

**SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF ORANGE  
CIVIL COMPLEX CENTER**

**MINUTE ORDER**

DATE: 09/25/2025

TIME: 02:00:00 PM

DEPT: CX102

JUDICIAL OFFICER PRESIDING: Layne H. Melzer

CLERK: L. Mendez

REPORTER/ERM: None

BAILIFF/COURT ATTENDANT: A. Condaras

CASE NO: **30-2019-01050162-CU-SL-CXC** CASE INIT.DATE: 02/08/2019

CASE TITLE: **Salvation Investment, LLC vs. MO Murrayfield, LLC**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Securities Litigation

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EVENT ID/DOCUMENT ID: 74616117

**EVENT TYPE:** Motion to Dismiss

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EVENT ID/DOCUMENT ID: 74655605

**EVENT TYPE:** Status Conference

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**APPEARANCES**

Zaal Aresh, from Zaal Aresh, Esq., present for Plaintiff(s) remotely.

Jeffrey Blank, from Garcia Rainey Blank & Bowerbank LLP, present for Plaintiff(s) remotely.

Stephen Johnson, from S.C. Johnson & Associates, P.C., present for Plaintiff(s).

Jonathan K. Ramler, from Schonbuch & Lebovits, LLP, present for Defendant(s).

Brook John Changaka, from Fitzgerald Kreditor Bolduc Risbrough LLP, present for Defendant(s) remotely.

Natasha Dandavati, from Edge, A professional Law Corporation, present for Appellant, Intervenor, Interested Party(s) remotely.

Daniel Rozenblatt, from EDGE, a professional Law Corporation, appearing in person on behalf of Plaintiff in Intervention.

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Hearing held, participants appearing remotely and in person.

Tentative Ruling posted on the Internet.

All parties submit on the Court's tentative ruling.

The Court confirms the tentative ruling, a copy of which is attached hereto and included herein by reference.

**Salvation Investment, LLC vs. MO Murrayfield, LLC**  
**Case No. 30-2019-01050162**

**MOTION TO DISMISS**

The Renewed Request for Dismissal of the Second Amended Complaint in Intervention filed by Intervening Plaintiffs Norman Rockmaker, as Trustee of the Norbrite, Inc. Retirement Trust; Alice Noble, as Trustee of the Noble Family Trust dated 11/21/83; Mike Rozenblatt, as Trustee of the Manhattan Revocable Trust dated 4/16/2013; and Eric Swinderman is GRANTED, with the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup>, 10<sup>th</sup>, 11<sup>th</sup>, 12<sup>th</sup>, 13<sup>th</sup>, 14<sup>th</sup>, 15<sup>th</sup>, 16<sup>th</sup>, 17<sup>th</sup>, and 18<sup>th</sup> Causes of Action in the Second Amended Complaint in Intervention DISMISSED WITHOUT PREJUDICE, and the 19<sup>th</sup> and 20<sup>th</sup> Causes of Action in the Second Amended Complaint in Intervention DISMISSED WITH PREJUDICE.

This is a securities fraud action filed by Plaintiff Salvation Investment, LLC on February 8, 2019. (ROA 2.) After various demurrers and motions to strike, Plaintiff Salvation Investment filed the operative Third Amended Complaint on August 14, 2020. (ROA 902.) Plaintiff brought the suit individually and derivatively on behalf of nominal defendant, MO Murrayfield, LLC ("MO Murrayfield") against the following defendants:

- Murrayfield
- TRP Management Murrayfield, LLC (MO Murrayfield Managing Member)
- TwinRock Holdings, LLC
- TwinRock Partners, LLC;
- TRP Fund VIII, LLC;
- TRP Management VIII, LLC;
- MO Azzurri, LLC (Doe 2)
- TRP Management Azzurri, LLC (Azzurri Managing Member)
- Marcus & Millichap Real Estate Investment Services, Inc. ("M&M")
- Weiland Golden Goodrich LLP (previously identified as Weiland Golden Friedman LLP)
- Southside Ventures LLC; Log Hill Properties and Consulting LLC (collectively, "Sellers")
- William Lobel (partner at Weiland Golden Goodrich)
- Alexander Philips (executive officer and manager of MO Murrayfield, Managing Member, and the TwinRock Entities)
- Michael Meyer (officer and manager of each of the TwinRock Entities)
- Greg Logsdon (officer and manager of Sellers)

- Robert Hill (officer and manager of Sellers)
- Scott Harris (executive officer and manager of M&M)
- Patrick Stang (executive officer and manager of M&M)
- Bret Chetek (executive officer and manager of M&M)
- Adele Flechsig (executive officer and manager of M&M)
- Pachulski Stang Ziehl & Jones LLP (Doe 1)
- TwinRock Management, Inc. (Doe 3)

Plaintiffs Salvation alleged that Defendants were involved in a conspiracy to mislead and defraud 25 investors into becoming members of three different companies: MO Murrayfield, MO Azzurri, LLC; and TRP Fund VIII, LLC—each of which was formed to acquire commercial real estate as investments. MO Murrayfield acquired an 82-unit student housing complex, and MO Azzurri acquired a 138-unit student housing complex, both of which were near the University of Missouri, and TRP Fund acquired a one-to-four-unit single family homes obtained through foreclosures (collectively, the “Investments”).

