No. 20-

IN THE

Supreme Court of the United States

SEAN HARTRANFT,

Petitioner,

v.

MIDLAND FUNDING, LLC, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

RICHARD E. QUINTILONE II
Counsel of Record
QUINTILONE & ASSOCIATES
22974 El Toro Road, Suite 100
Lake Forest, California 92630
(949) 458-9675
req@quintlaw.com

Counsel for Petitioner

303726

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

QUESTIONS PRESENTED

Sean Hartranft brought an action against Midland Credit Management, Inc. for damages and injunctive relief for Midland's violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227, and sought to intervene into *Fetai v. Midland Credit Management, Inc., et al.*, Case No. 11-md-2286-MMA-MDD. The District Court denied Petitioner's motion on November 1, 2019 stating that Petitioner did not meet the Rule 24 threshold.

The Court of Appeals for the Ninth Circuit affirmed the decision on November 19, 2019, expressly holding that Petitioner had not met his burden on showing that the motion to intervene was proper, and that the District Court did not abuse its discretion when it determined that Petitioner's motion to intervene was untimely.

The questions presented are:

1. Whether the Court of Appeals committed reversible error when it denied Petitioner's Federal Rules of Civil Procedure 24(a) motion to intervene as a matter of right into *Fetai v. Midland Credit Management, Inc.*

2. Whether the District Court committed reversible error when it denied Petitioner's Federal Rules of Civil Procedure 24(b) motion to permissively intervene into *Fetai v. Midland Credit Management, Inc.*

3. Whether the District Court abused its discretion when it determined that Petitioner's motion to intervene as a matter of right was untimely.

4. Whether the District Court's denial of Petitioner's motion to intervene as a matter of right denied him recovery to his "significantly protectable interest," protected under Federal Rules of Civil Procedure 24(a), constituted a violation of Petitioner's procedural due process rights under the 5th and 14th Amendments of the United States Constitution.

RULE 29.6 STATEMENT

Midland Credit Management, Inc. is a debt collections agency that helps resolve past-due debt obligations by telephoning debtors, and is a wholly-owned subsidiary of Encore Capital Group, Inc.

PARTIES TO THE PROCEEDING AND RELATED CASES

The parties in this case are Petitioner Sean Hartranft (appellant in the 9th Circuit); Midland Funding, LLC (appellee in the 9th Circuit); Midland Credit Management, Inc., (appellee in the 9th Circuit); Encore Capital Group, Inc., (appellee in the 9th Circuit); Laura E. Hartman, (appellee in the 9th Circuit); Frederick J. Hanna & Associates, P.C. (); Unidentified Collector, aka Defendant Collector Doe, (appellee in the 9th Circuit); Gamache & Myers, P.C., (appellee in the 9th Circuit); Asset Acceptance LLC, (appellee in the 9th Circuit); Best Buy, (appellee in the 9th Circuit); Best Buy Credit Service, (appellee in the 9th Circuit); Capital One Bank (USA), N.A., (appellee in the 9th Circuit); Capital One Retail Services, (appellee in the 9th Circuit); Cavalry Portfolio Services, (appellee in the 9th Circuit); Citi Cards, (appellee in the 9th Circuit); Citibank, N.A., (appellee in the 9th Circuit); Citicorp, (appellee in the 9th Circuit); Citicorp Credit Services, Inc. (appellee in the 9th Circuit); Equifax Information Services LLC, (appellee in the 9th Circuit); Experian Information Solutions, Inc., (appellee in the 9th Circuit); Global International, (appellee in the 9th Circuit); MRC Receivables, (appellee in the 9th Circuit); Midland Funding NCC-2 Corporation, (appellee in the 9th Circuit); Trans Union LLC, (appellee in the 9th Circuit); Transunion, (appellee in the 9th Circuit); Experian, (appellee in the 9th Circuit); Equifax, (appellee in the 9th Circuit); Does 1-10, inclusive, (appellee in the 9th Circuit); Portfolio Recovery Associates, LLC, (appellee in the 9th Circuit); Atlantic Credit and Finance, Inc., (appellee in the 9th Circuit); Credit One Bank, N.A., (appellee in the 9th Circuit); Synchrony Bank, (appellee in the 9th Circuit); and Sentry Credit, Inc., (appellee in the 9th Circuit).

