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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

LUCILLE WINSTON, et al.,
Plaintiffs,
v.
UNITED STATES OF AMERICA,
KEENAN LEE GRAW, KAREN HIMES
GRAWE, and DOES 1-50,
Defendants.

Case No. [14-cv-05417-MEJ](#)
ORDER RE: MOTION TO INTERVENE
Re: Dkt. No. 46

INTRODUCTION

Plaintiff Lucille M. Winston (“Plaintiff”), individually and as Guardian Ad Litem for Lumari Newsome, her minor daughter, brings this negligence action related to two car accidents. Pending before the Court is a Motion to Intervene pursuant to Federal Rule of Civil Procedure (“Rule”) 24, filed by Mercury Insurance Company (“Mercury”). Dkt. No. 46. Defendant United States of America filed a Statement of Non-Opposition. Dkt. No. 49. Plaintiff and Defendants Keenan Lee Grawe and Karen Himes Grawe did not respond. The Court finds this matter suitable for disposition without oral argument and **VACATES** the February 4, 2016 hearing. *See* Fed. R. Civ. P. 78(b); Civ. L.R. 7-1(b). Having considered the parties’ positions, relevant legal authority, and the record in this case, the Court **GRANTS** Motion for the following reasons.

BACKGROUND

Plaintiff and her minor daughter were involved in automobile accidents on December 12, 2012 and February 28, 2013. Second Am. Compl. (“SAC”) ¶¶ 11-13, 18-19, Dkt. No. 40. The 2012 accident involved a vehicle owned by the government and driven by Asmaa Ali Ali, a federal employee. *Id.* ¶ 4. The 2013 accident involved a vehicle owned and/or managed by

1 Defendants Keenan Lee Grawe and Karen Himes Grawe. *Id.* ¶ 16. Plaintiff filed her initial
2 Complaint on December 11, 2014. Dkt. No. 1. She filed the SAC on November 2, 2015.

3 Mercury filed the present Motion on December 11, 2015. It seeks to intervene as
4 Plaintiff’s insurance company, arguing that disposition of this case without Mercury’s
5 participation may impede its claims, as it has a subrogation claim based on an assignment from
6 Plaintiff. Mot. at 2. In its proposed Complaint in Intervention, Mercury alleges it paid \$10,611.16
7 for expenses associated with Plaintiff’s vehicle after the December 12, 2012 accident. *Id.*, Ex. 1.

8 **LEGAL STANDARD**

9 Intervention is a procedure by which a nonparty can gain party status without the consent
10 of the original parties. *United States ex rel. Eisenstein v. City of N.Y.*, 556 U.S. 928, 933 (2009)
11 (“Intervention is the requisite method for a nonparty to become a party to a lawsuit.” (citation
12 omitted). There are two types of intervention: (1) intervention of right, and (2) permissive
13 intervention. *See* Fed. R. Civ. P. 24(a)-(b).

14 Intervention exists as a matter of right when a federal statute confers the right to intervene
15 or the applicant has a legally protected interest that may be impaired by disposition of the pending
16 action and existing parties do not adequately represent that interest. Fed. R. Civ. P. 24(a). A court
17 must permit an applicant to intervene as a matter of right when: “(1) it has a significant protectable
18 interest relating to the property or transaction that is the subject of the action; (2) the disposition of
19 the action may, as a practical matter, impair or impede the applicant’s ability to protect its interest;
20 (3) the application is timely; and (4) the existing parties may not adequately represent the
21 applicant’s interest.” *Chamness v. Bowen*, 722 F.3d 1110, 1121 (9th Cir. 2013) (citation and
22 internal quotation omitted). “Each of these four requirements must be satisfied to support a right
23 to intervene. While Rule 24 traditionally receives liberal construction in favor of applicants for
24 intervention, it is incumbent on the party seeking to intervene to show that all the requirements for
25 intervention have been met.” *Id.* (internal citation, quotation, and alterations omitted). Failure to
26 satisfy any one of the requirements is fatal to the application. *Perry v. Proposition 8 Official*
27 *Proponents*, 587 F.3d 947, 950 (9th Cir. 2009).