Plaintiff Salvation alleges Defendants fraudulently represented material facts regarding the Investments in order to get it to invest in the properties. In addition, Salvation alleges Defendants mismanaged the Investments, and then defaulted on the loans used to acquire the properties and had the Investments foreclosed upon or sold, thus resulting in significant losses to Salvation. It is alleged the TwinRock Entities dissipated, stole, and hid the money through fraudulent transfers, and then provided Salvation with fraudulent accountings of the funds and assets. Specifically, Salvation alleges Defendants misappropriated more than \$3.2 million dollars.

Salvation alleges Defendants Philips and Meyer spearheaded these investments and marketed and searched for the investors and products. Philips and Meyers are principals, owners, and/or managers of Defendants MO Murrayfield; TRP Management Murrayfield, LLC (“Managing Member”); TwinRock Holdings, LLC; TwinRock Partners, LLC; TRP Fund; TRP Fund Management VIII, LLC; MO Azzurri; and TRP Management Azzurri (collectively, “TwinRock Entities”), and that they are all alter egos of each other.

Defendant Marcus & Millichap Real Estate Investment Services, Inc. (“M&M”) was the real estate broker that assisted the TwinRock Entities in purchasing the Investments and marketed them to investors. Defendants Southside Ventures LLC and Log Hill Properties and Consulting LLC (collectively, “Sellers”) were the sellers of the student housing complexes. Defendants Greg Logsdon and Robert Hill are principal officers and managers of each of the Sellers.

Defendant Attorney William Lobel was brought in by the TwinRock Entities to restructure the loans on the Investments. However, the lender did not agree to the restructuring. Lobel was a partner at Defendant Weiland Golden Goodrich LLP, who then became a partner at Defendant Pachulski Stang Ziehl & Jones LLP. Plaintiff Salvation Investment alleges Lobel knew of the fraud and mismanagement by the Defendants but concealed it from MO Murrayfield's members. Salvation also alleges it had an attorney-client relationship with Lobel and the Weiland firm, but was never advised of any potential conflicts with the TwinRock Entities.

The Weiland firm was also tasked with seeking to recover claims on behalf of MO Murrayfield in a lawsuit filed in February 2018 in the Circuit Court of Boone County, Missouri by TwinRock Holdings and TwinRock Partners against Sellers (the "Missouri Action").

In April 2018, the Property was foreclosed upon for less than half the total consideration paid, resulting in losses of over \$4 million. Plaintiff Salvation Investment lost more than \$600,000.

In the Third Amended Complaint, Salvation asserts 38 causes of action, including fraud and deceit, various violations of the Corporations Code, breach of contract, breach of fiduciary duty, aiding and abetting breach of fiduciary duty, and violation of Penal Code section 496. (ROA 902).

Plaintiff Salvation has settled with and dismissed Lobel, the Weiland firm, and the Pachulski firm from this action.

#### Missouri Action

On February 2, 2018, MO Murrayfield, TwinRock Holdings, and TwinRock Partners (collectively, "Missouri Plaintiffs") filed a lawsuit against Defendants Southside, Log Hill, Logsdon, Hill, and M&M (collectively, "Missouri Defendants") in the Circuit Court of Boone County, Missouri, Case No. 18BA-CV00443. The operative Second Amended Complaint was filed on January 19, 2019. (ROA 1553.)

The Complaint in the Missouri Action alleges that the Missouri Defendants engaged in a scheme to induce the Missouri Plaintiffs to purchase the Murrayfield Property for the inflated price of \$14,700,000. The Missouri Plaintiffs allege the Missouri Defendants made various fraudulent misrepresentations about the inspection reports, rent roll, leasing standard, and parental guarantees, among other things.

#### West Coast Action

On April 3, 2019, Plaintiff Salvation Investment filed a Notice of Related Case as to *West Coast Lending, Inc., et al. v. TwinRock Partners, LLC, et al.*, Case No. 2019-01056031 ("West Coast Action"). (ROA 95.) On June 19,

2020, Plaintiff Salvation moved to consolidate its action with the West Coast Action for discovery, pre-trial proceedings, and trial. (ROA 739.) The motion was granted on August 13, 2020. (ROA 912.)