Related cases to this proceeding are:

- *In re Midland Credit Management, Inc., Telephone Consumer Protection Act Litigation*, No. 3:18-cv-01187, U.S. District Court for the Southern District of California. Judgment entered July 19, 2019.

- *In re Midland Credit Management Inc. TCPA Litigation*, No. 19-59390, U.S. Court of Appeals for the Ninth Circuit. Judgment entered November 19, 2019.

TABLE OF CONTENTS

TABLE OF APPENDICES

TABLE OF CITED AUTHORITIES

Page

CASES

Page

Page

STATUTES AND OTHER AUTHORITIES

Sean Hartranft respectively petitions for a writ of certiorari to review the judgement of the United States Court of Appeals for the Ninth Circuit in this case.

OPINIONS BELOW

The opinion affirming the denial of Mr. Hartranft's motion to intervene (App. 1a) is unreported and may be found at *In re Midland Credit Management, Inc., Telephone Consumer Protection Act Litigation*, (9th Cir. 2020) 829 Fed.Appx. 805, Dkt Entry 38-1, Entered November 16, 2020.

The opinion under review in this petition (App. 5a) is unreported and may be found *at In re Midland Credit Management, Inc., Telephone Consumer Protection Act Litigation*, (2019 S.D. Cal.) 2019 WL 5698234, Dkt Entry 38-1, Entered November 1, 2019.

JURISDICTION

The Court of Appeals issued its decision on November 19, 2020. App. 1a. This Court has jurisdiction under 28 U.S.C. § 1254(1). This petition is timely, per the Court's March 19, 2020 order extending deadlines.

CONSTITUTIONAL PROVISIONS INVOLVED

> No person shall … be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U.S. Const. amend V

> [N]or shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S. Const. amend. XIV § 1

> The judicial power of the United States, shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behaviour, and shall at stated times receive for their services, a compensation, which shall not be diminished during their continuance in office.

U.S. Const. Art. III sec. 1

STATEMENT OF THE CASE

This is an appeal of an order denying Sean Hartranft's Motion to Intervene in the current action. The case on appeal is a multidistrict litigation ("MDL") involving a putative class action originated in 2011. MDL Plaintiffs alleged that Defendants Midland Credit Management, Inc., Midland Funding, LLC and Encore Capital Group, Inc. (collectively, "Defendants") violated the TCPA by making automated calls to Plaintiffs and the class members without their consent. (Dkt. 651). Although the action was filed in 2011, the case progressed very little throughout the years. On October 20, 2017, a first amended complaint was filed, which added claims under the Fair Debt Collection Practices Act ("FDCPA"). (Dkt. 538). The

Court struck the FDCPA claims from the complaint, and all non TCPA claims were stayed. (Dkt. 569, 571).

On February 8, 2018, the JPML suspended the JPML Rule of Procedure 7.1(a), which ceased conditional transfer orders to prevent further tag-along actions. (JPML Dkt. 1074).

Meanwhile, on June 6, 2018, Hartranft filed a putative class action alleging TCPA and FDCPA claims against the same Defendants in the MDL ("Hartranft Action"). See *Hartranft v. Encore Capital Group, Inc., et al.*, Case No. 3:18-cv-01187-BEN-RBB. Hartranft amended his complaint once and then a second time on November 30, 2018. (Ninth Circuit Court of Appeal In re Midland Management Inc. TCPA Litigation (9th Cir. Case 19-59390) Excerpt of Record ["ER"] Dkt 698 pages 89-100). Hartranft's second amended complaint ("Hartranft's SAC") alleged three causes of action: (1) negligent violations of the TCPA; (2) knowing and/or willful violations of the TCPA; and (3) violations of the FDCPA. Additionally, Hartranft's SAC requested both monetary damages and injunctive relief.

Encore Capital Group responded to the Complaints with a Motion to Dismiss, which was filed on October 11, 2018 and heard by the District Court on November 19, 2018. However, the District Court did not rule on the Defendant's Motion to Dismiss until July 19, 2019, exactly *eight months* after the hearing. After the Court denied the Motion to Dismiss, the Petitioner brought his Motion to Intervene into *Fetai* on August 12, 2019, less than one month from the District Court's denial of Defendant's Motion to Dismiss. *In re Midland Credit Management,*

Inc., Telephone Consumer Protection Act Litigation, (9th Cir. 2020) 829 Fed.Appx. 805, Dkt Entry 24, Entered July 22, 2019.

