IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 13-21189-CIV-WILLIAMS

CONSUMER FINANCIAL PROTECTION BUREAU,

Plaintiff,

v.

UNITED GUARANTY RESIDENTIAL INSURANCE CORPORATION,

Defendant.

DEFENDANT UNITED GUARANTY RESIDENTIAL INSURANCE COMPANY'S RESPONSE IN OPPOSITION TO PHH'S MOTION TO INTERVENE AND RESPONSE IN OPPOSITION TO REQUEST FOR ORAL ARGUMENT

Defendant United Guaranty Residential Insurance Company ("United Guaranty") hereby submits this response in opposition to the Motion to Administratively Reopen Case and Intervene filed by PHH Corporation, PHH Mortgage Corporation, PHH Home Loans, LLC, Atrium Insurance Corporation, and Atrium Reinsurance Corporation (collectively, "PHH") (D.E. 7), and in opposition to PHH's request for oral argument on its Motion (D.E. 8).

INTRODUCTION

More than ten months after this action was settled through a Consent Order on April 4, 2013, and six months after this action was formally closed on August 15, 2013, PHH has filed a motion to reopen the case so it can intervene. This request should be denied. As a threshold matter, because PHH is a non-party to the Consent Order, it lacks standing to enforce its terms, as it seeks to do by intervening. Even if PHH had standing, its motion to intervene is untimely. Despite having been aware of this action and its settlement since April 2013, PHH took no action

to intervene until now. Permitting PHH to intervene at this late stage would prejudice United Guaranty by threatening to disrupt a hard-fought, comprehensive settlement that United Guaranty has been complying with for almost a year. Conversely, denying intervention would not prejudice PHH, as it is free to protect its interests, including any rights it has under the Consent Order, in its ongoing administrative action against the Consumer Financial Protection Bureau ("CFPB"). Moreover, because this Court already approved the Consent Order, including the provision in it that expressly authorizes PHH's conduct in question, it is wholly unnecessary for PHH to intervene in this case simply so that this Court can confirm again that such conduct is authorized by the Consent Order. Finally, permitting PHH to reopen this case so it can intervene would multiply litigation and force United Guaranty (and the CFPB) to incur undue additional costs, and thus would run counter to the purpose of the intervention rule of promoting judicial efficiency.

Under these circumstances, PHH's motion should be denied. If, however, the Court is inclined to permit intervention, then United Guaranty respectfully requests the case be reopened only for the limited purpose of determining the effect of the Consent Order on PHH, and not for altering or affecting the Consent Order in any manner.

FACTUAL BACKGROUND

On April 4, 2013, the CFPB filed the instant action against United Guaranty seeking a permanent injunction and other forms of relief for alleged violations of Section 8 of the Real Estate Settlement Procedures Act ("RESPA"), 12 U.S.C. § 2607. That same day, the CFPB filed an unopposed motion for entry of a proposed Consent Order that, if approved, would resolve the allegations in the complaint. (D.E. 4.) On April 5, 2013, the Court approved the proposed Consent Order. (D.E. 5.) The Consent Order explicitly permitted the continuation of certain

payments under the reinsurance contracts between United Guaranty and Atrium. *Id.* at 5. Four months later, on August 15, 2013, the Court issued an order closing this case. (D.E. 6.)

On January 31, 2014, PHH filed the instant motion to reopen the case and to intervene. PHH's motion comes after an administrative action was filed against it by the CFPB. In that action, the CFPB allegedly challenges the legality of certain payments received by PHH from United Guaranty that United Guaranty had been expressly authorized to make in the Consent Order. Allegedly hoping to "expose the CFPB's apparent hypocrisy" in its administrative proceeding, PHH has asked this Court to issue a declaratory judgment that the Consent Order permitted the payments from United Guaranty to PHH and that these payments did not violate RESPA.

ARGUMENT

PHH's motion to intervene should be denied because it lacks standing to enforce the Consent Order to which it was not a party, its request is untimely and, in any case, it has failed to meet the requirements of mandatory or permissive intervention.