On March 7, 2019, the West Coast Plaintiffs (West Coast Lending, Inc., Trenton Rhodes, and California Anchor Consulting, Inc.) brought its action, individually and derivatively, on behalf of MO Murrayfield, LLC. The West Coast Plaintiffs allege they were investors in MO Murrayfield, Azzurri, TwinRock Fund, and AR Shamrocks, LLC ("Shamrocks") who participated in the private offering to purchase the Property, and they contributed \$350,000.00 to the funding. West Coast Lending also alleged that Defendants engaged in fraud, made various misrepresentations about the investment, mismanaged the investment, and incurred a loan in the amount of \$11,250,000.00 from Greystone Service Corporation in violation of its operating agreement and without notice to the investors. (ROA 1335.) Defendants in the West Coast Action include TwinRock Partners; TwinRock Holdings; TRP Management Murrayfield; MO Murrayfield; TRP Management Azzurri; MO Azzurri; TRP Management Shamrocks; AR Shamrocks; TRP Fund VIII; TRP Management VIII; Alexander Philips; and Michael L. Meyer.

On March 20, 2019, the West Coast Defendants attempted to effect an involuntary withdrawal of the West Coast Plaintiffs from four of the entities.

After demurrers and motions to strike, West Coast filed the operative Second Amended Complaint on November 3, 2020, alleging 52 derivative and direct causes of action, including theft by false pretense, constructive fraud, fraudulent concealment, intentional and negligent misrepresentation, false promise, breach of fiduciary duty, and violations of the Corporations Code. The first 19 causes of action pertain to MO Murrayfield, and the remaining claims involve the other investments. (ROA 1479.)

After the West Coast Defendants attempted to involuntarily withdraw the West Coast Plaintiffs as members of four of the entities, the parties agreed to bifurcate the Salvation and West Coast Actions. In Phase One, the Court was tasked with making two determinations:

1. Whether the Managing Members of MO Murrayfield, MO Azzurri, TRP Fund VIII, and AR Shamrock had the authority under their Operating Agreements to involuntarily withdraw Plaintiffs Salvation, West Coast Lending, Trenton Rhodes, and/or California Anchor from the aforementioned LLCs; and
  2. Whether the Court's determination of the first issue deprived Plaintiffs of standing to pursue the derivative claims raised by Plaintiff.
- (See, ROA 2523, Stipulation and Order.)

On January 29, 2025, the Court issued its Statement of Decision wherein it found that the authority of the Defendants under the various Operating Agreements "was not triggered by the necessary prerequisites to the creation of such authority and, as such, the Defendants did not have the authority to involuntarily withdraw the Plaintiffs as members of the subject LLCs. The Plaintiffs are, therefore, still members of the LLCs and have the standing to pursue their derivative claims. (ROA 2633.)

#### Intervening Action

On September 21, 2022, pursuant to leave of court, Investors Norman Rockmaker, as Trustee of the Norbrite, Inc. Retirement Trust; Alice Noble, as Trustee of the Noble Family Trust dated 11/21/83; Mike Rozenblatt, as Trustee of the Manhattan Revocable Trust dated 4/16/2013; and Eric Swinderman (collectively, "Intervening Plaintiffs") filed a Derivative Complaint in Intervention individually and on behalf of MO Murrayfield. (ROA 1751.) Defendants are TwinRock Partners, TwinRock Holdings, TwinRock Management, MO Murrayfield Managing Member, M&M, Southside, Log Hill, Philips, Meyer, Logsdon, Hill. As in the consolidated Salvation Action and West Coast Action, Intervening Plaintiffs allege Defendants defrauded them, made various misrepresentations about the Investments, and mismanaged the Investment.

The Intervening Plaintiffs filed the First Amended Complaint in Intervention on November 10, 2022, upon notice of their purported involuntary withdrawal from MO Murrayfield. (ROA 1892.) The Intervening Plaintiffs allege that the complaint in the Missouri Action intentionally fails to differentiate between MO Murrayfield, TwinRock Partners, and TwinRock Holdings, thus conflating MO Murrayfield's claims and damages with TwinRock's claims and damages so that the TwinRock Defendants can justify allocating a disproportionate share of the recovery to TwinRock Partners and confer legal standing upon TwinRock Partners to sue the Missouri Defendants. Intervening Plaintiffs allege such standing is questionable since TwinRock Partners was not a party to the purchase agreement. In addition, the Intervening Plaintiffs allege that the TwinRock Defendants have directed and controlled the Missouri Action so as to ensure the litigation will be resolved by an "unallocated" award or settlement so they can justify keeping 50% of the award.