Back in the MDL litigation, 10 months after the JPML suspension order, Emir Fetai was added as an additional-named Plaintiff and the second amended consolidated class action complaint ("MDL SAC") was filed on the same day, December 17, 2018. (Dkt. 650, 651). The SAC sets forth two causes of action: (1) knowing and/or willful violations of the TCPA; and (2) violations of the TCPA. The MDL SAC requested both monetary damages and injunctive relief.

Both the Hartranft Action and MDL seek determinations by the courts as to:

(1) whether Defendants made non-emergency calls to the class members' cellular telephones using an automatic telephone dialing system during the same time period (Dkt. 651, ¶ 138(a)), compare with (ER Dkt 698, 92-93) (ER Dkt 698, 94, ¶¶ 29(a), (b));

(2) whether Defendants can meet their burden of showing they obtained prior express consent to make such calls (JPML Dkt. 651, ¶ 138c), compare with (ER 94, ¶ 29(c));

(3) whether Defendants' conduct was knowing and/or willful (JPML Dkt. 651, ¶ 138(d)), compare with (ER Dkt 698, 94, ¶ 29(d));

(4) whether Defendants are liable for damages, and the amount of such damages. (Dkt. 651, ¶ 138e), compare (ER Dkt 698, 94, ¶ 29(e)); and

(5) whether Defendants should be enjoined from engaging in such conduct in the future (Dkt. 651, ¶ 138f), compare with (ER Dkt 698, 94, ¶ 29(f)).

On August 5, 2019, the MDL parties filed a joint status report and proposed discovery plan requesting deadlines as far out as September 2020. (JPML, Dkt 695). Just seven days after the proposed deadlines were filed, Hartranft filed his motion to intervene (Dkt 698, ER 65-75) supported by the declaration of his counsel, Richard E. Quintilone, II, Esq. ("Quintilone"), (Dkt 698, ER 698, 76-87), a copy of the Hartranft SAC (Dkt 698, ER 89-100) and declaration of Sean Hartranft. (Dkt 698, ER 101-103).

The motion sought intervention, pursuant to Federal Rule of Civil Procedure 24(a) as a matter of right and Rule 24(b) as a permissive allowance. The motion alleged that: (1) the intervention was timely, given the early stages of discovery and the fact that no class certification nor motions for summary judgment had yet even been filed; (2) Hartranft had a significant, protectable interest in the subject of the MDL since he currently had the same pending claims against the same Defendants in a separate action; (3) disposition of the action may, as a practical matter, impair or impede the applicant's ability to protect its interest given that the same questions of law and fact were pending for determination in the MDL; and (4) the existing parties may not adequately represent the applicant's interest given the superior position of Hartranft's counsel to litigate the causes of action. Further, Hartranft alleged that no MDL party would be prejudiced by the intervention and, indeed, no MDL party objected. In fact, Defendants filed a notice of non-opposition. (ER Dkt 699, 63-64).

The District Court did not address Hartranft's motion for three months. Instead, one month after the motion to intervene was filed, the court entered an order shortening the discovery deadlines. (Dkt. 702). Then, on November 4, 2019, the court denied the motion to intervene as untimely, given the upcoming discovery deadlines. Additionally, despite the similarities in the Hartranft and MDL claims and Defendants, the District Court held that Hartranft did not have an interest in the litigation, would not be affected by the disposition of the case and had not provided evidence he may be inadequately represented in the action. The District Court even went as far as to hold that the MDL parties would be prejudiced if Hartranft intervened, even though no party protested and Defendants openly conceded to the intervention. Lastly, the District Court held that the JPML suspension order – which only suspended tag-along actions – prevented Hartranft from intervening as an individual, pursuant to the Federal Rules of Civil Procedure.

On November 26, 2019, Hartranft promptly filed a notice of appeal from the November 4, 2019 order. (Dkt 710, ER 53-62). Less than a month after the denial of intervention, the MDL parties filed a joint motion of parties' proposed additional deposition and discovery plan seeking an extension of some of the previously-shortened discovery deadlines. (Dkt 715, ER 15-52). On December 16, 2019, the District Court granted extensions of the discovery deadline, with the deadline for filing a motion for summary judgment and class certification set as far out as June 2020. Given the circumstances of this case and the procedural posture, Hartranft herein seeks review of the District Court's denial of intervention and the Ninth Circuit's denial of his request for review of the same decision.