28 Alternatively, under Rule 24(b), a court may also permit anyone to intervene who “has a

1 claim or defense that shares with the main action a common question of law or fact.” Fed. R. Civ.
2 P. 24(b)(1)(B). Unlike intervention as of right, permissive intervention focuses on possible
3 prejudice to the original parties to the litigation, not the intervenor. *Donnelly v. Glickman*, 159
4 F.3d 405, 411 (9th Cir. 1998). Thus, “in exercising its discretion, the court is to consider ‘whether
5 the intervention will unduly delay or prejudice the adjudication of the rights of the original
6 parties.’” *Kootenai Tribe of Idaho v. Veneman*, 313 F.3d 1094, 1128 n.10 (9th Cir. 2002),
7 *abrogated on other grounds by Wilderness Soc. v. U.S. Forest Serv.*, 630 F.3d 1173 (9th Cir.
8 2011) (quoting Fed. R. Civ. P. 24(b)(2)). “[P]ermissive intervention ‘requires (1) an independent
9 ground for jurisdiction; (2) a timely motion; and (3) a common question of law and fact between
10 the movant’s claim or defense and the main action.’” *Freedom from Religion Found., Inc. v.*
11 *Geithner*, 644 F.3d 836, 843 (9th Cir. 2011) (quoting *Beckman Indus., Inc. v. Int’l Ins. Co.*, 966
12 F.2d 470, 473 (9th Cir. 1992)). “Even if an applicant satisfies those threshold requirements, the
13 district court has discretion to deny permissive intervention.” *Donnelly*, 159 F.3d at 412.

14 In ruling on a motion to intervene, the Court must accept as true the nonconclusory
15 allegations of the motion and proposed pleading. *Sw. Ctr. for Biological Diversity v. Berg*, 268
16 F.3d 810, 819 (9th Cir. 2001).

17 **DISCUSSION**

18 Mercury’s unopposed Motion seeks to intervene as a matter of right under Rule 24(a), or in
19 the alternative, permission to intervene under Rule 24(b). As set forth below, the Court finds
20 Mercury has sufficiently satisfied the four-factor test for intervention as a matter of right under
21 Rule 24(a), and thus the Court need not address whether intervention is proper under Rule 24(b).

22 **A. Significant Protectable Interest**

23 “An applicant has a ‘significant protectable interest’ in an action if (1) it asserts an interest
24 that is protected under some law, and (2) there is a ‘relationship’ between its legally protected
25 interest and the plaintiff’s claims.” *Cal. ex rel. Lockyer v. United States*, 450 F.3d 436, 441 (9th
26 Cir. 2006) (quoting *Donnelly*, 159 F.3d at 409). To trigger the right to intervene, an economic
27 interest must be concrete and related to the underlying subject matter of the litigation. *United*
28 *States v. Alisal Water Corp.*, 370 F.3d 915, 919 (9th Cir. 2004). As Mercury’s subrogation claim

1 is identical to the subject matter of this litigation, Mercury easily establishes a cognizable, legally
2 protectable interest.

3 **B. Practical Impairment of Mercury’s Interests**

4 When considering possible impairments to an intervenor’s interests in an action, “courts are
5 guided primarily by practical and equitable considerations.” *Id.* Consistent with the liberal standard
6 in favor of intervention, a proposed intervenor need not show impairment is an “an absolute
7 certainty.” *Citizens for Balanced Use v. Mont. Wilderness Ass’n*, 647 F.3d 893, 900 (9th Cir.
8 2011). Rather, the intervenor’s interests need only be “substantially affected in a practical sense
9 by the determination made in an action.” *Berg*, 268 F.3d at 822 (quoting Fed. R. Civ. P. 24
10 advisory committee note to 1966 amendment)). Generally, after determining the applicant has a
11 protectable interest, courts have “little difficulty concluding” the disposition of the case may affect
12 such interest. *Lockyer*, 450 F.3d at 442.

13 Mercury argues it shares a cause of action for property damage with Plaintiff, and should
14 she resolve that cause of action without its permission, Mercury will be barred from pursuing
15 reimbursement of its claim. Mot. at 6. Given that Mercury’s subrogation claim is identical to the
16 subject matter of this litigation, the Court finds disposition of this case will substantially affect
17 Mercury’s interest.