I. PHH LACKS STANDING TO ENFORCE THE CONSENT ORDER

As a threshold matter, PHH, as a non-party to the Consent Order, lacks standing to enforce that order. Rather, as the Supreme Court has recognized, a "well-settled line of authority from this Court establishes that a consent decree is not enforceable directly or in collateral proceedings by those who are not parties to it even though they were intended to be benefitted by it." *Blue Chip Stamps v. Manor Drug Stores*, 421 U.S. 723, 750 (1975). Accordingly, PHH is not permitted to intervene in this action for the purpose of enforcing the Consent Order. *See, e.g.*, *Reynolds v. Butts*, 312 F.3d 1247, 1249 (11th Cir. 2002) ("The appellants are not parties to the consent decree. As non-parties, the appellants have no standing to enforce the consent decree."); *Dillard v. Chilton Cnty. Comm'n*, 495 F.3d 1324, 1330 (11th Cir. 2007) ("Any party,

whether original or intervening, that seeks relief from a federal court must have standing to pursue its claims."); *S.E.C. v. Dollar Gen. Corp.*, 378 F. App'x 511, 516 (6th Cir. 2010) ("The plain language of *Blue Chip* indicates that even intended third-party beneficiaries of a consent decree lack standing to enforce its terms."); *United States v. New Jersey*, 373 F. App'x 216, 221-22 (3d Cir. 2010) (would-be intervenor lacked standing to enforce consent decree because "he is not a party to the Consent Decree, the Consent Decree does not contemplate his participation in the proceedings as he proposes, and he is not an intended beneficiary of the Consent Decree"); *Brooks v. S. Bell Tel. & Tel. Co.*, 133 F.R.D. 54, 56, n.2 (S.D. Fla. 1990) ("plaintiffs may not enforce the decree either directly or in collateral proceedings as even intended beneficiaries who were not parties, cannot sue to enforce a . . . consent decree").[1]

Nor does PHH need to avail itself of this Court's continuing jurisdiction over the Consent Order so that it can "enforce or interpret" that order. Rather, the ALJ overseeing the CFPB's administrative proceeding against PHH is permitted to take official notice of the Consent Order and make any appropriate findings or conclusions based on the import of that agreement on the CFPB's claims against PHH. *See* 12 C.F.R. § 1081.303(c) ("Official notice may be taken of any material fact that is not subject to reasonable dispute in that it is either generally known or capable of accurate and ready determination by resort to sources whose accuracy cannot

[1] Even if an intended beneficiary of a consent order had standing to enforce its terms, PHH does not qualify as one under these circumstances. To qualify as an intended beneficiary, a party must demonstrate that it was the "clear or manifest intent of the parties that the contract primarily and directly benefits the third party." *Steadfast Ins. Co. v. Corporate Prot. Sec. Grp., Inc.*, 554 F. Supp. 2d 1335, 1338 (S.D. Fla. 2008). Where, as here, the agreement does "not expressly provide for the third party beneficiary, [] the litigant must clearly show that both parties to the contract intended its beneficiary status." *Id.* PHH has not offered any facts to suggest that either United Guaranty or the CFPB intended to make PHH a beneficiary of the Consent Order. To the contrary, that the CFPB seeks to enforce against PHH for conduct explicitly immunized under the Consent Order suggests that the CFPB did *not* intend to benefit PHH through the Consent Order.

reasonably be questioned."). PHH therefore has neither standing nor any need to intervene in this case, and its request should be denied.

II. PHH'S MOTION TO INTERVENE IS UNTIMELY

The Federal Rules of Civil Procedure permit a party to intervene only upon a "timely motion." FED. R. CIV. P. 24(a)-(b). The Supreme Court has held that the timeliness of a motion to intervene is a threshold factor that must be satisfied before the other factors should be considered. *See NAACP v. New York*, 413 U.S. 345, 365 (1973) ("If [a motion to intervene] is untimely, intervention must be denied. Thus, the court where the action is pending must first be satisfied as to timeliness.").

