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3 **UNITED STATES DISTRICT COURT**
4 **FOR THE EASTERN DISTRICT OF CALIFORNIA**

5 **SECURITIES AND EXCHANGE**
6 **COMMISSION,**

7 **Plaintiff,**

8 **v.**

9 **BIC REAL ESTATE CORP., et al.,**

10 **Defendants.**

1:16-cv-344-LJO-JLT

**ORDER FOR SUPPLEMENTAL
BRIEFING**

11
12 Currently before the Court is Valley Mortgage Investment, Inc.'s ("VMI") motion to intervene.
13 Doc. 91. VMI asserts it is entitled to intervene in this case as of right under Federal Rule of Civil
14 Procedure¹ 24(a) and, alternatively, asks the Court for permission to intervene under Rule 24(b).
15 Plaintiff Securities and Exchange Commission ("the SEC") and the Court-appointed Receiver, David
16 Stapleton ("the Receiver"), oppose the motion. Docs. 96 & 98. Defendants joined the SEC's opposition.
17 Doc. 97. The Court took the matter under submission on the papers pursuant to Local Rule 230(g). Doc.
18 105.

19 The SEC brought this enforcement action to enjoin Defendants' allegedly fraudulent investment
20 scheme. The SEC alleges:

21 Daniel R. Nase and the corporation he controls, BIC Real Estate Development Corporation
22 ("BIC"), engaged and are engaging in an unregistered and fraudulent offer and sale of BIC
23 securities. From July 2013 through September 2015, BIC and Nase raised at least \$11.6 million
24 from approximately 400 investors nationwide to purchase BIC common stock. While Nase and
BIC stated that the purpose of the offering was to provide funds for BIC to purchase real
property in Bakersfield, California, and fractional interests in promissory notes for consumer

25 ¹ All further references to any "Rule" are to the Federal Rules of Civil Procedure.

1 loans, in fact, the offering was simply a scheme by Nase and BIC to defraud investors for his
2 personal benefit.

3 As part of his fraud, Nase misappropriated approximately \$5.5 million of BIC assets by using
4 investor funds to purchase real properties that he then titled or held in his own name or the name
5 of his wife, Relief Defendant Margarita Nase, or in the name of their trust, Relief Defendant BIC
Solo 401k Trust. He also transferred cash from BIC's account to his personal account at
LendingClub.com, and used BIC's funds to pay his person expenses even as BIC paid Nase and
his wife generous salaries.

6 Doc. 1, Complaint ("Compl.") at ¶¶ 4-5.

7 Along with its complaint, the SEC filed a motion for a temporary restraining order and a motion
8 to appoint a receiver over BIC and its subsidiaries. Docs. 2, 6. The Court granted both motions. Docs.
9 10, 13. Shortly afterward, the Court preliminarily enjoined Defendants pursuant to the parties'
10 stipulation between one another and with the Court. Docs. 33, 42. As part of that injunction, the
11 Receiver was permitted to manage a number of real properties owned or managed by BIC. *See generally*
12 Doc. 42 at 10.

13 VMI moves to intervene in this case "as assignee for multiple private mortgage lenders [(“the
14 Lenders”)] who, between them, hold secured interests in 36 parcels of real property owned by either
15 Bakersfield Investment Club or BIC Real estate Development Corporation [(“the Properties”)]. Doc. 91-
16 1 at 3. "VMI is presently acting as loan servicer for each of the 36 mortgages" on the Properties. *Id.*

17 VMI contends that, since the Receiver was appointed, a number of the properties and their
18 corresponding mortgages have suffered due to the Receiver's action and inaction. Due to the problems
19 facing the Properties, VMI seeks to intervene so that its interests and those of the Lenders, who VMI
20 represents, are "more directly represented." Doc. 91-1 at 4.

21 The SEC, the Receiver, and Defendants oppose VMI's intervention under both Rule 24(a) and
22 24(b). Docs. 96, 98. They argue, among other things, that the Receiver adequately represents VMI's
23 interests and, accordingly, VMI is not entitled to intervene as of right under Rule 24(a).

24 To intervene as of right under Rule 24, the applicant for intervention must satisfy four
25 requirements:

1 (1) the applicant must timely move to intervene; (2) the applicant must have a significantly
2 protectable interest relating to the property or transaction that is the subject of the action; (3) the
3 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.

4 *Perry v. Proposition 8 Official Proponents*, 587 F.3d 947, 950 (9th Cir. 2009). "Failure to satisfy any
5 one of the requirements is fatal to the application, and [the Court] will not reach the remaining elements
6 if one of the elements is not satisfied." *Id.*

7 On the current record, the Court is unable to rule on VMI's motion to intervene as of right under
8 Rule 24(a) because the Court has concerns about how the Receiver is managing the Properties and
9 whether VMI has been (or can be) afforded the ability to review and comment on the Receiver's plans to
10 sell the Properties. The Court is also unable to determine whether the Properties are currently on the
11 market and, if not, why that is the case. Finally, the Court cannot determine whether the Receiver is
12 timely providing VMI relevant information, including information about rental income, mortgage
13 payments, and vacancies. The Court therefore requires more information from the parties.

14 Accordingly, on or before November 4, 2016, the Receiver shall submit a supplemental brief, not
15 to exceed fifteen pages, answering the following questions with appropriate evidentiary support:

- 16 1. What process, if any, exists for VMI to be apprised of and comment on the Receiver's plans
17 for the Properties?
- 18 2. Are the Properties currently on the market? If they are, the Receiver shall indicate whether
19 there are (or have been) any credible offers for them. If they are not on the market, the
Receiver shall explain why that is so and when he anticipates they will be.

20 Within seven days of the Receiver's submitting his brief, VMI may file a responsive
21 supplemental brief, not to exceed fifteen pages. The Court leaves the substance of that brief to VMI's
22 discretion with the caveat that both parties are directed to discuss further whether the third and fourth
23 requirements for Rule 24(a) intervention are satisfied under current or proposed circumstances.

24 Alternatively, if the parties can come to a mutual agreement about a process by which they can
25 share information and bring VMI's concerns to the attention of the Court, the Court will consider such a

1 stipulated resolution. The Court will also consider the Receiver's suggestion that the parties stipulate to
2 abandonment of the Properties to VMI. Doc. 98 at 15 n.5. If the parties require more time to meet and
3 confer to discuss potential stipulations prior to submitting their briefs, they shall so inform the Court as
4 soon as reasonably practical, and the Court may adjust deadlines accordingly.

5
6 IT IS SO ORDERED.

7 Dated: October 27, 2016

/s/ Lawrence J. O'Neill
UNITED STATES CHIEF DISTRICT JUDGE