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DATE FILED: 3/8/13

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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PASHA S. ANWAR, et al., :

Plaintiffs, :

09 Civ. 0118 (VM)

-against-

FAIRFIELD GREENWICH LIMITED, :  
et al., :

Defendants. :

DECISION AND ORDER

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VICTOR MARRERO, United States District Judge.

By letter dated February 23, 2013, counsel to Irving Picard (the "Trustee"), the court-appointed Trustee in the liquidation of Bernard L. Madoff Investment Securities LLC ("BLMIS"), requested a pre-motion conference and advised the Court of the Trustee's intention to file a motion to intervene in this action. Specifically, the Trustee seeks intervention in order to assert at the upcoming March 22, 2013 fairness hearing before this Court that the Trustee has superior claims to the assets that are the subject of the proposed settlement agreement between the Plaintiffs in this action and defendants Fairfield Greenwich Limited and Fairfield Greenwich (Bermuda) Limited (collectively, the "Fairfield Greenwich Defendants").

The Trustee asserts that, pursuant to Federal Rule of Civil Procedure 24(a), he is entitled to intervene as of right because "the proposed settlement, if approved, would drain money from the same limited pool of assets on which the Trustee has first claim under SIPA." (Dkt. No. 154 at 2.) Therefore, the Trustee claims that he has a direct interest relating to the property or transaction and that a partial settlement in this action would impair his ability to protect the interest of the bankruptcy estate in this property. Alternatively, the Trustee requests permission to intervene pursuant to Federal Rule of Procedure 24(b) because there are common questions of law and fact between the various actions the Trustee has brought against the Fairfield Greenwich Defendants and this action, and because intervention will not unduly delay or prejudice the adjudication of the rights of the existing parties.

Plaintiffs and the Fairfield Greenwich Defendants have filed separate letters opposing the Trustee's request. (Dkt. Nos. 1060 and 1061.) They argue that the Trustee's request to intervene should be denied because (1) the Trustee lacks standing; (2) intervention is unnecessary because the Trustee's objection is already pending before this Court in the form of a motion to enjoin the proposed settlement agreement; (3) the Trustee's request is

untimely; and (4) any further proceedings by the Trustee would cause undue delay and prejudice the interests of the parties.

The Court finds that neither mandatory nor permissive intervention by the Trustee is warranted in the present action. To begin with, nonparties, such as the Trustee, generally do not have standing to object to a class action settlement. See, e.g., Central States Welfare Fund v. Merck-Medco, LLC, 504 F.3d 229, 244 (2d Cir. 2007) (citation omitted). Moreover, the Trustee has already filed a motion to enjoin the preliminary class action settlement, which is currently pending before this Court, in which he advances the same theory that the Trustee has superior claims to the Fairfield Greenwich Defendants' assets. This Court has before it the Trustee's arguments and the Plaintiffs' and Fairfield Greenwich Defendants' responses to the underlying issue. Therefore intervention in this action is not necessary to protect the Trustee's alleged interest. Finally, the Trustee seeks intervention in this action nearly four years after the Trustee had notice of any alleged interest and less than one month prior to the final fairness hearing. Therefore, even if the Trustee had valid grounds to intervene, his motion at this point is barred as untimely.

Accordingly, the Court hereby **DENIES** the Trustee's request for a pre-motion conference, deems the Trustee's February 23, 2013 letter a motion to intervene, and **DENIES** the Trustee's motion to intervene.

**SO ORDERED.**

Dated: New York, New York  
7 March 2013

A handwritten signature in black ink, appearing to read 'Victor Marrero', is written over a horizontal line.

VICTOR MARRERO  
U.S.D.J.