

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
CALIFORNIA

Securities and Exchange Comission v. Eng Taing and Touzi Capital,
LLC

SEC v. Eng Taing · No. 3:24-cv-02179-CAB-VET · Decided April 17, 2025

OPINION

Securities and Exchange Comission v. Eng Taing and Touzi Capital, LLC

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 SOUTHERN DISTRICT OF CALIFORNIA

10 11 SECURITIES AND EXCHANGE Case No.: 3:24-cv-02179-CAB-VET

COMMISSION,

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ORDER DENYING MOTION TO

Plaintiff,

13 INTERVENE

v. 14 [Doc. No. 5]

ENG TAING and TOUZI CAPITAL,

15

LLC,

16 Defendants. 17

18 This matter comes before the Court on Proposed Intervenor Vince Faridani’s 19 (“Faridani”) motion to intervene as a matter of right pursuant to Rule 24(a) of the Federal 20 Rules of Civil Procedure. [Doc. No. 5.] For the reasons set forth below, Faridani’s motion 21 to intervene is DENIED. 22

I. BACKGROUND

23 In November 2024, the Securities and Exchange Commission (“SEC”) filed a 24 complaint alleging fraud against Eng Taing and the entity he controls—Touzi Capital, 25 LLC. [Doc. No. 1.] The complaint alleges that Defendants made false representations to 26 investing clients regarding the use of clients’ funds and the company’s investment business. 27 [Doc. No. 1 at 1–4.] Additionally, Touzi Capital has allegedly collapsed and its investors 28 1 have been unable to communicate with the company or Defendant Taing. [Doc. No. 1 at 2 5.] The SEC seeks injunctive relief, disgorgement of ill-gotten gains, an officer and 3 director bar against Defendant Taing, civil penalties, and pre-judgment interest. [Doc. No. 4 1 at 8.] Faridani filed a motion to

intervene on January 9, 2025 to protect a claimed 5 personal financial interest arising from investments made with Defendants. [Doc. No. 5.] 6 The Court denies the motion.

7 II. DISCUSSION

8 a. Intervention as a Matter of Right 9 Faridani seeks to intervene in the case as a matter of right pursuant to Fed. R. Civ. 10 P. 24(a). Intervention as a matter of right allows a non-party to become a party to a case 11 to protect the non-party's interests that may be affected by the outcome of the litigation. 12 See Fed. R. Civ. P. 24(a); see also *Callahan v. Brookdale Senior Living Cmtys., Inc.*, 42 13 F.4th 1013, 1020 (9th Cir. 2022). The proposed intervenor has the burden of showing that 14 four requirements for intervention are met. *W. Watersheds Project v. Haaland*, 22 F.4th 15 828, 835 (9th Cir. 2022). The requirements are as follows: (1) the motion must be timely; 16 (2) the applicant must have a significantly protectable interest related to the property or 17 transaction which is the subject of the action; (3) the applicant must be so situated such that 18 the disposition of the action may impair or impede the party's ability to protect that interest, 19 and; (4) the applicant's interest must be inadequately represented by the existing parties. 20 Fed. R. Civ. P. 24(a)(2); *Callahan v. Brookdale Senior Living Cmtys.*, 42 F.4th at 1020. 21 Although the requirements are interpreted broadly in favor of intervention, *id.*, "[a]n 22 applicant's failure to satisfy any one of the requirements is fatal to the application, and [the 23 court] need not reach the remaining elements if one of the elements is not satisfied." *Perry 24 v. Schwarzenegger*, 630 F.3d 898, 903 (9th Cir. 2011) (internal quotation marks omitted). 25 Given the early stage of this litigation, timeliness is not at issue. See *Citizens for Balanced 26 Use v. Montana Wilderness Ass'n*, 647 F.3d 893, 897 (9th Cir. 2011). The Court considers 27 the remaining three factors below. 28

1 i. Significantly Protectable Interest 2 A proposed intervenor has a "significantly protectable interest" in an action if (1) he 3 asserts an interest that is protected under law, and (2) there is a "relationship" between his 4 legally protected interest and the plaintiff's claims. *Northwest Forest Resource Council v. 5 Glickman*, 82 F.3d 825, 837 (9th Cir. 1996). 6 Faridani "requests intervention to ensure protection of his investment, the 7 preservation of Defendants' assets, and equitable recovery consistent with the SEC's 8 allegations." [Doc. No. 5 at 2.] Clearly, the money he invested is a legally protected 9 property interest. See *Dickman v. Comm'r*, 465 U.S. 330, 336 (1984). This interest, based 10 on Faridani's claimed, significant investment into the vehicle that the SEC is suing for ill- 11 begotten gains, is one that is "direct, non-contingent, [and] substantial." *Dilks v. Aloha 12 Airlines*, 642 F.2d 1155, 1157 (9th Cir. 1981). Faridani's interest is not animated by some 13 vague economic stake in the disposition of this suit. Rather, his claim is predicated on a 14 fundamental proprietary relationship to the funds allegedly controlled by Defendants. See, 15 e.g., *Shinault v. Hawks*, 782 F.3d 1053, 1057 (9th Cir. 2015) ("An individual's property is 16 a fundamental example of a protected interest."). Faridani satisfies this second 17 requirement. 18

ii. Ability to Protect Interest; Adequacy of Representation 19 Even if the Court assumes that Faridani's ability to protect his interest is impaired, 20 and that he satisfies the third requirement, the Court finds that he is adequately represented 21 by the SEC in this