To prepare for judicial review, Sean Hartranft asks to intervene as a petitioner in *In re Midland Credit Management, Inc., Telephone Consumer Protection Act,* (9th Cir. 2020) 2020 WL 2849481. As the real party in interest, Movant has a direct, concrete stake in the outcome of these petitions. The interests of justice and judicial economy strongly favor its participation in these proceedings.

ARGUMENT

While no statute expressly governs intervention in the Ninth Circuit this Court'sRule contemplate a "motion for leave to intervene," S. Ct. R. 33.1(e), and the Ninth Circuit frequently grants intervention, *e.g., N.B.D. v. Ky. Cabinet for Health & Family Servs.*, 140 S. Ct. 860 (2020); *BNSF Ry. Co. v.EEOC*, 140 S. Ct. 109 (2019); *Vos v. Barg*, 555 U.S. 1211 (2009); *Dames & Moore v. Regan*, 452 U.S. 932 (1981). When making that decision, this Court uses the Federal Rules of Civil Procedure as a guide. *Automobile Workers v. Scofield*, 382 U.S. 205, 217 n.10 (1965); *see also Mullaney v. Anderson*, 342 U.S. 415, 416-17 (1952). The Federal Rules contemplate both "intervention of right" and "permissive intervention."Fed. R. Civ. P. 24. Movant qualifies for both and this Court should grant this Petition allowing intervention.

I. Due Process Rights

Mr. Hartranft also claims that his rights under the fifth amendment's due process Clause were violated. The fifth amendment instructs that the federal government may not deprive individuals of property "without due process of law." U.S. Const. amend. V. in order to

determine whether there has been a violation of due process rights, we undertake a two-part inquiry: first, we must determine whether the claimant was deprived of a protected interest; and second, if the claimant was so deprived, we then consider what process the claimant was due. *Logan v. Zimmerman Brush Co.,* 455 U.S. 422, 428 (1982); *Ralls Corp. v. Comm. on Foreign Inv. in U.S.,* 758 f.3d 296, 315 (D.C. Cir. 2014).

Mr. Hartranft identifies a potentially protected property interest in his unadjudicated claim. The Supreme Court has "affirmatively settled" that a cause of action is a species of property requiring due process protection. *Logan*, 455 U.S. at 428 (analyzing due process rights under the fourteenth amendment) (citing *Mullane v. Cent. Hanover Bank & Trust Co.*,339 U.S. 306 (1950)). Surely so, as "[t]he hallmark of property . . . is an individual entitlement grounded in state law, which cannot be removed except 'for cause.'" *Id.* at 430 (quoting *Memphis Light, Gas & Water Div. v. Craft,* 436 U.S. 1, 11-12 (1978)). once the legislature confers an interest by statute, it may not constitutionally authorize the deprivation of that interest without implementing appropriate procedural safeguards. *Id.* at 432.

II. Precedent Provides That The 9th Circuit Should Have Interpreted Rule 24 Differently

The 9th Circuit denied the Petitioner's Motion to Intervene was that the motion was untimely, citing to *Cal. Dep't of Toxic Substances Control v. Commercial Realty Projects*, (9th Cir. 2002) 309 F.3d 1113. In *Cal Dep't of Toxic Substances Control*, the Court similarly denied a motion to intervene because it was not timely filed. In

Cal. Dep't of Toxic Substances Control, the Intervenor Cities were aware of the settlement negotiations and had the opportunity to timely intervene in August of 1999. *Id.* at 1117. However, it waited until January 5, 2001 to file its Motion to Intervene. In that time, the Parties to the original action had settled, which the Cities were aware. *Id.* at 1117-1118.

