

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO.: 23-24903-CIV-JB

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

RISHI KAPOOR, et al.,

Defendants.

**RECEIVER’S REPLY TO NON-PARTY MIRONEST CG, LL’S OBJECTION, AND
IN SUPPORT OF MOTION TO APPROVE THIRD PARTY LITIGATION
PROCEDURES AND CONTINGENCY FEE ARRANGEMENT**

Bernice C. Lee, as the Court-appointed Receiver (“Receiver”) over the Receivership Companies,¹ submits this reply in support of her Motion to Approve Third Party Litigation Procedures and Contingency Fee Arrangement [DE 490] (“Litigation Procedures Motion”), to address the Objection and Reservation of Rights (“Objection”) [DE 508] filed by non-party Mironest CG, LLC (“Mironest”). Mironest (1) lacks standing to be heard on the Litigation Procedures Motion; and (2) in any event, fails to identify a meritorious objection to the Litigation Procedures Motion.²

¹ The Receivership Companies include: Location Ventures, LLC, URBIN, LLC, Patriots United, LLC; Location Properties, LLC; Location Development, LLC; Location Capital, LLC; Location Ventures Resources, LLC; Location Equity Holdings, LLC; Location GP Sponsor, LLC; 515 Valencia Sponsor, LLC; LV Montana Sponsor, LLC; URBIN Founders Group, LLC; URBIN CG Sponsor, LLC; 515 Valencia Partners, LLC; LV Montana Phase I, LLC; Stewart Grove 1, LLC; Stewart Grove 2, LLC; Location Zamora Parent, LLC; URBIN Coral Gables Partners, LLC; URBIN Coconut Grove Partners, LLC; URBIN Miami Beach Partners, LLC; and URBIN Miami Beach II Phase 1, LLC.

² The Receiver has previously filed a Reply [DE 497] in support of the Litigation Procedures Motion which addressed the objections of non-parties CWL-CH, LLC, ASJAIA, LLC and Vieden Grove Oz, LLC. The Receiver incorporates by reference the arguments made in her earlier Reply.

BACKGROUND

The Receiver, consistent with the authority vested in her by the Court's Order Granting Plaintiff Securities and Exchange Commission's Expedited Motion for Appointment of Receiver, Asset Freeze, and Other Relief Against the Company Defendants ("Receivership Order"), has filed the Litigation Procedures Motion in order to (a) confirm her authority to assert and resolve potential litigation claims against third parties; (b) set forth clear and efficient procedures for the resolution of such claims and further Court approval in appropriate circumstances; and (c) approve the engagement of her firm, Kozyak Tropin & Throckmorton, LLP ("KTT") as counsel to pursue such claims on a contingent fee basis, based on the Receiver's determination that such an arrangement is in the best interests of the receivership estate. The Litigation Procedures Motion was filed after consultation with, and with the consent of, the Securities and Exchange Commission ("SEC").

Mironest is an entity which entered into a pre-receivership \$6 million purchase agreement for a condominium unit at the Villa Valencia condominium project owned by 515 Valencia SPE, LLC, which in turn is owned and managed by 515 Valencia Partners, LLC, a Receivership Company. Mironest is not a party to the receivership case, though this Court has permitted it to file papers in connection with particular proceedings relating to the Villa Valencia project. The Receiver has been engaged in ongoing negotiations with Mironest regarding the potential purchase of the condominium unit for which it had a pre-receivership purchase agreement.

Mironest has now filed its Objection to the Litigation Procedures Motion, in which it asserts (1) that the proposed contingency engagement of KTT is likely to dissipate assets of the receivership estate; (2) that the Receiver has not adequately explored other options such as

“bidding out” the proposed retention; and (3) that potential conflicts of interest arise from prior transactions approved by this Court. On these bases, Mironest requests that the Court deny the Litigation Procedures Motion. Mironest has not sought to intervene in the receivership case with respect to the Litigation Procedures Motion, nor does its Objection attempt to set forth any basis for why intervention would be appropriate.³

DISCUSSION

1. Mironest Lacks Standing to be Heard on the Litigation Procedures Motion.

Mironest is not a party to the receivership case, and has not been permitted to intervene in the receivership case.⁴ As such, it lacks standing to be heard on the Litigation Procedures Motion. *See, e.g., Stoppa v. Bal Harbour Village*, 385 F. App'x 932 (11th Cir. 2010) (non-parties generally lack standing to challenge orders in matters where they are not parties); *Commodity Futures Trading Comm'n v. Oasis Int'l Group, Ltd.*, 19-cv-886-VMC-SPF, 2022 WL 1136571, *5 (M.D. Fla. Apr. 18, 2022) (non-party claimants in CFTC receivership case lack standing: “The Federal Rules of Civil Procedure contemplate that only those designated as parties may file motions and pleadings.”). On this basis alone, its Objection is improper and need not be considered or addressed by the Court.

