IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

BRAND ENGAGEMENT NETWORK, INC.,	§	
	§	
Plaintiff,	§	
	§	
V.	§	No. 3:25-cv-114-S-BN
	§	
RALPH WRIGHT BREWER, III, ET AL.,	§	
	§	
Defendants.	§	

FINDINGS, CONCLUSIONS, AND RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE

Plaintiff Brand Engagement Network, Inc. ("BEN") sues Defendant Ralph Wright Brewer, III and others alleged to be corporate entities under his control ("Defendants") based on "complex and coordinated scheme of fraudulent misrepresentations, bad faith conduct, violations of the Securities Exchange Act of 1934 and breaches of contract orchestrated by [Defendants]." Dkt. No. 27 at 1; *see id.* at 2 ("Defendants concealed a critical ransomware attack, misrepresented their operational readiness and data security compliance, and failed to fulfill their obligations under multiple agreements with Plaintiff BEN and Due Figlie. Through this misconduct, Defendants unjustly enriched themselves, caused significant financial harm to Plaintiff, and jeopardized Plaintiff's business relationships, reputation, and strategic initiatives. Plaintiff now seeks to hold Defendants accountable for their actions and recover damages for the harm caused.").

United States District Judge Karen Gren Scholer has now referred BEN's

lawsuit to the undersigned United States magistrate judge for pretrial management under 28 U.S.C. § 636(b). *See* Dkt. No. 42.

But, before Judge Scholer did so, Nonparty Maurice Fitzpatrick, who appears to be a former employee of an entity named as a defendant in this action (Defendant AGF Companies, Inc.), filed a *pro se* motion to intervene under Federal Rule of Civil Procedure 24 and moved for leave to proceed *in forma pauperis*. *See* Dkt. Nos. 21 & 22.

And, in the four weeks or so since Fitzpatrick moved to intervene (on February 11, 2025), he has besieged this lawsuit with filings, including (as of March 19, 2025) eight additional motions, and his barrage of filings has caused the parties to respond by filing needless additional motions and briefing. *See* Dkt. Nos. 26, 28, 30, 32-41, & 43-51

For example, it appears that through his motion to intervene Fitzpatrick may attempt to remove lawsuits that AFG filed in separate state courts, one in Denton County (against Fitzpatrick) and a second in Tarrant County (in which Fitzpatrick has moved to intervene), and Fitzpatrick's doing so prompted AFG to, out of an abundance of caution, file motions to remand in this lawsuit. *See* Dkt. Nos. 40 & 41.

For the following reasons, the Court should deny the motion to intervene, grant the motions to remand, and take further action to unwind Fitzpatrick's unauthorized intervention in this lawsuit.

Discussion

Fitzpatrick moves both (1) to intervene as a matter of right (under Rule 24(a))

and (2) for permissive intervention (under Rule 24(b)(1)(B)). *See generally* Dkt. No. 21.

Both BEN and Defendants oppose Fitzpatrick's intervening in this lawsuit. *See generally* Dkt. Nos. 25 & 26.

> To intervene of right under Federal Rule of Civil Procedure 24(a), a putative intervenor must show that "(1) the application ... [was] timely"; (2) that it has "an interest relating to the property or transaction which is the subject of the action"; (3) that it is "so situated that the disposition of the action may, as a practical matter, impair or impede [its] ability to protect that interest"; and, finally, (4) that its interest is "inadequately represented by the existing parties to the suit."

Field v. Anadarko Petroleum Corp., 35 F.4th 1013, 1017 (5th Cir. 2022) (quoting *DeOtte v. State*, 20 F.4th 1055, 1067 (5th Cir. 2021) (quoting *Wal-Mart Stores, Inc. v. Tex. Alcoholic Beverage Comm'n,* 834 F.3d 562, 565 (5th Cir. 2016))); *accord Int'l Tank Terminals, Ltd. v. M/V Acadia Forest*, 579 F.2d 964, 967 (5th Cir. 1978).

The Court "should 'liberally construe' the test for mandatory intervention and 'allow intervention where no one would be hurt and the greater justice could be attained.'" *Rotstain v. Mendez*, 986 F.3d 931, 937 (5th Cir. 2021) (cleaned up; quoting *Texas v. United States*, 805 F.3d 653, 656-57 (5th Cir. 2015)).

Still, "[a] would-be intervenor bears the burden to prove an entitlement to intervene," so "failure to prove a required element is fatal." *Id.* (citing *Edwards v. City of Hous.*, 78 F.3d 983, 999 (5th Cir. 1996)).

