UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 23-cv-24903-JB

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

RISHI KAPOOR, *et al.*,

Defendants.
_____/

PLAINTIFF SECURITIES AND EXCHANGE COMMISSION'S RESPONSE IN OPPOSITION TO THE CG INVESTORS' AMENDED MOTION TO INTERVENE

Plaintiff Securities and Exchange Commission ("Commission") opposes the Amended Motion to Intervene for the Limited Purpose of Opposing Receiver's Proposed Third-Party Litigation Procedures [ECF No. 503] ("Motion to Intervene" or "MTI"), filed by CWL-CH, LLC; ASJAIA, LLC; and VIEDEN GROVE OZ, LLC (collectively, the "CG Investors"), and states:

I. INTRODUCTION

The CG Investors' argument that the Receiver must obtain the approval of 70% of the members of URBIN Coconut Grove Partners, LLC ("UCGPLLC") for all "Major Decisions" is at odds with the Court's Receivership Order [ECF No. 28] and prevailing federal law. As discussed below, 28 U.S.C. § 959(b) does not apply when a receiver is liquidating the estate and therefore the Receiver is not bound by the UCGPLLC operating agreement. Further, the CG Investors do not meet the requirements for either intervention as of right or permissive intervention under Rule 24 of the Federal Rules of Civil Procedure. The Motion to Intervene should be denied.

II. BACKGROUND

On December 27, 2023, the Commission filed an emergency action against Defendants Rishi Kapoor ("Kapoor"), Location Ventures, LLC ("LV"), URBIN, LLC ("URBIN"), and its subsidiaries and affiliated companies[1] (collectively, the "Defendants") for their operation of a real estate investment scheme in violation of the anti-fraud provisions of the federal securities laws. As alleged in the Complaint, from January 2018 through March 2023, the Defendants fraudulently raised approximately $93 million from more than 50 investors. [ECF. No. 1 at 1].

On January 5, 2024, the Commission filed an Expedited Motion for Appointment of Receiver, Asset Freeze, and Other Relief Against the Company Defendants [ECF No. 16] ("Receivership Motion"), requesting that the Court appoint a receiver with full and exclusive power, duty, and authority to, among other things, fully investigate the manner in which the financial and business affairs of the Company Defendants were conducted and institute such actions and legal proceedings for the benefit of investors. *See* Receivership Motion, p. 2.

On January 12, 2024, the Court granted the Receivership Motion [ECF No. 28] ("Receivership Order" or "RO") and appointed Bernice Lee as Receiver over the Company Defendants (the "Receivership Entities"). The Receivership Order provides in pertinent part:

> 36. Subject to the requirement…that leave of Court is required to resume or commence certain litigation, the Receiver is authorized, empowered, and directed to investigate, prosecute, defend, intervene in or otherwise participate in,

[1] LV's and URBIN's subsidiaries and affiliated entities named as defendants in the Complaint are 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. Patriots United, LLC, was also named as a defendant in the Complaint. These entities, together with LV and URBIN, are collectively referred to as the "Company Defendants."

> compromise, and/or adjust action in any state, federal, or foreign court or proceeding of any kind as may in her discretion, and in consultation with Plaintiff's counsel, be advisable or proper to recover and/or conserve Receivership Property.
>
> 37. Subject to her obligation to expense Receivership funds in a reasonable and cost-effective manner, the Receiver is authorized, empowered, and directed to investigate the manner in which the financial and business affairs of the Receivership Defendants were conducted and (after obtaining leave of Court) institute such actions and legal proceedings, for the benefit and on behalf of the Receivership Estate, as the Receiver deems necessary and appropriate: the Receiver may seek, among other legal and equitable relief, the imposition of constructive trusts, disgorgement of profits, asset turnover, avoidance of fraudulent transfers, recission and restitution, collection of debts, and such other relief from the Court as may be necessary to enforce this Order.

Id.

On December 23, 2025, the Receiver moved to Approve Third Party Litigation Procedures and Contingency Fee Arrangement [ECF No. 490] (the "Receiver's Litigation Motion"). On January 6, 2026, without first seeking intervention, the CG Investors filed a Response in Opposition to the Receiver's Litigation Motion [ECF No. 496]. The CG Investors are investors in the URBIN Coconut Grove project, which owns an assemblage of fee simple and leasehold interests in Coconut Grove (the "Commodore Properties"), as more fully defined in the Receiver's Motion to Approve Sale of Commodore Properties Free and Clear of Liens, Encumbrances and Interests [ECF No. 238].