On May 17, 2023, after demurrer, the Intervening Plaintiffs filed the operative Second Amended Complaint in Intervention against the TwinRock Defendants alleging the following twenty (20) derivative and direct causes of action (ROA 2238):

- 1<sup>st</sup> derivative cause of action for Violation of Corporations Code § 25504, against the TwinRock Defendants;
- 2<sup>nd</sup> derivative cause of action for Violation of Corporations Code §

25504.1, against all Defendants;

- 3<sup>rd</sup> derivative cause of action for Fraud - Intentional Misrepresentation, against all Defendants;
- 4<sup>th</sup> derivative cause of action for Fraud - Negligent Misrepresentation, against all Defendants;
- 5<sup>th</sup> derivative cause of action for Fraud – Concealment, against M&M and TwinRock Defendants;
- 6<sup>th</sup> derivative cause of action for Fraud – False Promise, against TwinRock Defendants;
- 7<sup>th</sup> derivative cause of action for Constructive Fraud, against TwinRock Defendants;
- 8<sup>th</sup> derivative cause of action for Breach of Fiduciary Duty for Failure to Use Reasonable Care, against TwinRock Defendants;
- 9<sup>th</sup> derivative cause of action for Breach of Duty of Undivided Loyalty in Connection with Purchasing the Property, against TwinRock Defendants;
- 10<sup>th</sup> derivative cause of action for Breach of Fiduciary Duty in Connection with MO Murrayfield’s Claims against Seller Defendants and M&M, against TwinRock Defendants;
- 11<sup>th</sup> derivative cause of action for Breach of Duty of Undivided Loyalty in Connection with TwinRock’s Purported Loan to MO Murrayfield, against TwinRock Defendants;
- 12<sup>th</sup> derivative cause of action for Anticipatory Breach of Contract, against TwinRock Defendants;
- 13<sup>th</sup> derivative cause of action for Anticipatory Breach of Implied Covenant of Good Faith and Fair Dealing, against TwinRock Defendants;
- 14<sup>th</sup> derivative cause of action for Breach of Implied Duty to Perform with Reasonable Care, against TwinRock Defendants;
- 15<sup>th</sup> derivative cause of action for Promissory Estoppel, against TwinRock Defendants;
- 16<sup>th</sup> cause of action for Unjust Enrichment, against all Defendants;
- 17<sup>th</sup> cause of action for Breach of Fiduciary Duty for Failure to Use Reasonable Care in Connection with Involuntarily Withdrawing Intervenors as Members of MO Murrayfield, against TwinRock Defendants;
- 18<sup>th</sup> derivative cause of action for Breach of Implied Duty to Perform with Reasonable Care in Connection with Involuntarily Withdrawing Intervenors as Members of MO Murrayfield, against TwinRock Defendants;
- 19<sup>th</sup> direct cause of action for Breach of Contract for Involuntarily Withdrawing Intervenors as Members of MO Murrayfield, against TwinRock Defendants; and

- 20<sup>th</sup> direct cause of action for Breach of Implied Duty of Good Faith and Fair Dealing for Involuntarily Withdrawing Intervenors as Members of MO Murrayfield, against TwinRock Defendants.

On August 2, 2023, Intervening Plaintiffs and the TwinRock Defendants filed a Joint Stipulation and Request for Entry of Dismissal pursuant to a settlement agreement. The Joint Stipulation contemplated the TwinRock Defendants acquisition of the MO Murrayfield membership interests of the Intervening Plaintiffs in exchange for Intervening Plaintiffs dismissing their derivative claims without prejudice and their direct claims with prejudice for a settlement of \$550,000. (ROA 2281.) Believing no objections or responses had been filed, the Court entered the requested dismissal on August 7, 2023. However, it was subsequently brought to the Court's attention that the West Coast Plaintiffs had timely filed an objection. (ROA 2279.) As a result, on August 8, 2023, the Court recalled and vacated the dismissal, and set a full hearing on the request for entry of dismissal. (ROA 2288.)

On February 8, 2024, after considering the extensive briefing of the parties and their oral arguments at the hearing, the Court denied Intervening Plaintiffs' request for entry of dismissal. (ROA 2486.) In its ruling, the Court found that Intervening Plaintiffs had not met their burden of demonstrating that the settlement with the TwinRock Defendants was fair and reasonable. (*Id.*)

On April 7, 2025, Intervening Plaintiffs filed a Request for Dismissal wherein they asked the clerk to dismiss with prejudice their Second Amended Complaint. (ROA 2681.) The clerk entered the dismissal the same day. (*Id.*) On April 22, 2025, the West Coast Plaintiffs filed the Motion to Set Aside the Dismissal of Intervening Plaintiffs' Claims. (ROA 2714.) At the hearing on July 17, 2025, the Court granted the Motion and vacated the dismissal of the Intervening Plaintiffs' Second Amended Complaint. (ROA 2760.) The Court then set a hearing on Intervening Plaintiffs' request for entry of dismissal, and informed the parties that the Intervening Plaintiffs and the TwinRock Defendants could file papers in support, the Objectors could file supplemental papers in opposition, and Intervening Plaintiffs could submit reply briefs to any opposition. (*Id.*)

On September 3, 2025, Intervening Plaintiffs filed a brief in support of their current Renewed Request for Dismissal of the Second Amended Complaint in Intervention ("SACI"). (ROA 2806.) The West Coast Plaintiffs have filed a response brief in opposition. (ROA 2826.)