"A district court must consider four factors in assessing timeliness, namely (1) the length of time during which the would-be intervenor knew or reasonably should have known of his interest in the case before he petitioned for leave to intervene; (2) the extent of prejudice to the existing parties as a result of the would-be intervenors' failure to apply as soon as he knew or reasonably should have known of his interest; (3) the extent of prejudice to the would-be intervenor if his petition is denied; and (4) the existence of unusual circumstances militating either for or against a determination that the application is timely." *United States v. Jefferson Cnty.*, 720 F.2d 1511, 1516 (11th Cir. 1983). Based on these factors, PHH's motion to intervene is untimely and it should not be permitted to intervene—either as of right under Rule 24(a) or permissively under Rule 24(b).

A. PHH Knew of Its Interest in This Case For Ten Months Before Filing a Post-Judgment Motion to Intervene

The first timeliness factor—the length of time during which the would-be intervenor knew of his interest in the case before petitioning for leave to intervene—weighs against PHH.

The Eleventh Circuit[2] generally adheres to the well-established and long-standing practice of denying motions to intervene made post-settlement or post-judgment. *See, e.g.*, *Payne v. Block*, 714 F.2d 1510, 1521 (11th Cir. 1983), *modified on other grounds*, 721 F.2d 741 (11th Cir. 1983), *and vacated on other grounds*, 469 U.S. 807 (1984) (recognizing the prevailing rule that courts are "reluctant to grant leave to intervene post-judgment"); *United States v. U.S. Steel Corp.*, 548 F.2d 1232, 1235 (5th Cir. 1977) (concluding that district court did not err in denying intervention as untimely after final judgment was entered, and stating that intervention attempts after judgment are "looked upon with a jaundiced eye [as they] have a strong tendency to prejudice existing parties to the litigation or to interfere substantially with the orderly process of the court"); *Brown v. Advantage Engineering, Inc.*, 960 F.2d 1013, 1016 (11th Cir. 1992) (collecting multiple cases for the view that "intervention after settlement or entry of judgment is not favored") (Edmonson, J., dissenting).[3]

Because of the general reluctance to permit intervention after a settlement, a party seeking post-judgment intervention must demonstrate the existence of "extraordinary circumstances" that justify intervention. *Minor I Doe ex rel. Parent I Doe v. Sch. Bd. for Santa Rosa Cnty., Florida*, 264 F.R.D. 670, 692, n.39 (N.D. Fla. 2010) (denying intervention where "'extraordinary circumstances' do not exist to justify permitting intervention after the entry of

[2] In *Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11th Cir. 1981) (*en banc*), the Eleventh Circuit adopted as precedent all Fifth Circuit decisions handed down before the close of business on September 30, 1981.

[3] PHH's citation to *Alley v. HHS*, 590 F.3d 1195, 1201 (11th Cir. 2009), is misleading because intervention was not an issue considered on appeal by the Eleventh Circuit; rather, intervention was considered by the district court—the Northern District of Alabama. *See Alley v. HHS*, 1:07-cv-00096, D.E. 59 (N.D. Al. Nov. 19, 2008). In any event, *Alley* is readily distinguishable because it concerned a "close call" in which intervention was sought only "one day after [the] court entered an order on both parties' motions for summary judgment," and only "one week" after learning of the suit. *Id*. There is no "close call" here where PHH waited ten months following the settlement of this action.

the final Consent Order"); *see also Alaniz v. Tillie Lewis Foods*, 572 F.2d 657, 659 (9th Cir. 1978) ("Intervention after entry of a Consent Order is reserved for exceptional cases."); FED. PRAC. & PROC. CIV. § 1916 (3d ed.) (intervention requests after judgment must meet an "exacting standard").