After the Receiver raised the CG Investors' failure to seek intervention in her Reply [ECF No. 497], on January 21, 2026, the CG Investors filed the subject Motion to Intervene, arguing, among other things, that the terms of the Amended and Restated Operating Agreement of URBIN Coconut Grove Partners, LLC [ECF No. 503-1] (the "OA")—specifically, Section 6.5 as to Voting on "Major Decisions," as defined in Exhibit B to the OA—requires the Receiver to seek Member Approval[2] for the institution of any legal proceedings in the name of the CG Investors. [ECF 503-

[2] Member Approval, as defined in the OA, "refers to approval by Members holding at least

1 at 17].

On February 4, 2026, the Receiver filed a Response to the CG Investors' Motion to Intervene [ECF No. 518], and on February 11, 2026, the CG Investors filed their Reply in Support of the Motion to Intervene [ECF No. 519] ("CG-Reply"). In the CG-Reply, the CG Investors argue that 28 U.S.C. § 959(b) requires the Receiver to comply with state law, including the Florida Revised Limited Liability Company Act, such that the Receiver is bound by the terms of the OA, and is, therefore, required to obtain approval from the CG Investors prior to instituting legal proceedings. *Id*. at 2-3.

III. ARGUMENT

The Motion to Intervene should be denied for several reasons. First, 28 U.S.C. § 959(b) does not apply when, as here, the receiver is liquidating the estate. *See In re Scott Housing Systems, Inc.*, 91 B.R. 190, 196 (Bankr. S.D. Ga. 1988); *In re N.P. Min. Co., Inc.*, 963 F.2d 1449, 1461 (11th Cir. 1992). Second, the Commission has not consented to intervention as required by Section 21(g) of the Securities Exchange Act of 1934 ("Exchange Act"). Third, the CG Investors are not entitled to intervention as of right under Rule 24(a) because their motion is untimely and their interests are adequately protected by the Commission and the Receiver. Finally, the CG Investors are not entitled to permissive intervention under Rule 24(b) because their claim or defense and the main action do not have a question of law or fact in common, and the proposed intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

A. The Receiver Is Not Bound By The OA

The CG Investors argue that, pursuant to 28 U.S.C. § 959(b), the Receiver "steps into the

seventy (70%) percent of all outstanding Percentage Interests in the Company." [ECF No. 503-1 at 44].

shoes" of the receivership entity's management and is, therefore, bound by the terms of the OA. *See* MTI, at. 8-9; CR-Reply, at 2-3. Specifically, 28 U.S.C. § 959(b) provides:

> Except as provided in section 1166 of title 11, a trustee, receiver or manager appointed in any cause pending in any court of the United States, including a debtor in possession, shall manage and operate the property in his possession as such trustee, receiver or manager according to the requirements of the valid laws of the State in which such property is situated, in the same manner that the owner or possessor thereof would be bound to do if in possession thereof.

Section 6.5 of the OA relates to voting and Class A Members' right to vote on "Major Decisions," as defined in Exhibit B to the OA. "Major Decisions" refer to any decision by the company to take certain action that requires "Member Approval" (70 percent supermajority), which includes:

> (xi) Institution of any legal proceedings in the name of Owners, the settlement of any legal proceedings against Owners, or the confession of any judgment against Owners or any property of Owners to the extent that: (i) such legal proceedings are not in the ordinary course of business for Owners; (ii) either Member reasonably believes that such legal proceedings may have a material adverse effect upon the reputation of the Company or such Member; or (iii) the amount in controversy, or sough by Owners or the plaintiff, is at least one hundred thousand ($100,000.00) Dollars.

[ECF 503-1 at 43]. Other "Major Decisions" include, *inter alia*, selling the company's assets, acquiring any real property other than the Commodore Property, borrowing money, deviating from any approved budget, dissolving the company, and filing a voluntary petition for bankruptcy proceedings. *See id*. at. 42-44.

According to the CG Investors, "[s]ection 959(b) explicitly requires the Receiver to comply with Florida law, including the Florida Revised Limited Liability Company Act, in the same manner as [the CG Investors] and its former managers would have been bound to do." CG-Reply at 2-3. The CG Investors then point to section 605.0105(a) of the Florida Revised Limited Liability Company Act, which provides that the operating agreement governs relationships among the members and between members and the limited liability company, and sections 605.0106(1) and

(4), which provide, respectively, that "a limited liability company is bound by and may enforce the operating agreement" and "a manager of a limited liability company is bound by the operating agreement, regardless of whether the manager has agreed to the operating agreement." CG-Reply at 3. The CG Investors, therefore, conclude that the Receiver must obtain approval to institute litigation—not from the Court, despite the unambiguous language of the Receivership Order, but from them. The CG Investors are wrong.

