4 matter impair or impeded the movant’s ability to protect its interest” in the property.
5 There are four requirements a party must meet to be entitled to intervention as of right:

6 (1) the [party’s] motion must be timely; (2) the applicant must
7 claim a “significantly protectable” interest relating to the
8 property or transaction which is the subject of the action; (3)
9 the applicant must be so situated that the disposition of the
10 action may as a practical matter impair or impede its ability to
protect that interest; and (4) the applicant’s interest must be
inadequately represented by the parties to the action.

11 California ex rel. Lockyer v. United States, 450 F.3d 436, 440 (9th Cir. 2006) (quoting
12 Sierra Club v. Env’tl. Prot. Agency, 995 F.2d 1478, 1481 (9th Cir. 1993)).

13 The current record does not support a conclusion that Movants have a significantly
14 protectable interest in the property in question.² Plaintiff asserted in her Motion that the
15 property contains only music files, family photos, and household documents. (Doc. 1).
16 Movants’ claims that the property contains sensitive information is purely speculative,
17 based on Plaintiff’s previous purchase of software that she used to “alter and hide
18 evidence” and her “propensity for deceit.” (Doc. 10 at 2). Movants also argue Plaintiff
19 has a history of hiding and preventing access to property in order to prevent Movants’
20 from mitigating their losses. (Doc. 10 at 3). Plaintiff’s history alone does not give rise to
21 an appreciable likelihood that this particular property contains sensitive information
22 about Movants. See Silver v. Babbitt, 166 F.R.D. 418, 429 (D. Ariz. 1994) (denying
23 motion to intervene because the applicant’s interests were “too speculative . . . to justify
24 intervention of right”).

25 Nevertheless, as the victims of the crimes in question, Movants have the right to

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27 ² Movants also argue they are entitled to possession of the property in order to sell
28 the electronic equipment in satisfaction of the civil judgment against Mims. (Doc. 8 at 2).
Movants admit, however, that any satisfaction obtained through the sale of this
equipment would be “marginal.” (Doc. 18-1 at 1 (Reply in Support)). Accordingly,
Movant’s financial interest in the property is not significantly protectable.

1 “be treated with . . . respect for the victim’s dignity and privacy.” 18 U.S.C. § 3771. In
2 the event the property does in fact contain sensitive or personal information, releasing the
3 property to Plaintiff will not adequately protect Movants’ rights. The Court agrees with
4 Movants that their interest would be better protected if the Government undertook to
5 review the property in order to determine whether it contains sensitive information. (Doc.
6 18-1 at 2).

7 Accordingly,

8 **IT IS ORDERED** denying the Motion to Intervene (Doc. 10) without prejudice.

9 **IT IS FURTHER ORDERED** that the Government shall review all of the
10 property in question and determine the nature of the data contained therein; no later than
11 **thirty (30) days** from the date of this Order, the Government shall report to Movants
12 regarding whether the property contains sensitive or personal information Movants.

13 **IT IS FURTHER ORDERED** that if the Government’s report reveals any
14 relevant data concerning Movants, Movants may renew this Motion to Intervene within
15 **ten (10) days** of the date of the report.

16 **IT IS FURTHER ORDERED** that, if the Government’s report does not reveal
17 that the property contains any relevant data concerning Movants, the Government shall,
18 within **thirty (30) days** of its report, notify the Court that Plaintiff’s property at issue has
19 been returned to her or describing its efforts to return Plaintiff’s property and the
20 expected date on which it will be returned.

21 Dated this 28th day of October, 2016.

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27 **James A. Teilborg**
28 **Senior United States District Judge**