PHH has failed to satisfy this exacting standard here. It concedes that it became "aware of this Action [when] the settlement was announced on April 4, 2013." Mot. at 11. At that time, PHH knew that the legality of its captive reinsurance arrangement with United Guaranty was central to this action, or as PHH terms it, the "axis on which the lawsuit turns." *Id.* at 12. Despite this understanding, PHH took no action to protect this purported interest, such as by seeking a clarification about the legality of its receipt of the payments from United Guaranty that now are allegedly at issue in the CFPB administrative action. PHH's delay in seeking intervention therefore counsels against granting intervention. *See United States By Bell On Behalf of Marshall v. Allegheny-Ludlum Indus., Inc.*, 553 F.2d 451, 453 (5th Cir. 1977) (denying intervention post-entry of a consent order where intervenors "offered no compelling reason for waiting until seven and a half months after the judgment and six months after implementation of the decrees to file their motion" and where intervenors "knew of the consent agreement three days after the suit was filed"); *United States v. Sec'y, Florida Dep't of Corr.*, 2013 WL 4786829, *2 (S.D. Fla. Sept. 6, 2013) (intervention untimely where intervenor "learned of the case in late 2012[,] [h]owever, the motion [to intervene] was not filed until May 30, 2013, more than nine months after the complaint was filed").[4]

[4] Acknowledging its delay, PHH cites a number of cases from courts outside the Eleventh Circuit and the Southern District of Florida that purport to support the argument that "[i]ntervention after judgment is permitted . . . for the purpose of enforcing orders over which a court has retained jurisdiction." Mot. at 10. These cases, however, are not binding on this Court and, in any event, are rare departures from the general practice of denying motions to intervene

B. United Guaranty Could Be Prejudiced By PHH's Delayed Intervention

The second timeliness factor requires the Court to "consider the extent of prejudice to the existing parties." *Florida Key Deer v. Fugate*, 2011 WL 6935288, *2 (S.D. Fla. Dec. 30, 2011). Where, as here, the existing parties were involved in extensive settlement negotiations that culminated in a settlement agreement that occurred before the filing of a motion to intervene, courts have found substantial prejudice to the existing parties. *See, e.g.*, *id.* (finding substantial prejudice where "permitting intervention . . . could undue months of negotiations between the existing parties"); *Hollywood Cmty. Synagogue, Inc. v. City of Hollywood*, 254 Fed. App'x 769, 771 (11th Cir. 2007) (intervention "would substantially prejudice the existing parties by practically undoing twenty-two months of litigation and settlement negotiations culminating in a Consent Order"); *Doe v. Sch. Bd. For Santa Rosa Cnty.*, 264 F.R.D. 670, 691 (N.D. Fla. 2010) (finding that existing parties to the litigation would be greatly prejudiced from an attempt to undo or even modify the Consent Order after months of negotiations).

Although PHH argues that it is "not challenging the settlement or the Consent Order" (Mot. at 11), it is, nevertheless, asking the Court "to interpret . . . the Consent Order." *Id.* at 9. Should the Court interpret the order in a manner that is inconsistent with what was originally intended by United Guaranty when it negotiated the settlement, United Guaranty would be severely prejudiced. Indeed, "a district court may rightly 'deny intervention to avoid *risk* of [a] hard-won settlement package becoming undone.'" *Solbourne Computer, Inc. v. Bd. of Cnty.*

made post-settlement or post-judgment. Moreover, the only case cited by PHH in which a non-party to a consent order "over which a court has retained jurisdiction" was permitted to intervene so it could enforce the order, *Orleans Fair Hous. Ctr. v. St. Bernard Parish*, 641 F. Supp. 2d 563 (E.D. La. 2009), is distinguishable. There, the intervenors were seeking to intervene to protect their own civil rights that were being violated as a result of a violation of the consent order. *Id.* at 566. PHH can claim no comparable violation of the consent order or resulting injury to it, and *St. Bernard Parish* is therefore inapposite.