Here, the facts are starkly different. The Court determined that since the Motion to Intervene was filed seven years after the MDL was initiated and fourteen months after the individual action, that Intervention was untimely. Shortly after Petitioner's Complaint was filed and amended, Defendant filed a Motion to Dismiss on October 11, 2018. The Petitioner opposed, and the motion and was heard on November 19, 2018. However, the District Court did not rule on the Defendant's Motion to Dismiss until July 19, 2019, exactly *eight months* after the hearing. After the Court denied the Motion to Dismiss, the Petitioner brought his Motion to Intervene into *Fetai* on August 12, 2019, less than one month from the District Court's denial of Defendant's Motion to Dismiss. *In re Midland Credit Management, Inc., Telephone Consumer Protection Act Litigation*, (9th Cir. 2020) 829 Fed.Appx. 805, Dkt Entry ER, 698 - 706. During the Motion to Dismiss period, discovery was stayed, and proceedings did not commence because the future of the case hinged on the Court's Motion to Dismiss ruling. In its Order, the District Court then found that too much time had lapsed before Petitioner filed his Motion to Intervene. Factoring the total delay between the initial Complaint and the Motion to Intervene was filed, nearly fourteen months had passed. However, a majority of the time, the Petitioner was either defending the Motion to Dismiss or waiting for the Court's ruling. (Dkt Entry ER, 698 – 706).

The petitioner in *Cal. Dep't of Toxic Substances Control* had the opportunity for over one year to intervene, with plenty of opportunity before the Parties settled and sent notice. *Id.* at 1117. Petitioner on the other hand, did not have the same opportunity. Most of the fourteen months between the initial Complaint and Motion to Intervene filings, the Petitioner was defending against a Motion to Dismiss or waiting for the District Court to rule. Additionally, in *Cal. Dep't of Toxic Substances Control*, the matter was settled, and the petitioner Cities were noticed. Here, the MDL was still actively litigated. Petitioner acted swiftly based on the surrounding circumstances, and timely filed the Motion to Intervene in August of 2019. Taking the totality of the circumstances into consideration, it is clear that Petitioner acted timely. Therefore, the District Court abused its discretion when it found Petitioner's Motion to Intervene untimely, and the 9th Circuit incorrectly affirmed the decision.

CONCLUSION

For all these reasons, the Court should find that the District Court had incorrectly applied FRCP 24(a) and (b) when it denied Petitioner's Motion to Intervene. Further, Petitioner's and the class's due process rights were violated when they were denied the notice and opportunity to intervene, and that the grant thismotion and allow Movant to intervene as a petitioner.

Respectfully submitted,

RICHARD E. QUINTILONE II
Counsel of Record
QUINTILONE & ASSOCIATES
22974 El Toro Road, Suite 100
Lake Forest, California 92630
(949) 458-9675
req@quintlaw.com

Counsel for Petitioner

April 19, 2021

APPENDIX

APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT, FILED NOVEMBER 19, 2020

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

In re: MIDLAND CREDIT MANAGEMENT, INC., TELEPHONE CONSUMER PROTECTION ACT LITIGATION,

---

SEAN HARTRANFT,

Movant-Appellant,

v.

MIDLAND FUNDING, LLC; *et al.*,

Defendants-Appellees.

MEMORANDUM*

No. 19-56390

D.C. No. 3:11-md-02286-MMA-MDD

Appeal from the United States District Court
for the Southern District of California
Michael M. Anello, District Judge, Presiding

---

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

Appendix A

Submitted, November 16, 2020**
Pasadena, California

Filed November 19, 2020

Before: FERNANDEZ, PAEZ, and OWENS, Circuit Judges.

Sean Hartranft moved to intervene in multidistrict litigation in which Appellees (collectively, "Midland") are the defendants. The district court denied the motion as untimely. Hartranft timely appealed.

We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm. We review de novo the denial of a party's motion to intervene as a matter of right, except for the issue of timeliness, which we review for an abuse of discretion. *NAACP v. New York*, 413 U.S. 345, 366, 93 S. Ct. 2591, 37 L. Ed. 2d 648 (1973); *Cnty. of Orange v. Air Cal.*, 799 F.2d 535, 537 (9th Cir. 1986).

Federal Rule of Civil Procedure 24(a) provides that "[o]n timely motion, the court must permit" the intervention of an applicant who "claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest." Fed. R. Civ. P. 24(a)(2). Although

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Rule 24 is construed broadly in favor of intervenors, *Wilderness Soc'y v. U.S. Forest Serv.*, 630 F.3d 1173, 1179 (9th Cir. 2011) (en banc), the applicant bears the burden of showing that each of the elements is met, *Prete v. Bradbury*, 438 F.3d 949, 954 (9th Cir. 2006).

