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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

SECURITIES AND EXCHANGE )  
COMMISSION, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
SECURE INVESTMENT SERVICES, INC.; )  
AMERICAN FINANCIAL SERVICES, INC.; )  
LYNDON GROUP, INC.; KIMBERLY )  
SNOWDEN; and LINDA NEUHAUS, in her )  
capacity as the administrator and )  
personal representative of the )  
estate of Donald Neuhaus, )  
 )  
Defendants. )  
\_\_\_\_\_ )

2:07-cv-01724-GEB-CMK  
ORDER

On February 6, 2009, Gordon Harvey ("Harvey") filed a motion to intervene under Federal Rule of Civil Procedure 24(a)(2) for the purpose of compelling the Receiver (appointed in this action to oversee Defendant Secure Investment Services' ("SIS") assets) to return to Harvey \$200,000 that he gave to SIS for investment purposes. Harvey contends a \$200,000 check he gave SIS was not finally paid by his bank before August 24, 2007, the date on which a Temporary

1 Restraining Order issued in this action freezing SIS's assets, thus  
2 entitling him to have this \$200,000 returned from the frozen assets.  
3 Plaintiff opposes the motion, arguing it is untimely and that "Harvey  
4 . . . fails to provide evidentiary support for his basic factual  
5 contention that his bank did not finally honor his check to SIS until  
6 midnight on August 24, 2007." (Pls. Opp'n at 1:25-26.)

7 Timeliness is "the threshold requirement" for intervention  
8 under Rule 24(a)(2). League of United Latin Am. Citizens v. Wilson,  
9 131 F.3d 1297, 1302 (9th Cir. 1997).

10 In determining whether a motion for intervention  
11 is timely, [the Ninth Circuit] considers [the  
12 following] three factors: (1) the stage of the  
13 proceeding at which an applicant seeks to  
14 intervene; (2) the prejudice to other parties; and  
15 (3) the reason for and length of the delay. In  
16 considering these factors, however, we must bear  
17 in mind that any substantial lapse of time [in  
18 filing a motion] weighs heavily against  
19 intervention.

20 Id. (internal quotation and citation omitted).

21 Plaintiff argues these factors weigh against granting  
22 Harvey's motion since Harvey delayed filing his motion for a year and  
23 a half, even though he was aware of this action from the day it was  
24 filed on August 24, 2007. (Harvey Decl. ¶ 13) (declaring "I was  
25 unaware of any actions by the [Plaintiff] until after 5:00 p.m. on  
26 August 24, 2007, when I received an urgent telephone call . . .  
27 informing me of [Plaintiff's] action"). Harvey rejoins his delay was  
28 based on communications his counsel had with the Receiver, in which  
the Receiver told Harvey's attorney that an agreement would likely be  
reached and it was unnecessary for him to file an intervention motion.  
However, these communications occurred between November 2008 and  
January 2009, which was a late point in the "litigation continuum" of

1 this case. Stupak-Thrall v. Glickman, 226 F.3d 467, 475 (6th Cir.  
2 2000) (stating "A critical factor [in evaluating timeliness] is what  
3 steps occurred along the litigation continuum during [the] period of  
4 time [the movant failed to intervene]"). Harvey provides no other  
5 justification for his delay.

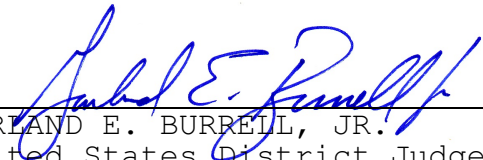
6 Further, Plaintiff argues since Harvey "fail[ed] to seek  
7 intervention many months ago[, before discovery closed on January 9,  
8 2009], Harvey has deprived [Plaintiff] of the opportunity to test his  
9 assertions through discovery of him and [his] bank." (Pl. Opp'n at  
10 5:14-15.) See Stupak-Thrall, 226 F.3d at 474-8 (denying an  
11 intervention motion as untimely because *inter alia* the discovery  
12 deadline had closed ten weeks previously). Compare with Hazel Green  
13 Ranch, LLC v. United States DOI, 2007 WL 2580570 \*3 (E.D. Cal.  
14 2007) (permitting intervention where the lawsuit was in its "infancy,"  
15 and holding there would not be prejudice to non-intervening parties  
16 because it was possible for the parties to comply with the issued  
17 Scheduling Order).

18 Plaintiff points to the declaration Harvey waited until his  
19 reply brief to file from Bob Tamehiro, the Group Operations Manager at  
20 Harvey's bank, as evidence that Harvey seeks to raise a discovery  
21 issue after the January 9, 2009 discovery completion date. In that  
22 declaration, Tamehiro declares, "Settlement for [Harvey's check] was  
23 made during our normal processing on August 23, 2007." (Rowlett Decl,  
24 Ex. 11.) Plaintiff argues this averment does not support Harvey's  
25 position that his check was not finally paid when the asset freeze was  
26 imposed on August 24, 2007. Since discovery has closed, and Harvey  
27 has failed to provide a sufficient reason justifying his delay in  
28

1 seeking intervention, Harvey's motion is not "timely" under Rule  
2 24(a)(2).

3 Accordingly, Harvey's motion to intervene is denied.

4 Dated: March 25, 2009

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8 GARLAND E. BURRELL, JR.  
9 United States District Judge  
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