Commissioners of Escambia Cnty., Florida, 2008 WL 1744930, *3 (N.D. Fla. Apr. 11, 2008) (emphasis added). Given the possibility that the Court's interpretation of the Consent Order could depart from the parties' intended meaning, United Guaranty could be prejudiced by PHH's delayed motion to intervene.

Furthermore, United Guaranty will also be prejudiced, and indeed already has been, by the added expenses and costs associated with opposing this motion and participating in this proceeding if it is reopened. These costs are entirely unnecessary given that this Court already authorized PHH's conduct at issue when it approved the Consent Order, and that, to the extent there is any legitimate dispute about that, PHH has a suitable alternative forum in which it can, and should, address those issues. Because "scarce judicial resources would be squandered, and the litigation costs of the parties would be increased" if intervention were granted, intervention "would be inconsistent with the important purposes of Rule 24" and should be denied. *Reeves v. Harrell*, 791 F.2d 1481, 1487 (11th Cir. 1986).

C. PHH Will Not Be Prejudiced If Intervention is Denied

The third timeliness factor—the extent of prejudice to the would-be-intervenor if the petition is denied—also weighs against intervention. Where, as here, an intervenor can defend its interests in its own proceeding, there is no prejudice to the proposed intervenor. *See, e.g.*, *United States v. Jefferson Cnty.*, 720 F.2d 1511, 1518 (11th Cir. 1983) (affirming district court's finding that proposed intervenor was not prejudiced because he was not deprived of "his day in court to assert" his claim); *EEOC v. Eastern Airlines, Inc.*, 736 F.2d 635, 639 (11th Cir. 1984) (holding that "if [the Rule 24 movant] can proceed with her own action independently of the [present] suit, then the settlement of the . . . suit cannot 'impair or impede' her ability to seek her own relief"); *Mitchell v. McCorstin*, 728 F.2d 1422, 1423 (11th Cir. 1984) (no prejudice where

proposed intervenor has "his own action against the employer involving claims personal to him").

Because of the CFPB's recent administrative filing against PHH based upon PHH's alleged receipt of payments from United Guaranty, PHH is free to defend the legality of its receipt of those payments, based on the Consent Order or otherwise, in that administrative action. PHH would not be prejudiced if it is not also permitted to raise that issue in this case too.

D. The Unusual Circumstances Surrounding This Case Support A Finding That The Motion is Untimely

Finally, the fourth factor—the presence of any unusual circumstances—militates against a finding of timeliness as well. The unusual circumstances here concern PHH's attempt to intervene in a case six months after it has been closed, and ten months after judgment has been entered, while a separate proceeding is ongoing in which they can effectively obtain the same relief they seek as intervenors. The Court should not permit intervention in these circumstances.

In sum, PHH's post-judgment motion to intervene is untimely. This conclusion alone is sufficient grounds for the Court to deny both mandatory or permissive intervention. *See Associated builders & Contractors, Inc. v. Herman,* 166 F.3d 1248, 1257 (D.C. Cir. 1998) ("If the motion was not timely, there is no need for the court to address the other factors that enter into an intervention analysis.").

III. PHH SHOULD NOT BE PERMITTED TO INTERVENE AS A MATTER OF RIGHT

In addition to being untimely, PHH's motion also fails to satisfy the requirements of Rule 24(a)(2) that govern intervention as of right. Rule 24(a)(2) permits a party to intervene as of right by establishing that "[1] he has an interest relating to the property or transaction which is the subject of the action; [2] he is so situated that disposition of the action, as a practical matter, may impede or impair his ability to protect that interest; and [3] his interest is represented

inadequately by the existing parties to the suit." *Loyd v. Ala. Dep't of Corrections*, 176 F.3d 1336, 1339–40 (11th Cir. 1999). "The movant bears the burden of establishing each of these [] elements." *Resort Timeshare Resales, Inc. v. Stuart*, 764 F. Supp. 1495, 1496 (S.D. Fla. 1991); *see also Chiles v. Thornburgh*, 865 F.2d 1197, 1213 (11th Cir. 1989). PHH has failed to meet its burden of establishing these factors.

