IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

DBSI/TRI IV LIMITED PARTNERSHIP, an Idaho limited partnership; FOREST HILLS INVESTORS OF COQUILLE, OREG. LTD, an Oregon limited partnership; JADIN INVESTMENTS, LTD., an Oregon limited partnership; NORSEMAN VILLAGE, an Oregon limited partnership; and PARKSIDE DEVELOPMENT, an Oregon limited partnership,

Plaintiffs,

v.

UNITED STATES OF AMERICA,

Defendant.

CV 98-1325-BR

OPINION AND ORDER

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BROWN, Judge.

This matter comes before the Court on the Motion to Intervene as Plaintiffs (#46) filed by Applicants Sherry Goldammer, Donald Gerhard, Ron Veillon, Carmen Thomas, Sharon Chudy, Linda Pool, Bren Taylor, Fauna Rae Ehrman, and Diana Rhodes (collectively Applicants). For the reasons that follow, the Court **DENIES** Applicants' Motion.

PROCEDURAL BACKGROUND

Plaintiffs are developers and owners of six properties in the state of Oregon. The properties are known as Forest Village, Seacrest, Hillside Terrace, Vittoria Square, Norseman Village, and Mountain View. Plaintiffs filed this action on October 27, 1998, and sought to extinguish government liens against their properties.

Each of the Plaintiffs financed their purchase and/or development of these properties via loans from the United States government. The loan agreements were consummated in the late 1970's or early 1980's under § 515 of the National Housing Act of 1949 (the 515 Program). *See* 42 U.S.C. § 1485. The 515 Program was enacted by Congress to reduce housing shortages for the elderly and other low-income persons in rural areas. Under the 515 Program, the government loaned money on favorable terms to finance the construction and purchase of rural rental property. Borrowers were required to rent units at affordable rates to low-income tenants for the duration of the loan. *Kimberly Assoc. v. United States*, 261 F.3d 864, 866 (9th Cir. 2001). All of the loan agreements at issue include a promissory note and a deed of trust or mortgage that secures the note. Each note gives each respective Plaintiff the right to prepay the loan balance at any time and thereby to exit the 515 Program.

In 1998, Plaintiffs tendered full payment on their

respective notes to the government, but the government refused to reconvey the deeds of trust or issue a release of its liens. Instead the government rejected Plaintiffs' prepayment tenders on the ground that the Emergency Low Income Housing Preservation Act (ELIPHA), 42 U.S.C. § 1472(c), prohibited the government from accepting Plaintiffs' tenders.[1] Plaintiffs brought this action to quiet titles in their properties because the government refused to release its liens.

On August 17, 2001, the Ninth Circuit issued its decision in *Kimberly* and rejected the government's assertion that ELIPHA modified a property owner's right to prepay its mortgage.[2] The Ninth Circuit remanded to the Idaho District Court, which ultimately entered judgment quieting title and releasing the government's liens.

In February 2003, DBSI and the government entered into an Agreement in Principle. The Agreement applies to the Oregon properties that are the subject of this action as well as Idaho properties that are the subject of a separate action in Idaho. The intent of the Agreement was to preserve the properties in the 515 Program by selling the properties to nonprofit organizations

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[1] Congress enacted ELIPHA in 1987 to discourage property owners from prepaying their loans and removing units from the low-income housing market. *See Kimberly*, 261 F.3d at 866-67.

[2] The *Kimberly* plaintiffs are affiliates of DBSI and tendered prepayment of 515 Program loans for properties located in Idaho.

at prices acceptable to Plaintiffs. If Plaintiffs and the government did not agree on sale prices, the government agreed to accept Plaintiffs' prepayment tenders and to release Plaintiffs and their properties from the 515 Program.

In early 2003, the government acknowledged Plaintiffs' payment in full of its debt for the Mountain View property and released the Mountain View property from the 515 Program. Plaintiffs thereafter sold that property to Northwest Real Estate Capital Corporation.