18 **C. Timeliness**

19 In determining whether a motion to intervene is timely, courts weigh three factors: “(1) the
20 stage of the proceeding at which an applicant seeks to intervene; (2) the prejudice to other parties;
21 and (3) the reason for and length of the delay.” *Alisal*, 370 F.3d at 921. “Timeliness is a flexible
22 concept; its determination is left to the district court’s discretion.” *Id.* (citing *Dilks v. Aloha*
23 *Airlines*, 642 F.2d 1155, 1156 (9th Cir. 1981)). The Court must be lenient in applying the
24 timeliness requirement where intervention is sought as a matter “of right.” *United States v.*
25 *Oregon*, 745 F.2d 550, 552 (9th Cir. 1984). Although delay can strongly weigh against
26 intervention, the mere lapse of time, without more, is not necessarily a bar to intervention. *Id.*

27 1. Stage of the Proceedings

28 With regard to the stage of the proceedings, the Court finds Mercury’s Motion timely.

1 Although Plaintiff filed this case in 2014, several procedural delays meant the operative SAC was
 2 not filed until November 2, 2015, and Defendants did not file their Answers until November 5 and
 3 23, 2015. Dkt. Nos. 42-43. As discovery has yet to commence and no significant substantive
 4 rulings have been made, the case remains in the early stages of litigation. Thus, the proceedings
 5 have not advanced to the point where intervention is inappropriate. *See N. Cal. River Watch v.*
 6 *Fluor Corp.*, 2014 WL 3385287, at *15 (N.D. Cal. July 9, 2014) (granting motion to intervene
 7 where discovery had yet to commence and the court had not “significantly engaged the issues.”);
 8 *S. Yuba River Citizens League & Friends of the River v. Nat’l Marine Fisheries Svc.*, 2007 WL
 9 3034887, at *12 (E.D. Cal. Oct. 16, 2007) (allowing intervention where motion to dismiss had
 10 been filed, no discovery had been conducted, and party moved for intervention before dispositive
 11 motion filing deadline); *cf. League of United Latin Am. Citizens v. Wilson*, 131 F.3d 1297, 1303
 12 (9th Cir. 1997) (affirming denial of motion to intervene where there had been multiple
 13 proceedings, including a preliminary injunction, appeal to the Ninth Circuit, and partial grant of
 14 summary judgment).

15 2. Prejudice to the Other Parties

16 The issue of prejudice to the existing parties is the most important consideration in
 17 deciding whether a motion for intervention is untimely. *Oregon*, 745 F.2d at 552. “[C]ourts have
 18 emphasized the seriousness of the prejudice which results when relief from long-standing
 19 inequities is delayed.” *Alaniz v. Tillie Lewis Foods*, 572 F.2d 657, 659 (9th Cir. 1978).
 20 Intervention has been denied at pretrial stages when “a lot of water [has] passed under . . . [the]
 21 litigation bridge.” *Alisal*, 370 F.3d at 922 (citations omitted). In assessing this factor, courts
 22 consider “whether existing parties may be prejudiced by the delay in moving to intervene . . . ‘not
 23 whether the intervention itself will cause the nature, duration or disposition of the lawsuit to
 24 change’ (otherwise, intervention would never be allowed because it inevitably prolongs the
 25 litigation).” *Defenders of Wildlife v. Johanns*, 2005 WL 3260986, at *4 (N.D. Cal. Dec. 1, 2005)
 26 (citation omitted). “The court looks to factors such as loss of evidence, settlements made in
 27 expectation of no further claims, and the need to reopen matters previously resolved.” *Id.*

28 Nothing in the record shows there would be prejudice to any of the existing parties. No

1 party has raised an issue regarding loss of evidence, no evidence has been presented of a
2 settlement agreement among any of the parties, and no substantive issues have been resolved in
3 the course of this litigation. *Cf. Oregon*, 913 F.2d at 588-89 (finding that intervention would
4 prejudice all parties because it would challenge a complex and delicately balanced plan achieved
5 after four years of negotiation); *League of United Latin Am. Citizens*, 131 F.3d at 1304 (prejudice
6 to all parties existed where proposed intervenor waited 27 months before seeking to intervene and
7 petitioned the court for full party status when litigation was beginning to wind down).
8 Accordingly, the Court finds intervention would not result in prejudice to the parties in this case.