The purpose of section 959(b) is to negate the idea that a trustee, receiver, or debtor in possession "could ignore the rules of law of the state of operation affecting the conduct of the business committed to his charge." *In re Borne Chem. Co*., *Inc.*, 54 B.R. 126, 135 (Bankr. D.N.J. 1984) (quoting *Palmer v. Webster & Atlas Nat'l Bank,* 312 U.S. 156, 166 (1941)). Importantly, however, section 959(b) does not apply when the receiver is liquidating the estate:

> Thus, a receiver operating a railroad must obey local speed limits; a receiver operating an oil refining company must obtain a license and bond required by state law; and a trustee operating an apartment building must comply with state rent control guidelines. **However, no case law has been cited applying § 959[b] or its predecessor [ ] statutes…in situations where the receiver, trustee or debtor in possession was in the process of closing down operations**.

In re Borne Chem. Co., *Inc.*, 54 B.R. at 135 (internal citations omitted) (emphasis added).

Several other courts have held that section 959(b) does not apply when the trustee, receiver, or debtor in possession is liquidating the estate. For example, in *In re Scott Housing Systems, Inc.*, the court examined the language of 28 U.S.C. § 959(a)[3] and (b) and maintained that subsection (b)'s "manage and operate" language, when read in conjunction with subsection (a)'s "carrying on

[3] "Trustees, receivers or managers of any property, including debtors in possession, may be sued, without leave of the court appointing them, with respect to any of their acts or transactions in carrying on business connected with such property. Such actions shall be subject to the general equity power of such court so far as the same may be necessary to the ends of justice, but this shall not deprive a litigant of his right to trial by jury." 28 U.S.C. § 959(a).

business" language "evidence[s] a statutory intent that Section 959 applies when the business is being operated, **not when its operations have ceased and its assets are being liquidated**." 91 B.R. at 196 (emphasis added). "[M]ere administration and liquidation is not carrying on the business as contemplated by [section 959's predecessor]." *Id*. at 196 (quoting *Vass v. Conron Bros. Co.*, 59 F.2d 969 (2d Cir. 1932); *see also, In re N.P. Min. Co., Inc.*, 963 F.2d at 1461 ("Because the business was not being administered for the purpose of continuing operations after the trustee took control, the policy of section 959(b) applies only with respect to those fines assessed for mining operations after the petition was filed and before the chapter 11 trustee took control."); *In re Valley Steel Products, Co., Inc.*, 157 B.R. 442, 448 (Bankr. E.D. Mo. 1993) ("The Court is persuaded by the reasoning of those courts which hold that 28 U.S.C. § 959(b) does not apply to a debtor that is liquidating its estate.").

As stated in Section 2.1 of the OA, the purpose and defined "Business" of UCGPLLC is to "acquire, finance, demolish, develop, re-develop, operate, lease and sell" the Commodore Properties. [ECF 503-1 at 3]. Upon being appointed, the Receiver did not carry on the company's business by continuing to develop the Commodore Properties as contemplated by the OA. Instead, operations had ceased, and the Receiver liquidated the Commodore Properties through a private sale that closed on January 28, 2026. *See* Notice of Closing [ECF No. 509]. As section 959(b) does not apply to a receiver that is liquidating the estate, the CG Investors' argument fails.

Moreover, accepting the CG Investors' argument would lead to absurd results and undermine the very purpose of an equity receivership. For example, UCGPLLC is one of several projects governed by an operating agreement requiring Member Approval of Major Decisions. Under the CG Investors' interpretation of the law, the Receiver would be required to obtain a supermajority of each investor group, not only to institute third-party litigation but before

performing many of her essential functions as Receiver, including: selling property, terminating contracts, instituting or settling legal proceedings, deciding certain tax-related matters, dissolving the Receivership Entities, and petitioning for bankruptcy protection. This is directly at odds with the Receivership Order and vast federal authority wherein district courts in Commission actions empower court-appointed receivers to bring, compromise, or settle litigation on behalf of receivership entities;[4] sell property of the receivership entities;[5] and develop and implement plans for recovery, liquidation, and distribution of receivership property.[6]