Timely filing is a "threshold requirement" for intervention as of right. *League of United Latin Am. Citizens v. Wilson*, 131 F.3d 1297, 1302 (9th Cir. 1997) (citation omitted). We evaluate three factors to determine the timeliness of a motion to intervene: "(1) the stage of the proceeding at which an applicant seeks to intervene; (2) the prejudice to other parties; and (3) the reason for and length of the delay." *Cal. Dep't of Toxic Substances Control v. Com. Realty Projects, Inc.*, 309 F.3d 1113, 1119 (9th Cir. 2002) (citation omitted). The district court thoroughly considered these factors and denied Hartranft's motion to intervene.

"A party seeking to intervene must act as soon as he knows or has reason to know that his interests might be adversely affected by the outcome of the litigation." *United States v. Oregon*, 913 F.2d 576, 589 (9th Cir. 1990) (internal quotation marks and citation omitted). "Mere lapse of time alone is not determinative" of how the court must consider the stage of the proceedings when assessing timeliness. *Smith v. L.A. Unified Sch. Dist.*, 830 F.3d 843, 854 (9th Cir. 2016) (citation and alteration omitted). Instead, timeliness is determined by the totality of the circumstances.

Hartranft filed his motion to intervene seven years after the MDL action was initiated and fourteen months

after he filed his separate, related action against Midland. Although motions for summary judgment and class certification were not yet due and depositions not yet completed in the MDL, the first phase of discovery had been completed by the time Hartranft moved to intervene. The district court therefore did not abuse its discretion in concluding that the motion to intervene was untimely filed. *See Wilson*, 131 F.3d at 1302.

AFFIRMED.

APPENDIX B — OPINION OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA, FILED NOVEMBER 4, 2019

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA

IN RE: MIDLAND CREDIT MANAGEMENT, INC., TELEPHONE CONSUMER PROTECTION ACT LITIGATION

November 1, 2019, Decided;
November 4, 2019, Filed

Case No. 3:11-md-2286 - MMA (MDD)

ORDER DENYING SEAN HARTRANFT'S MOTION TO INTERVENE

[Doc. No. 698]

Sean Hartranft ("Applicant") filed a motion to intervene in this multidistrict litigation pursuant to Federal Rule of Civil Procedure ("FRCP") 24. Doc. No 698. Defendants responded with a notice of nonopposition to the motion. Doc. No. 699. The Court found the matter suitable for determination on the papers and without oral argument pursuant to Civil Local Rule 7.1(d)(1). Doc. No. 704. For the reasons set forth below, the Court **DENIES** Applicant's motion to intervene.

Appendix B

Background[1]

Plaintiffs in the present multidistrict litigation ("MDL"), which originated in 2011, allege defendants violated the Telephone Consumer Protection Act ("TCPA") by illegally making debt collection calls to them, through use of an automatic dialer or pre-recorded voice, on their cellular telephones without first obtaining their prior consent. *See generally* Doc. No. 23. On February 8, 2018, the Judicial Panel on Multidistrict Litigation ("JPML") suspended JPML Rule of Procedure 7.1(a), which ceased conditional transfer orders to prevent further tag-along actions. JPML Doc. No. 1074.[2] In effect, the February 2018 JPML order bars new member cases from entering the MDL.

Applicant filed a putative class action in this district on June 6, 2018, alleging violations by Defendants of the TCPA and Federal Debt Collection Practices Act. *See Hartranft v. Encore Capital Group, Inc.*, (No. 3:18-cv-1187-BEN-RBB). Applicant asserts that his action and the operative consolidated complaint in the MDL overlap substantially with respect to the TCPA claims

1. Because this matter is before the Court on a motion to intervene, the Court must "accept as true the non-conclusory allegations made in support of an intervention motion." *Sw. Ctr. for Biological Diversity v. Berg*, 268 F.3d 810, 819-20 (9th Cir. 2001).