9 3. Reason and Length of Delay

10 Last, the Court considers Mercury’s reason and length of the delay in moving for
11 intervention. “While the length of time that has passed since a suit was filed is not, in and of
12 itself, determinative of timeliness, a party seeking to intervene must act as soon as he knows or has
13 reason to know that his interests might be adversely affected by the outcome of the litigation.”
14 *Cal. Dep’t of Toxic Substances Control v. Commercial Realty Projects*, 309 F.3d 1113, 1120 (9th
15 Cir. 2002) (internal citation, quotation, and alteration omitted). Thus, the party seeking
16 intervention must provide a reason for its delay in seeking to enter into the case. *Alisal*, 370 F.3d
17 at 923. The key date for assessing the timeliness of a motion to intervene is the date the applicant
18 should have been aware that its interests would no longer be adequately represented by one of the
19 existing parties. *Smith v. Marsh*, 194 F.3d 1045, 1052 (9th Cir. 1999).

20 Mercury provides no reason why it waited nearly one year to move to intervene in this
21 case. At the same time, the timeliness inquiry in which a court engages on a motion to intervene is
22 to be determined from all of the circumstances. *See NAACP v. New York*, 413 U.S. 345, 366
23 (1973). “The Court may, in its discretion, decide whether the length of and reason for the delay,
24 combined with the other timeliness factors, are reasonable.” *Def. of Wildlife*, 2005 WL 3260986,
25 at *4. Furthermore, “[t]he mere passage of time, in itself, does not render an application untimely;
26 rather, the important question concerns actual proceedings of substance on the merits.” *Id.* (citing,
27 among others, *Nw. Forest Res. Council v. Glickman*, 82 F.3d 825, 837 (9th Cir. 1996), *as amended*
28 *on denial of reh’g* (May 30, 1996) (finding motion timely where it had been filed “before the

1 district court had made any substantive rulings.”)). Thus, on balance, given the early stage of the
2 proceedings and the lack of prejudice to all parties, the Court finds the delay was not excessive.

3 For these reasons, the Court finds Mercury’s Motion to Intervene is timely.

4 **D. Adequacy of Representation**

5 An applicant for intervention must demonstrate that representation of its interests by
6 existing parties to the litigation “may be” inadequate. *Forest Conservation Council v. United*
7 *States Forest Serv.*, 66 F.3d 1489, 1498 (9th Cir. 1995). The burden of showing inadequate
8 representation is minimal, and doubts about adequacy of representation should be resolved in
9 favor of the intervenor. *Id.*; see also *Arakaki v. Cayetano*, 324 F.3d 1078, 1084 (9th Cir. 2003).
10 In making this determination, the Court considers three factors: (1) “whether the interest of a
11 present party is such that it will undoubtedly make all of a proposed intervenor’s arguments”; (2)
12 “whether the present party is capable and willing to make such arguments”; and (3) “whether a
13 proposed intervenor would offer any necessary elements to the proceeding that other parties would
14 neglect.” *Arakaki*, 324 F.3d at 1086. “When an applicant for intervention and an existing party
15 have the same ultimate objective, a presumption of adequacy of representation arises.” *Id.*;
16 *League of United Latin Am. Citizens*, 131 F.3d at 1305. Thus, where “the applicant’s interest is
17 identical to that of one of the present parties, a compelling showing should be required to
18 demonstrate inadequate representation.” *Prete v. Bradbury*, 438 F.3d 949, 957 (9th Cir. 2006)
19 (citing *Arakaki*, 324 F.3d at 1086).

20 Because Mercury is pursuing reimbursement of its subrogation claim, and no other party is
21 furthering such interest, the Court finds representation of its interests by the existing parties is
22 likely inadequate. See *Defs. of Wildlife*, 2005 WL 3260986, at *8 (“The court also may find that a
23 proposed intervenor’s interests are not adequately represented where the intervenor would bring a
24 perspective none of the other parties to the litigation have.”).

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1 **CONCLUSION**

2 Based on the analysis above, the Court **GRANTS** Mercury's Motion to Intervene.
3 Mercury shall e-file its Complaint in Intervention by January 4, 2016. No chambers copy is
4 required.

5 **IT IS SO ORDERED.**

6
7 Dated: December 29, 2015



8 MARIA-ELENA JAMES
9 United States Magistrate Judge