³ Instead, Mironest claims in a footnote, without any legal citation, that there “is no need” to file a motion to intervene at this juncture because the Court has previously allowed parties-in-interest to be heard, and Mironest’s “rights and potential recoveries are directly at issue” in the Litigation Procedures Motion. DE 508 at 15, fn. 9. Notably, Mironest elected to disregard any intervention requirement despite the Receiver having already briefed the issue in response to another objection to the same motion. [DE 497].

⁴ As noted above, while the Court has permitted Mironest to file papers with regard to certain matters relating to the Villa Valencia property, Mironest has not been permitted or sought to intervene in the receivership case generally.

Even were Mironest to seek to intervene, such a request would be properly denied for at least two reasons. First, such intervention is barred by the Securities Exchange Act absent the SEC's consent. Section 21(g) of the Securities Exchange Act of 1934, codified at 15 U.S.C. § 78u(g), provides that "... [N]o action for equitable relief instituted by the Commission pursuant to the securities laws shall be consolidated or coordinated with other actions not brought by the Commission, even though such other actions may involve common questions of fact, unless such consolidation is consented to by the Commission." Section 78u(g) has been held to constitute a complete bar on intervention in an SEC case without the SEC's consent. *Sec. & Exch. Comm'n v. Nadel*, No. 8:09-cv-87-T-26TBM, 2009 WL 3126266 (M.D. Fla. Sep. 24, 2009) (reaching the "inescapable conclusion Section 21(g) bars intervention"), citing *Sec. & Exch. Comm'n v. Cogley*, 2001 WL 1842476, *5 (S.D. Ohio 2001) and *Sec. & Exch. Comm'n v. Homa*, 2000 WL 1468726, *2 (N.D. Ill. 2000). *See also Sec. & Exch. Comm'n v. Freedom Env't Servs., Inc.*, No. 6:12-cv-1415, 2013WL 12155837, *2 (M.D. Fla. Feb. 1, 2013) (holding that intervention is barred by Section 21(g), that intervention under Rule 24 by private parties in SEC litigation "has generally not been granted," and that appropriate relief is available through a claims process). *Compare Sec. & Exch. Comm'n v. BKCoin Mgmt., LLC*, No. 23-20719, 2023 WL 3250917, *2 (S.D. Fla. May 4, 2023) (noting split of authority on whether Section 21(g) is an absolute bar to intervention in SEC enforcement actions).

In so holding, the *Nadel* court noted that permitting intervention would establish a "dangerous precedent" and "would undermine the efficient administration of this receivership and divert resources and the Receiver's efforts from activities intended to benefit the entire Receivership Estate." *Id.* The *Nadel* court further noted, as have other courts, that the court would "implement a claims procedure designed to afford all disaffected investors the process they are

due under the law with regard to their claims interest in the estate's assets consistent with the principles of *Sec. & Exch. Comm'n v. Elliott*, 953 F.2d 1560 (11th Cir. 1992).

The Receiver is advised that Mironest has not requested the SEC's consent to intervention in connection with their Objection to the Litigation Procedures Motion, and further that the SEC does not and would not consent to their intervention. Accordingly, it would be inappropriate to confer standing on Mironest to litigate its objection to the Litigation Procedures Motion when it is not a party and has not been permitted to intervene.

Second, even independent of Section 21(g), Mironest would not be permitted to intervene because its interests are already adequately represented in the receivership case. Under Fed. R. Civ. P. 24(a)(2), a motion to intervene is subject to denial if "existing parties adequately represent" the interest claimed by the proposed intervenor. Here, the SEC and the Receiver are both already responsible for protecting the interests of all investors in the Receivership Companies, and accordingly intervention is unwarranted. This issue was addressed in *Sec. & Exch. Comm'n v. Stanford Int'l Bank, Ltd.*, 3:09-CV-0298-N, 2011 WL 13160367 (N.D. Tex. Nov. 14, 2011), where certain investors also sought to intervene to object to issues including the receiver's employment of counsel on a contingent fee basis. *Id.* at *1. In *Stanford*, the Court expressly noted that "the SEC's presence as Plaintiff in this action creates a presumption of adequate representation." *Id.* at *2, citing *Baker v. Wade*, 743 F.2d 236, 241 (5th Cir. 1984) and *Johnson v. City of Dallas*, 155 F.R.D. 581, 586 (N.D. Tex. 1994). *See also Sec. & Exch. Comm'n v. A Chicago Convention Center, LLC*, No. 13 C 982, 2013 WL 12498528, *2 (N.D. Ill. Sep. 11, 2013) (SEC, which is charged by law with protecting the interests of investors, is presumed to adequately represent their interests unless there is a showing of gross negligence or bad faith); *Sec. & Exch. Comm'n v. BIC Real Estate Dev. Corp.*, No. 1:16-cv-344-LJO-JLT, 2017 WL 85789, *3-4 (E.D. Cal. Jan. 10,