2. Unless otherwise noted—as the citation here refers to the JPML docket—all docket citations refer to the pagination assigned by the CM/ECF system for the United States District Court for the Southern District of California.

and putative class members.[3] Doc. No. 698-1 at 2. On August 12, 2019, Applicant filed this motion to intervene. *See id.* Emphasizing the related issues of fact and law, Applicant argues intervention is proper as a matter of right pursuant to FRCP 24(a). *Id.* at 3. In the alternative, Applicant requests permission to intervene pursuant to FRCP 24(b). *Id.*

Legal Standard

Federal Rule of Civil Procedure 24 governs motions to intervene. Rule 24 states that a court must, upon a timely motion, allow intervention of right where the movant

> (1) is given an unconditional right to intervene by a federal statute; or (2) claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest.

Fed. R. Civ. P. 24(a). The Ninth Circuit has interpreted Rule 24(a) to require an applicant meet all of the following four factors:

> (1) the applicant must timely move to intervene; (2) the applicant must have a significantly

3. Applicant seeks intervene in the "*Fetai* action." Doc. No. 698-1. Emir Fetai ("Fetai") is the Lead Plaintiff in the MDL. Applicant refers to the MDL as the "*Fetai* action." Fetai does not have an individual MDL member case in which Applicant could intervene.

> protectable interest relating to the property or transaction that is the subject of the action; (3) the applicant must be situated such that the disposition of the action may impair or impede the party's ability to protect that interest; and (4) the applicant's interest must not be adequately represented by existing parties

Arakaki v. Cayetano, 324 F.3d 1078, 1083 (9th Cir. 2003), *as amended* (May 13, 2003) (citing *Donnelly v. Glickman*, 159 F.3d 405, 409 (9th Cir. 1998)); *Sw. Ctr. for Biological Diversity*, 268 F.3d at 817-18; *C.S. v. California Dep't of Educ.*, 2008 U.S. Dist. LEXIS 28657, 2008 WL 962159, at *2 (S.D. Cal. Apr. 8, 2008). An applicant has a significant protectable interest where (1) his or her interest is protected under some law, and (2) "there is a 'relationship' between its legally protected interest and the plaintiff's claims." *Donnelly*, 159 F.3d at 409. The resolution of the plaintiff's claims must actually affect the applicant. *Id.* If there would be a substantial effect, the applicant "should, as a general rule, be entitled to intervene." *Sw. Ctr. for Biological Diversity*, 268 F.3d at 822.

In the alternative, courts may permit a party to intervene under Rule 24(b). The court may permit anyone to intervene who

> (A) is given a conditional right to intervene by a federal statute; or (B) has a claim or defense that shares with the main action a common question of law or fact. [. . .] (3) Delay or Prejudice. In exercising its discretion, the

> court must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights.

Fed. R. Civ. P. 24(b). A party seeking the court's permission to intervene must establish several prerequisites: "(1) independent grounds for jurisdiction; (2) the motion is timely; and (3) the applicant's claim or defense, and the main action, have a question of law or a question of fact in common." *League of United Latin Am. Citizens v. Wilson*, 131 F.3d 1297, 1308 (9th Cir. 1997). However, "[e]ven if an applicant satisfies those threshold requirements, the district court has discretion to deny permissive intervention." *S. California Edison Co. v. Lynch*, 307 F.3d 794, 803 (9th Cir.), *modified*, 307 F.3d 943 (9th Cir. 2002), and *certified question answered sub nom. S. California Edison Co. v. Peevey*, 31 Cal. 4th 781, 3 Cal. Rptr. 3d 703, 74 P.3d 795 (Cal. 2003) (quoting *Donnelly*, 159 F.3d at 412).

Discussion

I. Intervention as a Matter of Right

The Court first considers whether intervention as a matter of right is proper under the Ninth Circuit's multi-factor test.

As to the timeliness prong, the Court assesses three factors: "(1) the stage of the proceeding at which an applicant seeks to intervene; (2) the prejudice to other parties; and (3) the reason for and length of the delay."

Smith v. Marsh, 194 F.3d 1045, 1050 (9th Cir. 1999) (quoting *League of United Latin Am. Citizens*, 131 F.3d at 1302). Applicant appears to base his timeliness argument on the MDL parties' proposed discovery plan that requested depositions and other discovery be completed by April 3, 2020. *See* Doc. No 695 at 5; Doc. No. 698-1 at 2. However, after this motion was filed, the Magistrate Judge issued a discovery order with an accelerated timeline ordering Defendants to depose the Lead Plaintiff by October 25, 2019, and Lead Plaintiff to depose Defendants by November 22, 2019. Doc. No. 695 at 8. Importantly, the Magistrate Judge ordered the parties to file any motions for summary judgment and class certification by January 24, 2020. *Id.* at 9. The MDL has been before this Court since 2011, and the parties are currently completing discovery. In light of the MDL's procedural posture and the fact that Applicant initiated his separate action more than a year ago, Applicant's motion is the antithesis of timely.