In the summer of 2003, the government and DBSI agreed on sale prices for the Seacrest and Forest Village properties. In September 2003, however, the government refused to finance those sales. On October 28, 2003, DBSI tendered the loan balance for the Seacrest and Forest Village properties to the government and sold the properties to Northwest.

On December 15, 2003, the government issued Deeds of Reconveyance for the Seacrest and Forest Village properties and released the properties from the 515 Program. On December 19, 2003, the government and Plaintiffs stipulated to the entry of Rule 54(b) quiet title judgments.

Applicants are low-income tenants of Seacrest, Forest Village, and Meadowbrook, which are subsidized housing properties developed and operated by Plaintiffs under the 515 Program. The Meadowbrook property is not a subject of Plaintiffs' action.

On December 19, 2003, Applicants filed a Class Action Complaint against DBSI/TRI IV and others. *See Goldammer v. Veneman*, CV 03-1749-BR. In that action, Plaintiffs allege the government improperly accepted DBSI's prepayment of 515 Program loans. The *Goldammer* Plaintiffs seek, among other things, to reverse the prepayment of loans for Forest Village and Seacrest and the return of those properties to the 515 Program. The *Goldammer* Plaintiffs also ask the Court to enjoin the government from accepting any future prepayment of Section 515 Program loans until the requirements of ELIPHA are met.

Applicants filed their Motion to Intervene in this case on January 20, 2004. In their proposed Complaint in Intervention, Applicants assert three claims. In *Goldammer,* the Applicants as plaintiffs assert each of the claims that appear in their proposed Complaint in Intervention.

STANDARDS

Unless a federal statute confers an unconditional right to intervene, Fed. R. Civ. P. 24(a) provides a party may intervene in a pending action as a matter of right

> [u]pon timely application . . . when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is

adequately represented by existing parties.

The Ninth Circuit applies a four-part test for intervention as a matter of right:

1. the application for intervention must be timely;

2. the applicant must have a "significantly protectable" interest relating to the property or transaction that is the subject of the action;

3. the applicant must be so situated that the disposition of the action may, as a practical matter, impair or impede the applicant's ability to protect that interest; and

4. the applicant's interest must not be adequately represented by the existing parties in the lawsuit.

Southwest Ctr. for Biological Diversity v. Berg, 268 F.3d 810, 817 (9th Cir. 2001) (citing *Northwest Forest Res. Council v. Glickman*, 82 F.3d 825, 836 (9th Cir. 1996)). Applicants for intervention must demonstrate each of the four elements. Generally, the court must construe Rule 24(a) liberally in favor of potential intervenors. *Id*. at 818. In addition, the court must examine the evidence and arguments in favor of intervention with "practical and equitable" considerations in mind rather than "technical distinctions." *Id*. *See also Donnelly v. Glickman*, 159 F.3d 405, 409 (9th Cir. 1998).

DISCUSSION

This case has been pending for more than five years.

Judgments have been entered and settlement agreements have been reached. Applicants' proposed Complaint in Intervention is almost a carbon copy of the Class Action Complaint filed in *Goldammer*. In other words, Applicants seek to intervene in this action in order to assert the same claims and to obtain the same relief they seek in *Goldammer*. Applicants have not identified any reason for bringing claims in this action that are identical to those asserted in *Goldammer*. It appears Applicants can pursue all of the claims and remedies they seek in intervention by way of the *Goldammer* action and adequately protect their interests via that action. The Court, therefore, finds Applicants have failed to establish that they are "so situated that the disposition of the action may, as a practical matter, impair or impede" Applicants' ability to protect their interests.

In any event, the Court finds Applicant Diana Rhodes is not entitled to intervene in this action for the reason that she has no protectable interest relating to the subject of this action. Rhodes is a resident of Meadowbrook, and the Meadowbrook property is not and never has been a subject of this action.

CONCLUSION

For these reasons, the Court **DENIES** Applicants' Motion to

Intervene as Plaintiffs (#46).

IT IS SO ORDERED.

DATED this 15th day of September, 2004.

/s/ Anna J. Brown

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ANNA J. BROWN
United States District Judge

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