2017) (where investors and SEC share goal such as maximizing recovery for investors, “a mere difference in *how* that goal may be attained is not a ‘compelling showing’ that rebuts the presumption that the SEC (and, by extension, a court-appointed receiver) adequately represents the investor’s interests”), citing *United States v. City of Los Angeles, Cal.*, 288 F.3d 391, 402-03 (9th Cir. 2002); *Nw. Forest Res. Council v. Glickman*, 82 F.3d 825, 838 (9th Cir. 1996) (emphasis in original); *see also Chen v. Walsh*, No. 18-23894-CV-MIDDLEBROOKS, 2018 WL 11348600, *2-3 (S.D. Fla. Dec. 21, 2018) (representation is adequate “if no collusion is shown between the representative and an opposing party, if the representative does not have or represent an interest adverse to the proposed intervenor, and if the representative does not fail in fulfillment of [its] duty”), citing *Fed. Sav. & Loan Ins. Corp. v. Falls Chase Special Taxing Dist.*, 983 F.2d 211, 215 (11th Cir. 1993).

Here, as in *Stanford*, Mironest has not made any specific allegations explaining how the SEC (with which the Receiver conferred and which consented to the Litigation Procedures Motion before its filing) provides inadequate representation which would overcome that presumption. 2011 WL 13160367 at *2. In addition here, as in *Stanford*, Mironest has not made any concrete allegations – as distinguished from rank, unfounded speculation – as to actions by the Receiver that would demonstrate a conflict of interest. *Id.* at *3-4.⁵ And likewise here, as in *Stanford*, the Court has already had the opportunity to review multiple fee applications from the Receiver and her counsel, is familiar with the services provided and the amounts charged for them, and has approved the reasonableness and necessity of those services. *Id.* Accordingly, there is no basis for overcoming the presumption that investors’ interests are not being adequately represented.

⁵ Instead, Mironest suggests that transactions that this Court has already approved after full notice and hearing, and often with reservations of rights, create some unexplained conflict.

Because Mironest lacks standing as a non-party, has not requested intervention, and is not entitled to intervention, its Objection may properly be disregarded by the Court.

2. Mironest's Objections

Nonetheless, even if the Court were to consider Mironest's Objection, it does not raise any bona fide issue that would warrant denial of the Litigation Procedures Motion. Mironest acknowledges that the Receiver is entitled to obtain counsel for herself, and the Receiver does not dispute her duty to exercise reasonable care to protect and preserve estate assets. DE 508 at 14. The mere fact that Mironest – as a prospective purchaser of a condominium unit from a Receivership Company who may have claims against the Receivership Companies – has a difference of opinion as to how that should be done is not a basis for sustaining its Objection.

A. The Contingent Fee Structure Will Not Likely Dissipate Assets.

First, Mironest asserts that the contingent fee structure “likely will dissipate” assets of the Receivership Estate because of the “size and strength of the Receiver's claims against a relatively small number of parties.” DE 508 at 14-15. Of course, a small number of high-dollar cases, just like a large number of small-dollar cases, if financed on an hourly basis, can rapidly deplete limited cash resources, as here. That is so even where claimants may believe that potential recoveries are significant and claims are strong. Rather than risk the depletion of the receivership estate's available cash – potentially leaving the estate without funds to continue litigation to conclusion, much less make distributions to investors and creditors – the Receiver has negotiated a fee structure that aligns the interests of the Receiver, her counsel, and interested parties in maximizing recoveries while preserving available cash.⁶

⁶In the interest of not disclosing confidential work product, the Receiver does not intend to address Mironest's speculative comments as to the status of the Receiver's investigation into potential claims.

Based on the Receiver's experience, it is highly uncommon that prospective defendants simply turn over tens of millions of dollars without any fight, as Mironest's Objection appears to suggest is likely. Nonetheless, the fee structure proposed in the Litigation Procedures Motion contemplates and addresses that possibility by establishing a "sliding scale" in which the contingent fee is 5.5% lower (27.5%) if a matter settles before filing of a complaint, and 3% lower (30%) if a matter settles before filing of an answer.