Because Fitzpatrick's effort to intervene of right most obviously falters at the second required element, the undersigned begins (and ends) there.

> The second element, an interest in the action, is met when an intervenor shows a direct, substantial, legally protectable interest in the proceedings. Essentially, what is important is whether the intervenor

> has a stake in the matter that goes beyond a generalized preference that the case come out a certain way. Property interests are the quintessential rights Rule 24(a) protects, but they are not the only interests that may support intervention. However, a purported interest is insufficiently direct when it requires vindication in a separate legal action or the intervenor is too removed from the dispute. An interest that is purely ideological, economic, or precedential is also insufficient.

Field, 35 F.4th at 1018-19 (cleaned up).

Fitzpatrick's motion to intervene mostly offers legal conclusions couched as factual allegations and conclusory statements devoid of factual enhancement. But the most concrete interest that Fitzpatrick asserts is that AFG fraudulently induced his accepting employment and then retaliated against him for whistleblowing by terminating him. *See* Dkt. No. 21 at 2.

So, to start, Fitzpatrick's "purported interest is insufficiently direct [because] it requires vindication in a separate legal action," and he and his interest are, equally, "too removed from the dispute," *Field*, 35 F.4th at 1018, which, as BEN explains, is "a business dispute between BEN and the Defendants. Mr. Fitzpatrick is not a party to the Reseller Agreement – the contract forming the gravamen of BEN's claims – nor does he have any rights or obligations thereunder," Dkt. No. 25 at 6.

And, as BEN further persuasively argues,

> Mr. Fitzpatrick has no property rights at stake in this action. There is also no regulatory apparatus that will impact Mr. Fitzpatrick based on the result of this lawsuit. The ultimate outcome of this proceeding is that Defendants will be found liable to BEN for damages, or they will not. Nothing about that result implicates or impacts a legally protectable interest of Mr. Fitzpatrick.

Id.; *see also id.* at 11 ("Mr. Fitzpatrick's actual interests in this matter are, by his own admission, 'ideological, economic, or precedential' which are inadequate. *Field*, 35

F.4th at 1018-19. For example, Mr. Fitzpatrick claims his primary goal is to 'expose the … fraudulent schemes' and 'hold each of the Defendants accountable' for their alleged participation in a 'racketeering activity.' [Dkt. No. 21 at 3.] Similarly, Mr. Fitzpatrick claims that – absent intervention – Defendants will 'control the narrative' and 'limit [their] exposure' if he is not permitted to intervene. [*Id.* at 5.]"); *cf. Mausolf v. Babbitt*, 85 F.3d 1295, 1301 (8th Cir. 1996) ("While Rule 24 promotes judicial economy by facilitating, where constitutionally permissible, the participation of interested parties in others' lawsuits, the fact remains that a federal case is a limited affair, and not everyone with an opinion is invited to attend.").

The Court should therefore deny Fitzpatrick's request to intervene as a matter of right under Rule 24(a).

But a court also "may permit intervention if a timely motion is filed and the applicant 'has a claim or defense that shares with the main action a common question of law or fact.'" *Rotstain*, 986 F.3d at 942 (quoting FED. R. CIV. P. 24(b)(1)(B)).

"In assessing whether to allow permissive intervention, the court may consider, *inter alia*, the effect of permitting intervention on the existing parties, whether the intervenors' interests are adequately represented by other parties, and whether the intervenors will significantly contribute to full development of the underlying factual issues in the suit." *Texas v. Biden*, No. 3:22-cv-780-M, 2022 WL 22858891, at *1 (N.D. Tex. May 26, 2022) (cleaned up).

As discussed above, Fitzpatrick's claims do not share a question of law or fact that is common to this litigation. As BEN persuasively sums up its argument as to

this point, "[u]ltimately, Mr. Fitzpatrick's litany of individual claims for alleged economic damages must be brought in a separate proceeding – not haphazardly tacked onto a private business dispute between BEN and Defendants." Dkt. No. 25 at 15.

And, as Fitzpatrick has already demonstrated (as set out above), even before the Court has ruled on whether to allow him to intervene in this lawsuit, he has shown that (should he be allowed to intervene) he will prosecute his interests in a manner that unduly delays this proceeding, prejudices the parties, and frustrates the Court's ability to manage its docket efficiently.

The Court should therefore deny Fitzpatrick's request for permissive intervention under Rule 24(b)(1)(B).