## **ANALYSIS:**

### **Previous Request for Dismissal**

In its February 8, 2024 Ruling denying the Intervening Plaintiffs' first request

for dismissal of the SACI, the Court identified four (4) concerns as to whether the settlement, as a whole, was "fair, reasonable, and adequate to all concerned." (ROA 2486, pp. 16-17.)

First, the Court was concerned about the then-pending issue pertaining to Intervening Plaintiffs' status with regard to MO Murrayfield. At the time of the Ruling, the Intervening Plaintiffs had been involuntarily withdrawn as members of MO Murrayfield by the TwinRock Entities in November 2022. As a result, regarding the requested dismissal of the SACI, the Court found it was not clear how Intervening Plaintiffs could settle their claims by transferring a membership interest they no longer had. (ROA 2486, at p. 16.)

Second, the Court was concerned about Intervening Plaintiffs' failure to provide an analysis of their derivative claims as to MO Murrayfield. The Court found that absent that information, it could not be determined if the proposed \$550,000.00 settlement amount—which is the amount of Intervening Plaintiffs' original capital investment in MO Murrayfield—was "fair and reasonable to address any alleged damages suffered by the Intervening Plaintiffs." (ROA 2486, at p. 16.)

Third, the Court was concerned about the alleged conflicts of interest of MO Murrayfield and TwinRock's counsel and whether counsel was under the control of TwinRock, Meyer, and Philips. (ROA 2486, at p. 17.) The Court noted that MO Murrayfield's only assets appeared to be in the various lawsuits, and by settling Intervening Plaintiffs' derivative claims without recovering any monetary settlement in favor of MO Murrayfield, there was a question as to whether MO Murrayfield's interests were being considered.

Fourth, the Court found that previously-identified concerns regarding the 2022 Global Settlement were also present with regards to the settlement between Intervening Plaintiffs and the TwinRock Entities. The 2022 Global Settlement was entered into by Plaintiffs Salvation and West Coast wherein they purported to settle and dismiss the derivative claims they alleged on behalf of MO Murrayfield. Regarding the settlement between Intervening Plaintiffs and TwinRock Defendants and its relationship to the 2022 Global Settlement, the Court was concerned about the extent to which MO Murrayfield, as to its derivative claims, was adequately represented in the settlement negotiations. The Court stated that, in light of the then-pending uncertainty regarding Intervening Plaintiffs' membership status in MO Murrayfield, it was not clear if MO Murrayfield's interests were represented in the negotiations between Intervening Plaintiffs and the TwinRock Defendants. (ROA 2486, at p. 17.)

### **Second Request for Dismissal**

As discussed above, Intervening Plaintiffs filed a form Request for Dismissal

on April 7, 2025. (ROA 2681.) However, the form Request stated Intervening Plaintiffs were seeking dismissal of the SACI with prejudice. After the clerk entered the dismissal, the West Coast Plaintiffs moved to set aside the dismissal. (ROA 2714.) At the hearing on July 17, 2025, the Court granted West Coast Plaintiffs' Motion and vacated the dismissal of the SACI because Intervening Plaintiffs had not obtained the Court's approval for the settlement or the dismissal. (ROA 2760.)

**Current Request for Dismissal**

Now, regarding their current request for dismissal of the SACI, Intervening Plaintiffs contend all of the Court's previously-identified concerns have been addressed and resolved. As a result, Intervening Plaintiffs ask the Court to dismiss their direct claims with prejudice and their derivative claims without prejudice. According to Intervening Plaintiffs, the requested dismissal will not have any impact on the ongoing litigation in this action, and it will not prejudice MO Murrayfield or any of the remaining plaintiffs. Intervening Plaintiffs contend that Plaintiffs Salvation and West Coast Lending are the only remaining members in MO Murrayfield, and they can continue to pursue their direct claims against various defendants as well as their derivative claims, if any, on behalf of MO Murrayfield.