A. PHH's Interests Will Not Be Impaired Absent Intervention

PHH has failed to demonstrate that its interests would be impaired absent intervention. This factor requires a similar analysis as does the third timeliness factor that addresses the extent of prejudice to the would-be intervenor if his petition is denied. *See Qantum Commc'ns Corp.*, 2009 WL 3055371 at *4, n.1 ("The Court notes that this timeliness factor is also relevant to the third factor the prospective intervenors must prove in order to intervene; namely, that the intervenor is situated so disposition of the action, as a practical matter, may impede or impair his ability to protect that interest."). As discussed above, *supra* Section I.C., because this Court has already approved the Consent Order, which contains an express approval of PHH's receipt of ceded payments from United Guaranty, and because PHH is free to defend the legality of that conduct in its ongoing administrative action against the CFPB, its interests will not be impaired if intervention is denied. *See, e.g.*, *Eastern Airlines, Inc.*, 736 F.2d at 639; *Mitchell*, 728 F.2d at 1423; *Regions Bank*, 2010 WL 3632769 at *3.

Furthermore, one of the "important purposes of Rule 24 [is] to foster economy of judicial administration." *Stallworth v. Monsanto Co.*, 558 F.2d 257, 265 (5th Cir. 1977). Permitting intervention here, when PHH is already in the midst of an administrative action where it is free to defend its actions, and where this Court has already entered a Consent Order that addresses PHH's concerns, would have the opposite effect by multiplying litigation. *See Howard v. McLucas*, 782 F.2d 956, 960 (11th Cir. 1986) ("the burden multiple reverse discrimination suits

would impose on judicial economy is an important consideration in determining whether intervention is appropriate").

B. PHH's Interests Were Adequately Represented By United Guaranty

PHH's argument that intervention is necessary because its interests were not adequately represented in this action is contradicted by the fact that it now seeks an order from the Court to *enforce* the Consent Order as written. *See, e.g.*, Mot. at 11 (PHH is "not challenging the settlement or the Consent Order"); *id.* at 9-10 ("Defendant-Intervenors are not attempting to reopen or relitigate any issue which had previously been determined."). By seeking an order to *enforce* the Consent Order, PHH effectively concedes that its interests were adequately represented when United Guaranty negotiated a settlement that "*explicitly permitted* the continuation of the payments under the reinsurance contracts between UGI and Atrium." (D.E. 7 at 5) (emphasis in original); *see also E.E.O.C. v. E. Air Lines, Inc.*, 97 F.R.D. 646, 652 (S.D. Fla. 1983) (denying intervention because "[t]he fairness of the consent decree, in the final analysis, justifies the conclusion that representation was adequate").

Moreover, because United Guaranty shared the same objective of PHH (*i.e.*, declaring the legality of the ceded payments to Atrium), the Court should presume adequate representation. *See Sierra Club, Inc. et al. v. Leavitt*, 488 F.3d 904, 910 (11th Cir. 2007) (where "an existing party seeks the same objectives as the would-be intervenors[,]" the "Court presumes adequate representation"). This presumption "imposes upon the applicant for intervention the burden of coming forward with some evidence to the contrary." *Am. Fed'n of State, Cnty. & Mun. Employees (AFSCME) Council 79 v. Scott*, 278 F.R.D. 664, 670 (S.D. Fla. 2011). PHH has not satisfied this burden. In fact, the only evidence PHH has offered suggests that in negotiating the Consent Order with the CFPB, United Guaranty adequately represented its interests by including a provision that declared the ceded payments from United Guaranty to be lawful.