B. Section 21(g) Of The Exchange Act Bars Intervention

Court have held that Section 21(g) of the Exchange Act, 15 U.S.C. § 77u(g), bars third parties from intervening in enforcement actions by the Commission. Section 21(g) states:

> Notwithstanding the provisions of section 1407(a) of Title 28, or any other provision of law, no 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.**

[4] *See, e.g.*, *SEC v. Complete Bus. Sols. Grp.*, *Inc.*, No. 20-CV-81205-RAR, 2025 WL 2840732, at *1 (S.D. Fla. Apr. 29, 2025) (SEC receiver authorized to "pursue and defend all claims that may be brought by or asserted against the Receivership Estates and to compromise claims and actions involving Receivership Property"); *SEC v. Lauer*, No. 03-80612, 2015 WL 11004892, at *2 (S.D. Fla. Nov. 24, 2015) (giving receiver broad powers to defend, compromise and settle legal actions); *SEC v. Levine*, No. 09-80135, 2009 WL 10712514, at *8 (S.D. Fla. May 5, 2009) (appointing receiver to, among other things, institute legal proceedings for the benefit of investors).

[5] *See, e.g.*, *SEC v. Kapoor*, No. 23-CV-23903-JB, 2024 WL 3026490 (S.D. Fla. Jun. 17, 2024) (authorizing receiver to sell real property in the receivership estate); *SEC v. Kirkland*, No. 6:06-cv-183-Orl-28KRS, 2007 WL 704688 (M.D. Fla. Mar. 2, 2007) (stating that district court's broad powers in equity receivership include power to permit receiver to sell property of receivership estate).

[6] *See, e.g.*, *Complete Bus. Sols. Grp,*, *Inc.*, No. 20-CV-81205-RAR, 2024 WL 5348580, at *2, 6 (noting that in formulating a distribution plan, "there are no hard rules governing a district court's decisions in matters like these. The standard is whether a distribution is equitable and fair in the eyes of a reasonable judge."); *SEC v. TCA Fund Mgmt. Grp. Corp.*, No. 20-cv-21964-CMA, 2022 WL 3334488, *7 (S.D. Fla. Aug. 4, 2022) (acknowledging broad powers and wide discretion in equity receivership includes authority of receiver to propose distribution plan).

15 U.S.C. § 78u(g) (emphasis added).

Congress enacted Section 21(g) to allow efficient resolution of Commission actions. *See SEC v. Nadel*, No. 8:09-cv-87-T-26TBM, 2009 WL 3126266, at *1 (M.D. Fla. Sept. 24, 2009); *SEC v. Univ. Lab Techs., Inc.*, No. 07-80838-CIV, 2009 WL 723243, at *3 (S.D. Fla. March 18, 2009); *SEC v. Cogley*, No. 98CV802, 2001 WL 1842476, at *5 (S.D. Ohio Mar. 21, 2001). Allowing third parties to intervene in Commission enforcement actions drains agency resources with excessive tangential litigation costs and impedes the Commission's mission, which is to protect *all* of the defrauded investors and the public at large. *See SEC v. Everest Mgmt. Corp*., 475 F.2d 1236, 1240 (2d Cir. 1972); *Nadel*, No. 8:09-cv-87-T-26TBM, 2009 WL 3126266, at *1. Indeed, when passing Section 21(g), Congress expressly referred to *Everest*'s warning that "already complicated securities cases would become more confused and complex" if intervention were permitted. S. REP. 94-75, at 76 (citing *Everest Mgmt. Corp*., 475 F.2d at 1236). In denying the fraud victim's motion to intervene, the *Everest* Court held that "the complicating effect of the additional issues and the additional parties outweighs any advantage of a single disposition of the common issues." *Id*. at 1240. By citing an intervention case in the Senate report, Congress signaled that using Section 21(g) to bar intervention fulfills the law's purpose and allows for speedy resolution of agency action.