As a preliminary matter, Intervening Plaintiffs remind the Court that when MO Murrayfield first formed in 2016, there were thirty (30) members, and after the property was foreclosed in 2018, the TwinRock Defendants offered to purchase members' interests for 10% of their original investment in exchange for releasing any claims against TwinRock. (ROA 2808, Decl. of Daniel A. Rozenblatt ("Rozenblatt Decl."), Exh. 8.) Intervening Plaintiffs state that between 2019 and 2022, approximately fifteen (15) members accepted TwinRock's settlement offer, and therefore, when Intervening Plaintiffs intervened in the instant action in 2021, TwinRock had purchased and had control of \$1,875,000.00 of membership interests in MO Murrayfield. In or around 2023, TwinRock then made settlement offers to the eleven (11) remaining members of MO Murrayfield who were not participating in the instant action, and those members agreed to sell their interests to TwinRock for 50% of their original investment. Intervening Plaintiffs assert that as a result, the only individuals and entities that have any remaining claims related to MO Murrayfield are those directly involved in the instant litigation—namely, Plaintiffs Salvation and West Coast Lending, and Intervening Plaintiffs.

Regarding the settlement at issue, Intervening Plaintiffs state that in July 2023, they agreed to sell their interest in MO Murrayfield to the TwinRock Defendants for 100% of their original investment. Intervening Plaintiffs state the settlement was the result of non-collusive, arms-length negotiations. According to Intervening Plaintiffs, as a result of the settlement, they no

longer have standing to pursue any derivative claims on behalf of MO Murrayfield, and therefore, they have agreed to dismiss their derivative claims without prejudice and their direct claims with prejudice.

Now, Intervening Plaintiffs contend their settlement should be approved and the SACI dismissed because the Court's previously-identified concerns have been addressed. First, Intervening Plaintiffs note that on January 29, 2025, this Court found that the TwinRock Entities did not have the authority to involuntarily withdraw Plaintiffs Salvation and West Coast Lending or the Intervening Plaintiffs as members of MO Murrayfield and as a result, they were still members of the LLC. (See, ROA 2633, Statement of Decision, at p. 34.) As a result, Intervening Plaintiffs contend that since it was found they were not involuntarily withdrawn from MO Murrayfield, they could then transfer their membership interests to the TwinRock Defendants under the terms of the subject settlement. (Rozenblatt Decl., Exh. 5.)

Next, the Intervening Plaintiffs contend the Court's previous concern regarding the lack of analysis of the derivative and direct claims is misplaced. As argued by Intervening Plaintiffs, since there are no absent MO Murrayfield members in the instant action, and since the derivative claims are not being extinguished because the dismissal of those claims would be without prejudice, then the heightened judicial review that is typical of derivative settlements is unnecessary. Intervening Plaintiffs contend that with respect to the derivative claims, the settlement is fair and reasonable because Intervening Plaintiffs will not receive monetary compensation in exchange for the dismissal without prejudice of their derivative claims. Instead, they are receiving \$550,000.00 for their direct claims, which are to be dismissed with prejudice under the settlement. Therefore, Intervening Plaintiffs contend they are not "settling" the derivative claims. Intervening Plaintiffs contend Plaintiffs Salvation and West Coast Lending, the two remaining members of MO Murrayfield, may still continue to pursue derivative claims, if any, on behalf of MO Murrayfield. In support, Intervening Plaintiffs cite to *Robbins v. Alibrandi* (2005) 127 Cal.App.4th 438.

Intervening Plaintiffs argue that the fairness of the settlement is also supported by the fact that Plaintiffs Salvation and West Coast Lending received similar settlement offers from the TwinRock Defendants. According to Intervening Plaintiffs, in November 2023, the TwinRock Defendants made 998 settlement offers to Plaintiffs Salvation and West Coast Lending wherein each would receive 96% of their original investment in MO Murrayfield, as well as additional monies as compensation for their claims pertaining to their other unrelated investments. Intervening Plaintiffs argue that since they will receive only marginally more of their original investment than Salvation and West Coast Lending, it is clear the subject settlement was not the product of fraud, collusion, or overreach. Intervening Plaintiffs argue that the fact that

Salvation and West Coast Lending declined their settlement offers from TwinRock does not undermine the fairness of the subject settlement.

Regarding the previously-identified concern regarding potential conflicts of interest of MO Murrayfield and TwinRock's counsel, Intervening Plaintiffs reiterate that the dismissal of their derivative claims without prejudice does not amount to settlement of those claims. In addition, Intervening Plaintiffs note that since the TwinRock Defendants have acquired the membership interests of all MO Murrayfield members other than Plaintiffs Salvation and West Coast Lending, then the TwinRock Defendants are the majority owner of the LLC. Intervening Plaintiffs contend that as a result, any monetary settlement paid by the TwinRock Defendants to MO Murrayfield would primarily inure to the benefit of the TwinRock Defendants. As argued by Intervening Plaintiffs, this is unlike the typical derivative action where monetary payment to the nominal defendant benefits absent shareholders because in this instance, there are no absent members of MO Murrayfield whose interests would be served by such a payment.