action thus failing the fourth and final prong. 22 The Ninth Circuit “considers three factors in determining the adequacy of 23 representation: (1) whether the interest of a present party is such that it will undoubtedly 24 make all of a proposed intervenor’s arguments; (2) whether the present party is capable 25 and willing to make such arguments; and (3) whether a proposed intervenor would offer 26 any necessary elements to the proceeding that other parties would neglect.” *Arakaki v. 27 Cayetano*, 324 F.3d 1078, 1086 (9th. Cir. 2003). The “most important factor . . . is how 28 the [proposed intervenor’s] interest compares with the interests of existing parties.” *Id.* 1 “The burden on proposed intervenors in showing inadequate representation is 2 minimal, and would be satisfied if they could demonstrate that representation of their 3 interests may be inadequate.” *Id.* (internal quotation marks omitted). However, where an 4 existing party and the proposed intervenor share the same “ultimate objective,” a 5 presumption of adequacy of representation applies, and the intervenor can rebut that 6 presumption only with a “compelling showing” to the contrary. *Id.* 7 Here, the remedies sought by the SEC support an ultimate goal of maximizing 8 financial distributions to defrauded investors as well as inhibiting future fraudulent activity 9 by Defendants. Faridani states that, in intervening, he seeks “only to enhance . . . the 10 Commission’s efforts in holding the Defendants accountable and safeguarding investor 11 funds.” [Doc. No. 21 at 1.] This indicates complete alignment with the SEC’s ultimate 12 goal in this lawsuit. 13 As Faridani shares the same ultimate objective as the SEC, he must show that the 14 SEC’s representation will be inadequate. See *Arakaki*, 324 F.3d at 1086. But he fails to 15 do so. Faridani’s claim that his interests are not adequately represented by the existing 16 parties is conclusory—he merely states that the SEC “does not prioritize individual 17 investors’ financial recovery” and that his participation “will complement the SEC’s 18 enforcement objectives by directly addressing investor-specific restitution.” [Doc. No. 5 19 at 11.] The SEC, however, in bringing an enforcement action, is “mandated to act in the 20 interest of maximizing the recovery to all defrauded individuals and therefore, [is] often 21 presumed to be adequately representing the interests of non-party investors.” *Sec. & Exch. 22 Comm’n v. Callahan*, 193 F. Supp. 3d 177, 206 (E.D.N.Y. 2016) (emphasis added). 23 Faridani fails to establish any specific argument that the existing parties will not make, nor 24 does he address any elements necessary to the proceeding that they would neglect. See 25 *S.E.C. v. ABS Manager, LLC*, No. 13-CV-319-GPC-JMA, 2013 WL 3752119, at *4 (S.D. 26 27 28 1 Cal. July 15, 2013). With Faridani failing to show how the SEC’s representation is 2 inadequate, his motion to intervene fails.1 3 The Court’s finding that intervention is improper is in line with other courts that 4 have been reluctant to allow private parties to intervene in government enforcement 5 actions.2 See *SEC v. TLC Invest. & Trade Co.*, 147 F. Supp. 2d 1031, 1041 (C.D. Cal. 6 2001) (denying investors’ motion to intervene in SEC enforcement action because they had 7 the same goal as the Receiver: “to maximize distributions to defrauded investors”); see 8 also *U.S. Commodity Futures Trading Comm’n v. Efrosman*, No. 05 CIV 8422 KMW, 9 2012 WL 2510338, at *4 (S.D.N.Y. June 26, 2012). 10 Of course, this is not to say a defrauded investor can never intervene in an SEC 11 enforcement action. See *S.E.C.*

v. Navin, 166 F.R.D. 435, 441 (N.D. Cal. 1995). In Navin, 12 a defrauded investor successfully intervened as the “SEC . . . made it clear it [would] not 13 make all of the arguments that the [investor] would make.” Id. Further, as compared to 14 the current posture of this case, the court in Navin considered intervention at a stage in the 15 litigation where it became clear that the intervenor’s interests diverged from the SEC’s— 16 after the court entered judgment and appointed a receiver to guide the liquidation of the 17 principal defendant’s assets. Id. at 437 (considering the significant differences between 18 the settlement plans proposed by the intervenor and the SEC). 19 // 20 // 21 22 23 1 On April 14, 2025, Faridani submitted as an exhibit an order from the Bankruptcy Court for the Southern District of Texas prohibiting an entity, Tribolet Advisors, LLC, from transferring any cash or assets to 24 Defendants. [Doc. No. 24.] This order from the bankruptcy court, filed in February of 2025, does not 25 change the calculus here. There is no indication that there is any increased risk that the SEC’s interests will deviate from the Faridani’s due to that order. 26 2 The SEC also argues that Section 21(g) of the Securities Exchange Act of 1934 (“Exchange Act”), 15 U.S.C § 78u(g), bars intervention in SEC actions without SEC consent, which Faridani does not have. 27 [Doc. No. 16 at 14–15.] To the Court’s knowledge, the Ninth Circuit has not ruled on this issue directly. Nevertheless, the Court need not resolve the question as Faridani fails to meet his burden in seeking to 28

I HL. CONCLUSION

2 For the above-stated reasons, the motion to intervene in this case is DENIED. The 3 || Court may consider any motions to intervene at a later stage in the litigation. 4 It is SO ORDERED. 5 6 Dated: April 17, 2025 € ZL 7 Hon. Cathy Ann Bencivengo 8 United States District Judge 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28