As to the interest and the protection of the interest prongs, the disposition of any claims or issues in this action would not impair or impede Applicant's ability to protect his own interests. Applicant claims that he has "a significant, protectable interest in this action because this action asserts the same violations and relief sought in *Fetai*, and because this action seeks certification of a [] subclass that is entirely subsumed by the proposed California class in *Fetai*." Doc. No. 698-1 at 6. Applicant's prayer for relief comprises monetary damages. *See* Doc. No. 698-2 at 23-24. However, "[a]n economic stake in the outcome of the litigation, even if significant, is not enough."

Greene v. United States, 996 F.2d 973, 976 (9th Cir. 1993). Even if Applicant's economic interest were sufficient to trigger intervention as a matter of right, Applicant fails to detail how the disposition of any claims or issues the MDL action would prevent him from recovery in his separate pending putative class action.

As to the "inadequate representation" prong of the Ninth Circuit's factor test, Applicant fails to provide more than conclusory allegations that "[t]he *Fetai* parties are not able or well situated to make the arguments that Hartranft counsel could. Accordingly, Hartranft counsel is uniquely well situated to most effectively bring these claims against the Defendant and achieve the best possible resolution." Doc. No. 698-1 at 7. Because the Court must "accept as true the non-conclusory allegations made in support of an intervention motion," *Sw. Ctr. for Biological Diversity*, 268 F.3d at 819-20, and Applicant leaves the Court with only conclusory allegations, Applicant has failed to show how counsel's representation is inadequate.

Thus, Applicant fails to meet any of the requirements necessary to intervene in the MDL action as a matter of right.

II. Permissive Intervention

The Court next considers whether permissive intervention is proper.

Courts analyze timeliness similarly under Rules 24(a) and 24(b). *League of United Latin Am. Citizens*, 131 F.3d

at 1308. However, timeliness is analyzed "more strictly than . . . with intervention as of right." *Id.* As mentioned above, Applicant bases the timeliness of his motion on the parties' proposed scheduling order. Doc No. 698-1 at 2. In light of the Magistrate Judge's September 4, 2019, discovery order, the parties have already started discovery, and deadlines have already passed en route to the upcoming summary judgment and class certification motion deadlines in January 2020. Doc. No. 702 at 8-9. Granting intervention would cause substantial undue delay by necessitating further discovery and pushing back the summary judgment and class certification timeline. Given the above analysis and permissive intervention's stricter assessment of timeliness in addition to the related accompanying delay that would occur if intervention were permitted, the Court finds Applicant's motion both untimely and likely to cause undue delay if granted.

Irrespective of any delay or prejudice, there is a special circumstance that the Court must consider. Permissive intervention would effectively contravene and circumvent the JPML's February 8, 2018, order that suspended JPML Rule 7.1(a) and thus barred new members cases from entering the MDL. Allowing Applicant to intervene in an MDL that originated in 2011 would undermine the JPML's order and set a precedent at odds with that order. The Court will not condone Applicant's transparent attempt to circumvent the JPML's order barring new member cases from entering the MDL.[4]

4. Additionally, even if the Court were to grant Applicant's motion, Applicant fails to detail what form or function intervention would take. The Court is left wondering whether Applicant attempts

Appendix B

CONCLUSION

Based on the foregoing, the Court **DENIES** Applicant's motion to intervene. **IT IS SO ORDERED**.

Dated: November 1, 2019

/s/ Michael M. Anello
Hon. Michael M. Anello
United States District Judge

---

to intervene as a member case within the MDL or to intervene in the MDL itself. Applicant further overlooks the ramifications to the extent he seeks to intervene as co-Lead Plaintiff, as Lead Plaintiff has already been deposed, and Applicant's addition would require repeat discovery and deposition. Applicant also fails to consider whether his addition would require a third amended consolidated complaint and associated motion practice. However, the procedural ambiguity is irrelevant for the Court's disposition.