And, if the Court accepts these recommendations and therefore denies Fitzpatrick's requests to intervene, Fitzpatrick's inserting himself into this lawsuit over the past month or so – through the litany of filings that he has made prior to a ruling on his motion to intervene – must be unwound, as a nonparty who has not successfully intervened in a lawsuit is not a party and thus has no right to clutter a proceeding with needless filings. *See Texas v. United States*, 679 F. App'x 320, 323 (5th Cir. 2017) (per curiam) ("Dr. Tudor is not a party: she is neither '[o]ne by or against whom a lawsuit is brought' nor a successful intervenor." (quoting *United States ex rel. Eisenstein v. City of N.Y.*, 556 U.S. 928, 933 (2009))); *Eisenstein*, 556 U.S. at 933 ("[I]ntervention is the requisite method for a nonparty to become a party to a lawsuit." (citation omitted)).

To accomplish this, the Court should grant the motions to remand [Dkt. Nos. 40 & 41] as to Fitzpatrick's purported removal of state-court lawsuits pending in Denton County and Tarrant County (to be somehow also consolidated into this litigation).

A defendant may remove an action filed in state court to federal court if the action is one that could have originally been filed in federal court. *See* 28 U.S.C. § 1441(a).

But the federal courts' jurisdiction is limited, so they generally may only hear a case of this nature if it involves a question of federal law or where diversity of citizenship exists between the parties. *See* 28 U.S.C. §§ 1331 & 1332.

And, for removals that are defective based on violations of the removal statute's provisions and limitations – that is, where "removal was improper, [but] the exercise of subject matter jurisdiction was not," *Cox, Cox, Filo, Camel & Wilson, L.L.C. v. Sasol N. Am., Inc.*, 544 F. App'x 455, 456 n.6 (5th Cir. 2013) – "[a] motion to remand … must be made within 30 days after the filing of the notice of removal under [28 U.S.C. §] 1446(a)," 28 U.S.C. § 1447(c).

Through timely motions to remand filed on March 13, less than 30 days after Fitzpatrick filed his motion to intervene, AFG correctly asserts that any removal of the Denton County and Tarrant County cases from state court is – at the least – procedurally improper when attempted by an intervenor (as to the Tarrant County case) and when attempted to be removed into an existing case in this Court, which is (as to the Denton County case) the wrong district and (as to the Tarrant County case)

the wrong division – and by means of only attaching the purported notices of removal as exhibits to a motion to intervene (which should be denied). *See, e.g.*, *Murphy v. Joshua Fin. Servs., Inc.*, No. 3:06-cv-1253-K, 2006 WL 3299999 (N.D. Tex. Oct. 24, 2006) (procedurally improper removal by intervenor); *Hinkey v. Envoy Air, Inc.*, 968 F.3d 544, 550 (5th Cir. 2020) (procedurally improper removal to the incorrect judicial district); *S.W.S. Erectors, Inc. v. Infax, Inc.*, 72 F.3d 489, 493 n.3 (5th Cir. 1996) (procedurally improper removal to the incorrect division of the correct judicial district); *Berry v. Wells Fargo Bank, N.A.*, Civ. A. No. 22-889-JWD-RLB, 2023 WL 5230826, at *13-*14 (M.D. La. July 26, 2023) (failure to submit a copy of all process, pleadings, and orders served on the removing defendant in notice of removal is a procedural defect that may be cured but also subjects a lawsuit to remand (collecting authority interpreting the application of *Covington v. Indem. Ins. Co. of N. Am.*, 251 F.2d 930 (5th Cir. 1958))), *rec. adopted in applicable part*, 2023 WL 5228922 (M.D. La. Aug. 14, 2023).

The Court should also strike and unfile Fitzpatrick's numerous other filings in this action.

Recommendation

The Court should deny Nonparty Maurice Fitzpatrick's motion to intervene [Dkt. No. 21], grant the motions to remand [Dkt. Nos. 40 & 41], and strike and unfile the remaining filings made by Fitzpatrick in this lawsuit.

A copy of these findings, conclusions, and recommendation shall be served on all parties in the manner provided by law. Any party who objects to any part of these

findings, conclusions, and recommendation must file specific written objections within 14 days after being served with a copy. *See* 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 72(b). In order to be specific, an objection must identify the specific finding or recommendation to which objection is made, state the basis for the objection, and specify the place in the magistrate judge's findings, conclusions, and recommendation where the disputed determination is found. An objection that merely incorporates by reference or refers to the briefing before the magistrate judge is not specific. Failure to file specific written objections will bar the aggrieved party from appealing the factual findings and legal conclusions of the magistrate judge that are accepted or adopted by the district court, except upon grounds of plain error. *See Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1417 (5th Cir. 1996).

DATED: March 20, 2025

DAVID L. HORAN
UNITED STATES MAGISTRATE JUDGE