And courts have interpreted Section 21(g) to extend beyond consolidation and coordination, barring intervention into actions initiated by the SEC. *Nadel*, No. 8:09-cv-87-T-26TBM, 2009 WL 3126266, at *1 (quoting *Cogley*, No. 98CV802, 2001 WL 1842476, at *5 ("[A]fter reviewing the legislative history, and reviewing other cases that have discussed this issue, this Court comes to the inescapable conclusion that Section 21(g) bars intervention.")); *Univ. Lab Techs., Inc*., No. 07-80838-CIV, 2009 WL 723243, at *3 ("[Allowing intervention] opens the door

to a serious, substantial evisceration of Section 21(g).”). *But see, SEC v. Flight Transp. Corp.*, 699 F.2d 943, 950 (8th Cir. 1983) (“[T]he purpose of [Section 21(g)] is simply to exempt the Commission from the compulsory consolidation and coordination provisions applicable to multidistrict litigation. It does not say that no one may intervene in an action brought by the SEC without its consent. It does not mention Fed. R. Civ. P. 24, nor does Rule 24 contain any clause giving special privileges to the SEC.”); *SEC v. Callahan*, 2 F. Supp. 3d 427, 437 (E.D.N.Y. 2014) (“[T]here is no persuasive authority which suggests that section 21(g) ... bars intervention in all SEC enforcement actions.”).

Other than filing their Motion to Intervene, the CG Investors did not first seek the consent of the Commission to intervene. In any event, the Commission does not consent because the basis underlying the CG Investors’ Motion to Intervene is without merit, and allowing intervention would continue to drain agency resources and receivership assets, as well as impede the Commission’s mission to protect all of the defrauded investors. *See Everest Mgmt. Corp*., 475 F.2d at 1240; *Nadel*, No. 8:09CV-87-T-26TBM, 2009 WL 3126266, at *1.

C. The CG Investors Do Not Have A Right To Intervene Under Rule 24(a)

The CG Investors bring their Motion to Intervene as of right under Rule 24(a) of the Federal Rules of Civil Procedure. To intervene as of right, a party must establish that:

> (1) his application to intervene is timely; (2) he has an interest relating to the property or transaction which is the subject of the action; (3) he is so situated that disposition of the action, as a practical matter, may impede or impair his ability to protect that interest; and (4) his interest is represented inadequately by the existing parties to the suit.

Chiles v. Thornburgh, 865 F.2d 1197, 1213 (11th Cir. 1989) (citing *Athens Lumber Co. v. FEC*, 690 F.2d 1364, 1366 (11th Cir. 1982)). The movant has the burden to show that each of these four elements is met. *See CFTC v. Heritage Cap. Advisory Servs., Ltd.*, 736 F.2d 384, 386 (7th Cir.

1984). "Failure to satisfy even one of [Rule 24(a)'s] requirements is sufficient to warrant denial of a motion to intervene as a matter of right." *Id*.

Indeed, courts presiding over Commission enforcement actions where equity receiverships have been established typically deny motions to intervene.[7] Concerns of efficiency, resources of all parties involved, and equity often preclude intervention. Here, the CG Investors are not entitled to intervention as of right under Rule 24(a) because their motion is untimely and their interests are adequately protected by the Commission and the Receiver.

1. The Motion To Intervene Is Untimely

The Receivership Order was entered on January 12, 2024, and is explicit in the powers it grants to the Receiver, which includes the ability to "institute such actions and legal proceedings, for the benefit and on behalf of the Receivership Estate, as the Receiver deems necessary and appropriate." RO at ¶ 37. The CG Investors have been aware of the Receivership Order since at least October 4, 2024, as evidenced by their first attempt to intervene in this case for stay relief [ECF No. 244]. At no point, however, did the CG Investors seek to intervene to object to the Receivership Order under the auspices that it interfered with their rights under the OA. Given that the Motion to Intervene is untimely, it should be denied.

2. The CG Investors' Interests Are Adequately Protected

The Commission's and an equity receiver's adequate representation of all parties is *presumed* and must be rebutted by a proposed intervenor. *See CFTC v. Eustace*, No. 05-2973, 2005

[7] *See, e.g., CFTC v. Chilcott Portfolio Mgmt., Inc.,* 725 F.2d 584, 586 (10th Cir.1984); *Heritage Cap. Advisory Servs.,* 736 F.2d at 386-87; *Everest Management,* 475 F.2d at 1239-40; *SEC v. Charles Plohn & Co.,* 448 F.2d 546, 549 (2d Cir.1971); *FTC v. Jordan Ashley, Inc.,* No. 93-2257-CIV-NESBITT, 1995 WL 792076, at *2-3 (S.D. Fla. June 15, 1995); *SEC v. Byers,* 109 F.R.D. 299, 302-03 (W.D.Pa.1985); *SEC v. Reed,* 97 F.R.D. 746, 748 (S.D.N.Y.1983); *CFTC v. Carter, Rogers & Whitehead & Co.,* 497 F. Supp. 450, 452-53 (E.D.N.Y.1980); *SEC v. Canadian Javelin, Ltd.,* 64 F.R.D. 648, 650-51 (S.D.N.Y.1974), *appeal dismissed,* 538 F.2d 313 (2d Cir.1976).