Finally, Intervening Plaintiffs contend that the concerns the Court had with the 2022 Global Settlement are not present in the subject settlement. Again, Intervening Plaintiffs reiterate that they are not settling any claims on behalf of MO Murrayfield, and that any monetary payment by the TwinRock Defendants to MO Murrayfield would inure to the benefit of the TwinRock Defendants because they are the majority owner of MO Murrayfield. Moreover, MO Murrayfield is not responsible for paying any part of the monetary settlement to Intervening Plaintiffs. Intervening Plaintiffs note that, unlike the 2022 Global Settlement which sought to dismiss the derivative claims with prejudice, the subject settlement will dismiss the derivative claims without prejudice. In addition, Intervening Plaintiffs contend there are no absent members of MO Murrayfield since Plaintiffs Salvation and West Coast Lending are involved in the instant action. Intervening Plaintiffs also note that the subject settlement resolves only their direct claims against MO Murrayfield, but dismisses the derivative claims without prejudice such that they are not extinguished.

Intervening Plaintiffs contend that since there are no members of MO Murrayfield who are absent from this action, the derivative claims are not being extinguished, and there is no impairment of the rights of non-settling parties, then they have the right to seek voluntary dismissal of the SACI and heightened judicial scrutiny of the subject settlement is not necessary. In that regard, Intervening Plaintiffs contend the settlement is fair and reasonable and the request for dismissal is proper.

In opposition, the West Coast Plaintiffs claim they want to ensure that the subject settlement and any dismissal of Intervening Plaintiffs' claims does not adversely affect the West Coast Plaintiffs' derivative claims or their

ability to recover on such claims. According to West Coast Plaintiffs, although the subject settlement provides for the dismissal of Intervening Plaintiffs' derivative claims without prejudice, the settlement agreement does not expressly state that the settlement does not have any effect on the derivative claims of West Coast Plaintiffs and Salvation.

West Coast Plaintiffs also challenge the assertion of Intervening Plaintiffs that the 2022 Global Settlement contemplated the dismissal with prejudice of West Coast Plaintiffs' derivative claims. According to West Coast Plaintiffs, the 2022 Global Settlement expressly stated that West Coast Plaintiffs' derivative claims would be dismissed without prejudice. (Rozenblatt Decl., Exh. 4.)

West Coast Plaintiffs are also concerned that the subject settlement between Intervening Plaintiffs and the TwinRock Defendants will deplete the available funds under the insurance policies funding the instant action. According to West Coast Plaintiffs, their concern is valid and has not been addressed by Intervening Plaintiffs or the TwinRock Defendants. West Coast Plaintiffs also note that the subject settlement does not explicitly state that the TwinRock Defendants will not seek the reimbursement of litigation costs from MO Murrayfield.

Lastly, West Coast Plaintiffs contend that Intervening Plaintiffs are judicially estopped from dismissing their claims because they are now rejecting arguments they successfully asserted in opposing dismissals sought by West Coast Plaintiffs and Salvation. According to West Coast Plaintiffs, Intervening Plaintiffs argued in 2022 that it was "patently unfair" for an MO Murrayfield member to relinquish its shares in the LLC and its derivative claims against TwinRock in exchange for a monetary payment. West Coast Plaintiffs note that now, however, Intervening Plaintiffs argue the opposite. In addition, West Coast Plaintiffs contend that although Intervening Plaintiffs previously argued that the amount a member originally invested in MO Murrayfield was worth only ten cents on the dollar, they are now arguing that the monetary amount paid in their settlement with the TwinRock Defendants is less than what West Coast Plaintiffs and Salvation would have received under their respective 2022 settlement agreements. West Coast Plaintiffs note that in so arguing, Intervening Plaintiffs have grouped together the settlement amounts for the MO Murrayfield investments with the non-MO Murrayfield investments. West Coast Plaintiffs also note that Intervening Plaintiffs previously asserted that the harm alleged by West Coast Plaintiffs and Salvation pertained to MO Murrayfield and not the individual plaintiffs, but now, Intervening Plaintiffs believe these are individual claims and that no derivative claims are being settled. Thus, West Coast Plaintiffs argues that since Intervening Plaintiffs' previous positions regarding the 2022 Global Settlement were taken in judicial proceedings, they are estopped from now asserting different positions regarding the subject settlement.

The arguments of West Coast Plaintiffs are not well taken. It is well settled that in reviewing a settlement agreement, a court considers "whether the proposed settlement is fair and reasonable in light of all relevant factors. [Citations.]" (*Robbins, supra*, 127 Cal.App.4th at 449.) "A court reviews the settlement of a derivative suit as a means of protecting the interests of those who are not directly represented in the settlement negotiations. ... 'The court must scrutinize the proposed settlement agreement to the extent necessary to "reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned." [Citations.]' [Citation.]" (*Ibid.*) The burden is on the proponent to demonstrate the settlement is fair and reasonable. (*In re Caremark Inter. Inc. Deriv. Litig.* (Del. Ch. 1996) 698 A.2d 959, 967.)