PHH's reliance on *Triax Co. v. TRW, Inc.*, 724 F.2d 1224, 1228 (6th Cir. 1984), to argue that United Guaranty has not adequately represented its interests because it is not "currently representing the interests that PHH seeks to vindicate" is misplaced. Mot. at 13. In *Triax*, the proposed-intervenor claimed that the plaintiff's representation became inadequate when, after judgment was entered against it, the plaintiff failed to appeal. *Triax Co.*, 724 F.2d at 1228. Thus, in *Triax*, at the time of intervention, the action remained open and there were still interests to be represented on appeal. Here, however, the entire action has been resolved via settlement and the case has been closed for six months. There simply are no interests to be represented at this current juncture. And, to the extent the CFPB were to disregard its obligations under the Consent Order at some point in the future, United Guaranty will vigorously protect its rights.

IV. PHH SHOULD NOT BE PERMITTED TO INTERVENE PERMISSIVELY.

PHH's alternative request for permissive intervention under Rule 24(b) also fails. Permissive intervention may be granted, in the Court's discretion, where the intervenors have "a claim or defense that shares with the main action a common question of law or fact." FED. R. CIV. P. 24(b)(1)(B). Like intervention as of right under Rule 24(a), however, permissive intervention also requires a timely motion. FED. R. CIV. P. 24(b). As discussed above, *supra* Section I, PHH's motion was untimely. Permissive intervention is therefore inappropriate. *Reeves v. Wilkes*, 754 F.2d 965, 972 (11th Cir. 1985) (reversing trial court after finding permissive "intervention was improperly granted" because the motion to intervene was untimely). Moreover, PHH's lack of standing to enforce the Consent Decree precludes permissive intervention to the same extent that it bars mandatory intervention. *See Dillard*, 495 F.3d at 1330 (intervening party that seeks relief from a federal court must have standing to pursue its claims").

Finally, if there is no right to intervene as of right under Rule 24(a), as is the case here, "it is wholly discretionary with the court whether to allow intervention under Rule 24(b)," and "even though there is a common question of law or fact, or the requirements of Rule 24(b) are otherwise satisfied, the court may refuse to allow intervention.'" *Worlds v. Dep't of Health and Rehabilitative Services*, 929 F.2d 591, 595 (11th Cir. 1991). For the same reasons discussed above, *supra* Sections I and II, including that PHH's request to intervene is untimely, would be prejudicial to United Guaranty, and is wholly unnecessary in the circumstances, the Court should exercise its discretion and deny PHH's request for permissive intervention. Indeed, when intervention under Rule 24(a) is denied, courts routinely deny permissive intervention under Rule 24(b). *See, e.g., Am. Fed'n of State, Cnty. & Mun. Employees (AFSCME) Council 79 v. Scott*, 278 F.R.D. 664, 671 (S.D. Fla. 2011); *Ace Am. Ins. Co. v. Paradise Divers, Inc.*, 216 F.R.D. 537, 540 (S.D. Fla. 2003); *Fed. Trade Comm'n v. Am. Telnet, Inc.*, 188 F.R.D. 688 (S.D. Fla. 1999); *Arvida Corp. v. City of Boca Raton*, 59 F.R.D. 316, 320 (S.D. Fla. 1973).

V. PHH'S REQUEST FOR ORAL ARGUMENT SHOULD BE DENIED

As a final matter, PHH's request for oral argument (D.E. 8) should be denied. PHH has "fail[ed] to explain *how* oral argument would offer any additional insight beyond the motion, response, and reply." *Grabein v. Jupiterimages Corp.*, 2008 WL 2704451, *11 (S.D. Fla. July 7, 2008). Indeed, PHH concedes that the "legal issues raised in the Motion to Intervene are straightforward." (D.E. 8 at 1.) United Guaranty concurs that the issues are straightforward, and that they compel the denial of PHH's request for intervention. Oral argument would serve only to increase the costs, and prejudice, to United Guaranty from PHH's intervention request, and should therefore be denied.

CONCLUSION

For the foregoing reasons, United Guaranty respectfully requests that PHH's motion to intervene, and request for oral argument, be denied.

Dated: February 14, 2014

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CERTIFICATE OF SERVICE

I hereby certify that on February 14, 2014, I electronically filed the foregoing document with the Clerk of Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

/s/ Lauren G. Brunswick
Lauren G. Brunswick