WL 2862945, at *2 (E.D. Pa. Oct. 31, 2005) ("[O]nce a receiver has been appointed, and the parties seeking relief or intervention have the same goal, *i.e.*, protection of investors, there is a presumption that the receiver will adequately represent all parties."); *Ruthardt v. U.S.*, 303 F.3d 375, 386 (1st Cir. 2002) ("Adequacy is presumed, although rebuttably so, where a government agency is the representative party."). In *Byers*, the court denied intervention, finding that the attempted intervenors failed to show that the Commission and the federal receiver would not adequately represent their interests:

> The Proposed Intervenors have not shown that the Receiver and SEC are not adequately representing their interests in this case. The position of the Proposed Intervenors is no different from that of the other creditors and victims in this case, and, as set forth in my Prior Decision,
>
> > [a]s a practical matter, it does not make sense to allow individual victims and creditors to intervene as parties. There are allegedly 1,400 victims who invested in approximately sixty securities offerings that raised more than $250 million. There are dozens of creditors with divergent claims and interests. There is a complex web of some 120 Wextrust entities and affiliates operating throughout the world. In these circumstances, it would not be efficient or effective to permit individual creditors to intervene as parties.

No. 08-Civ.-7104(DC), 2009 WL 212780, at *1 (citations omitted).

The CG Investors offer no specific allegations explaining how either the Commission or the Receiver provides inadequate representation. Instead, they merely complain that "neither the Receiver nor the SEC has demonstrated any respect for the rights and powers that the CG Investors or other Members are granted in the [OA]…And, at every step in the present litigation, the Receiver and the SEC have opposed the positions that the CG Investors have espoused." MTI at 6. As discussed above, the terms of the OA are not binding on the Receiver or the Court and, therefore, cannot rebut the presumption of adequate representation. And much like *Byers*, the position of the CG Investors is no different from that of the other investors and victims in this case.

No. 08-Civ.-7104(DC), 2009 WL 212780, at *1 (citations omitted). Finally, the CG Investors seem to be lumping the Commission and the Receiver together when it claims that the Commission has opposed them at every step in the present litigation. Other than opposing its initial request for intervention for stay relief, the Commission consented to the CG Investors' appearance and ability to object to the sale of the Commodore Properties without the need of formal intervention. Ultimately, the Court, not the Commission, disagreed with the positions the CG Investors espoused.

D. The CG Investors' Request For Permissive Intervention Should Be Denied

A district court may exercise its discretion to allow a third party to intervene if (1) a movant's claim or defense and the main action have a question of law or fact in common, and (2) the proposed intervention will not unduly delay or prejudice the adjudication of the rights of the original parties. Fed. R. Civ. P. 24(b)(3).

The CG Investors argue that their objection to the Receiver's Litigation Motion shares a common question of law or fact because the "Receiver's Motion implicated the scope of her authority under the [OA], as well as the right to participate in the decision to initiate litigation." *See* MTI at 8. This is incorrect for at least two reasons. First, the CG Investor's objection to the Receiver's Litigation Motion does not share a common question of law or fact with the Commission's case against the Defendants for their violations of the federal securities laws. Rather, the CG Investors are objecting to a procedural aspect of the case. Second, the basis for their objection—*i.e.*, that the Receiver is bound by the terms of the OA—does not apply when a receiver is liquidating the estate.

Further, intervention would unduly delay or prejudice the adjudication of the rights of the parties in the Commission's case. If the Court were to grant intervention and allow the CG

Investors to object to the Receiver's Litigation Motion based on the purported rights arising from the OA, every investor could seek intervention claiming that they, not the Court, must approve any of the Receiver's actions that coincide with "Major Decisions" as defined by their respective operating agreement. For these reasons, the CG Investors are not entitled to permissive intervention.

IV. CONCLUSION

The CG Investors' Motion to Intervene lacks merit and allowing intervention would continue to drain agency resources and receivership assets, as well as impede the Commission's mission to protect all of the defrauded investors. The Commission respectfully requests that the Court enter an Order denying the Motion to Intervene.

Dated: February 18, 2026

Respectfully submitted,

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