Mironest has offered nothing to the Court to suggest that the proposed fee arrangement is inconsistent with those typically negotiated in comparable matters, in receiverships or otherwise, while the Receiver has presented the Court with several other cases within this jurisdiction approving comparable fee arrangements. *Sec. & Exch. Comm'n v. Capital Cove*, No. SACV 15-980-JLS (JCx), 2016 WL 6139939 (C.D. Cal. Mar. 23, 2016); *S.E.C. v. TCA Fund Mgmt Group Corp.*, No. 20-cv-21964-CMA, (ECF Nos. [155], [156]) (S.D. Fla. June 21, 2021); *S.E.C. v. MJ Capital Funding, et al*, Case No. 21-61644-AHS, (ECF Nos. [179], [193]) (S.D. Fla. Mar. 21, 2023); *see also CFTC v. Highrise Advantage, LLC*, No. 6:20-cv-1657-CEM-RMN, 2025 WL 2495636 (M.D. Fla. Jul. 24, 2025) (awarding fees under receiver's contingent fee arrangement providing for 30% of gross recoveries before commencement of action, 33% after commencement, and 40% after any appeal is taken).

While Mironest attempts to distinguish the nature of the potential claims that may be asserted here, similar fee arrangements have been approved in "high dollar" cases as well. *See, e.g., FTC v. On Point Global LLC*, No. 19-25046-Civ-Scola, 2022 WL 19574088, *2 (S.D. Fla. Dec. 1, 2022) (approving receiver's employment of counsel on 33% contingent fee basis to pursue legal malpractice action in case with \$11 million in the estate); *Sec. & Exch. Comm'n v. Creative Capital Consortium, LLC*, No. 08-81565-CV-HURLEY/HOPKINS, 2014 WL 12629681, *2 (S.D.

Fla. Dec. 30, 2014) (approving receiver counsel's 28% contingent fee award on \$1,250,000 settlement of claim in which receiver sought \$5.8 million recovery, noting that counsel could have sought the 33.33% in its fee agreement but had agreed to reduce its fee to facilitate settlement); *VC Macon, GA LLC v. Virginia College LLC*, No. 5:18-cv-00388-TES, 2023 WL 99204, *2 (M.D. Ga. Jan. 4, 2023) (awarding \$9.8 million in contingency fees as 35% of gross recovery of \$28 million by receiver's counsel). Accordingly, the nature of the potential claims that may be brought does not support Mironest's Objection.

Nonetheless, to the extent the Court is concerned with the application of the fee structure in the Litigation Procedures Motion to larger recoveries, KTT has advised that it is willing to adjust the fee structure and reduce the fee percentage for recoveries on a particular matter in excess of \$5 million, and reduce the percentage even further for recoveries on a particular matter in excess of \$15 million. In addition, the Receiver and KTT have agreed that all requests for payment of contingency fees for Additional Third-Party Claims shall be sought be included in motions to approve settlement of such claims or by other appropriate motion or application, eliminating the \$200,000 claim amount threshold originally proposed in the Litigation Procedures Motion. These modifications are reflected in a redline of the proposed order on the Litigation Procedures Motion which has been separately filed under a Notice of Filing simultaneously with this Reply. The Receiver respectfully submits that the fee arrangement, as modified, is reasonable, appropriate, and consistent with if not more favorable than those approved in other similar cases.

B. Necessity of Pursuing Other Options.

Next, Mironest argues that the Litigation Procedures Motion should not be approved because the Receiver did not solicit proposals from other qualified counsel in the market. Mironest cites no authority that would support any requirement that the Receiver do so, and the multiple

comparable examples that the Receiver has pointed to, both in the Litigation Procedures Motion itself and in her prior Reply, confirm that the contingent fee proposal is in line with fee arrangements that have been approved in other cases. Counterintuitively, Mironest suggests that the Receiver should have explored other options “such as an increase in hourly rates,” DE 508 at 18 – apparently not recognizing that the purpose of the contingent fee structure is to conserve estate cash, not to spend it even more rapidly. Likewise, Mironest suggests the Receiver should have potentially pursued litigation financing which, while an appropriate device in some circumstances, does not generally enhance the client’s ultimate recovery.⁷

CONCLUSION

One of the reasons for the restrictions on intervention in SEC cases is to avoid the delay and expense that would be caused if every interested non-party’s views had to be heard and addressed on every matter that comes before the Court, even where the SEC itself – whose mission and responsibility is the protection of investors – has already been consulted on and has no opposition to a motion. While Mironest may have opinions as to how third-party litigation ought to be prosecuted and funded, it has not made any argument with any demonstrable support that the proposal in the Litigation Procedures Motion is inconsistent with the Receiver’s powers and responsibilities, or is inconsistent with similar procedures and fee arrangements approved in other comparable cases. Accordingly, the Receiver respectfully requests that the Court overrule Mironest’s Objection, and grant the Litigation Procedures Motion, modified as set forth in the amended proposed order filed simultaneously with this Reply.

⁷ Like the CG Investors, Mironest also speculates as to hypothetical potential conflicts of interest without any demonstration that KTT would have any conflict as a result of actions that have been previously taken with full notice and Court approval.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served this
29th day of January, 2026 via CM/ECF upon all counsel of record.

By: /s/ David L. Rosendorf
David L. Rosendorf