Here, Intervening Plaintiffs have adequately addressed the concerns the Court previously identified regarding the settlement with the TwinRock Defendants. As noted by Intervening Plaintiffs, since this Court found that Intervening Plaintiffs were not actually involuntarily withdrawn as members of MO Murrayfield, then clearly, Intervening Plaintiffs can now transfer the membership interest in MO Murrayfield to the TwinRock Defendants as part of the settlement of their claims. Regarding the value of Intervening Plaintiffs' claims, since the only claims being dismissed with prejudice are their direct claims, then the \$550,000.00 is fair and reasonable because it is essentially a reimbursement of Intervening Plaintiffs' initial capital investment.

Regarding the derivative claims that the settlement contemplates dismissing without prejudice, the only interests that must be considered are those of Plaintiffs Salvation and West Coast Lending since they were not directly represented in the settlement negotiations between Intervening Plaintiffs and the TwinRock Defendants. As noted by Intervening Plaintiffs, the only remaining members of MO Murrayfield are Salvation, West Coast Lending, and the TwinRock Defendants, and the TwinRock Defendants own the vast majority of the shares of MO Murrayfield. As a result, since there are no absent MO Murrayfield members in this action, then the Court only needs to determine if the subject settlement affects the derivative claims of Salvation and West Coast Lending. (See, *Robbins, supra*, 127 Cal.App.4th at p. 449.) In this instance, since Salvation and West Coast Lending can still pursue their derivative claims on behalf of MO Murrayfield, then their interests and the interests of MO Murrayfield are still protected even if Intervening Plaintiffs dismiss their derivative claims since the dismissal is without prejudice.

West Coast Plaintiffs' concern regarding insurance funds available for settlement is also misplaced. As noted above, the Court need only be

concerned with the interests of MO Murrayfield and any absent members who may be bound by Intervening Plaintiffs' settlement with the TwinRock Defendants. In this instance, since there are no absent members and the interests of MO Murrayfield are still protected by Salvation and West Coast Lending through their derivative claims on its behalf, then the Court should decline to engage in a determination of the adequacy of any insurance funds. Moreover, Intervening Plaintiffs are only recovering the exact amount of their original capital investment, and West Coast Plaintiffs have not demonstrated that the subject settlement will deplete the available insurance funds or have an adverse impact on any potential future settlement with Plaintiffs Salvation or West Coast Lending.

There is also no longer a concern about a conflicts of interest issue. As stated repeatedly above, since Intervening Plaintiffs seek dismissal of their derivative claims without prejudice, and Plaintiffs Salvation and West Coast Lending can continue to pursue their derivative claims on behalf of MO Murrayfield, then MO Murrayfield's interests are still protected, and damages can still be sought on its behalf.

Lastly, since this Court determined that the attempted involuntary withdrawal of Intervening Plaintiffs as members of MO Murrayfield was improper, then it is found that MO Murrayfield was adequately represented in the settlement negotiations. Intervening Plaintiffs were still members of MO Murrayfield at the time the subject settlement was negotiated, and there is no evidence that they did not properly represent the interests of MO Murrayfield during the negotiations with the TwinRock Defendants.

As for West Coast Plaintiffs' judicial estoppel argument, it is unavailing. At the time the 2022 Global Settlement was negotiated, Intervening Plaintiffs were not involved in this litigation. Indeed, Intervening Plaintiffs did not intervene in the instant action until approximately six (6) months after Salvation and West Coast Plaintiffs entered into the settlement agreements that comprised the 2022 Global Settlement. Of course, because the 2022 Global Settlement involved, in part, derivative claims on behalf of MO Murrayfield and their purported dismissal with prejudice, then Intervening Plaintiffs, as members of MO Murrayfield, had certain concerns about whether their interests, as then-absent members, were being represented in the 2022 Global Settlement. As then-absent members, Intervening Plaintiffs would have had certain positions as to terms of the 2022 Global Settlement—positions that have not been demonstrated to be inconsistent with their positions regarding the subject settlement with the TwinRock Defendants.

Regarding West Coast Plaintiffs' concern regarding the possible shifting of legal fees, the concern is unfounded. The settlement agreement between the TwinRock Defendants and Intervening Plaintiffs states: "Each Party shall

bear their own attorneys' fees and costs incurred in connection with the allegations set forth in the Dispute." (Rozenblatt Decl., Exh. 5, at p. 3.) This provision, as worded, effectively precludes the TwinRock Defendants from seeking litigation cost reimbursement from MO Murrayfield.

Based on the discussion above, the Court grants Intervening Plaintiffs' request to dismiss without prejudice the derivative claims in the SACI, and dismiss with prejudice the direct claims in the SACI.

Intervening Plaintiffs are ordered to give notice of this ruling.