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**UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION**

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

NATIONAL NOTE OF UTAH, LC, a Utah
Limited Liability Company, *et al.*,

Defendants.

**MOTION TO INTERVENE AND
MEMORANDUM IN SUPPORT**

Civil No. 2:12-cv-00591-BSJ

Judge Bruce S. Jenkins

Pursuant to Federal Rule of Civil Procedure 24, Movants Shwol-Huo “Danny” Kiang (“Mr. Kiang”) and Barbara Kielek-Kiang (“Ms. Kiang”) (collectively, “Movants”), by and through undersigned counsel, hereby respectfully submit this Motion to Intervene and Memorandum in Support and move to intervene in this action.

RELIEF SOUGHT AND GROUNDS FOR MOTION

Movants were investors in National Note of Utah (“National”) who, along with hundreds of other investors, lost money. Movants never received notice from the Receiver that a claims procedure had been approved by this Court, and therefore did not file their claim forms prior to

the Bar Date. After learning of the claims procedure, Movants reached out to the Receiver, but were denied the opportunity to present their claim. Movants therefore request this Court grant their Motion to Intervene for the purpose of petitioning this Court to approve their late-filed claims based on widely-accepted principles governing federal equity receiverships.

STATEMENT OF FACTS

1. The United States Securities and Exchange Commission filed this action on June 25, 2012. (Dkt. 1.)

2. On June 25, 2012, this Court entered an order freezing the assets of National and appointing R. Wayne Klein as receiver (“Receiver”). (Dkt. 8, 9.)

3. On February 27, 2015, pursuant to his duties, the Receiver filed a Motion Seeking Approval of Proposed Claim Procedures, and an Amended Motion for Approval of Claim Procedures on June 23, 2015. (Dkt. 892, 957.)

4. This Court granted the amended motion on September 1, 2015 and set the Bar Date for claimants to file Proofs of Claim in this case as November 3, 2015. (Dkt. 999.)

5. According to the order, the Receiver was to provide notice to expectant claimants of the date by which they must file a Proof of Claim in the form of a Bar Date Notice¹ in order to give notice to the investors and other claimants of the requirement to file a claim in order to be eligible to receive money from the receivership estate. (*Id.*)

6. Movants never received the Bar Date Notice from the Receiver of the requirement to file a claim form. (*See* Declaration of S. Kiang, attached hereto as Exhibit A, at ¶2; Declaration of B. Kiang, attached hereto as Exhibit B, at ¶2.)

7. Movants did not, therefore, file a claim in this matter. (Ex. A at ¶3; Ex. B at ¶ 3.)

¹ The Bar Date Notice was to include a Proof of Claim form and the Claim Instructions.

8. After learning of the claims procedure, Mr. Kiang contacted the Receiver on April 27, 2016 to determine why he had not received notice of the claims procedure and how he and Ms. Kiang should proceed to ensure their interests would be represented. (Ex. A at ¶4.)

9. The Receiver told Mr. Kiang that because Movants had missed the claims deadline, the Receiver would not process their claims. (Ex. A at ¶5.)

ARGUMENT

Rule 24(a)(2) of the Federal Rules of Civil Procedure allows a party to intervene as a matter of right “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 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.” An applicant must be allowed to intervene if (1) the application is timely; (2) the applicant has an interest in the subject matter of the dispute; (3) that interest is or may be impaired or impeded; and (4) the applicant’s interest is not represented adequately by the existing parties. *Coalition of Arizona/New Mexico Counties for Stable Economic Growth*, 100 F.3d 837, 840 (10th Cir. 1996). Generally, the Tenth Circuit follows a liberal view in allowing intervention under Rule 24(a). *Elliott Industries L.P. v. BP American Production Co.*, 407 F.3d 1091, 1103 (10th Cir. 2005). As demonstrated below, Movants meet all of the requirements for intervention of right in this case.

A. The Application Is Timely.

When considering the timeliness of a motion to intervene, courts look to such circumstances as the “length of time since the applicant knew of his interest in the case, prejudice to the existing parties, prejudice to the applicant, and the existence of any unusual

circumstances.” *Id.* The Bar Date was set in this case as November 3, 2015. Movants learned of the need to file a claim after that date, but before any distributions had been made.

Immediately upon learning that this matter was being pursued, Mr. Kiang reached out to the Receiver on April 27, 2016 to determine why he had not received notice of the claims procedure and how he and Ms. Kiang should proceed to ensure their interests would be represented. (*See* Ex. A at ¶4.) The Receiver informed Mr. Kiang that because Movants had failed to file a claim form before the claims deadline passed, the Receiver would not process their claims. (*Id.* at ¶5.)

After learning that the Receiver would not be approving Movants’ claims, they have been working to determine the best way to ensure their interests are represented in this action. Accordingly, Movants are filing the present Motion to Intervene in order to obtain leave of Court to proceed with petitioning this Court to approve their late-filed claim.

Further, no party would be prejudiced by Movants’ intervention. One of the primary purposes of an equity receivership is to return money to defrauded investors, and as no money has been distributed yet, there exists no prejudice to the estate. In addition, the Receiver has always been aware of Movants’ potential claims in this matter based on his assertion that he sent Notices of Claim to Movants, which notices Movants never received. (*See* Ex. A at ¶2; Ex. B at ¶2.)

B. Movants Have an Interest in the Subject Matter of the Dispute, which will be Directly Impeded if Intervention is Denied.

The Tenth Circuit has stated that determining sufficiency of interest is “primarily a practical guide to disposing of lawsuits by involving as many apparently concerned persons as is compatible with efficiency and due process.” *Utahns for Better Transp. v. U.S. Dep’t of Transp.*, 295 F.3d 1111, 1115 (10th Cir. 2002). Further, “[t]he threat of economic injury from the

outcome of litigation undoubtedly gives a petitioner the requisite interest.” *Id.* Here, Movants have a direct interest in the subject matter of this action, as they invested and substantial sums of money to National—just like the other claimants in this matter. Ms. Kiang has a claim for \$53,652.43.² Mr. Kiang has a claim for \$97,670.48. The Receiver’s decision to deny Movants’ late-filed claims directly impedes their rights to pursue and collect on their claim against the receivership estate.

C. Movants’ Interests Are Not Represented Adequately by Existing Parties.

Movant’s interests are not adequately represented by existing parties in this matter. An equity receiver generally is in the best position to represent the broader interests of large classes of defrauded investors. However, because the Receiver has denied Movants’ request to file a claim form after the bar date results in sufficiently divergent interests between the parties that the Receiver no longer speaks for Movants’ interests. Movants should therefore be afforded minimal due process and the opportunity to present their arguments to this Court.

CONCLUSION

Based on the foregoing, Movants respectfully request that this Court grant their Motion to Intervene for the purpose of petitioning the Court to approve their late-filed claims. A copy of the proposed motion to approve Movants’ claims is attached as Exhibit “C”.

² While Ms. Kiang listed \$53,890.05 on her claim form, the Receiver’s records indicate that the total was actually \$53,652.43. Ms. Kiang does not dispute the amount in the Receiver’s records.

DATED this 24th day of August, 2016.

RAY QUINNEY & NEBEKER P.C.

/s/ Jared N. Parrish

Jared N. Parrish

*Attorney for Shwol-Huo “Danny” Kiang and
Barbara Kielek-Kiang*

CERTIFICATE OF SERVICE

I hereby certify that on the 24th, day of August, 2016, I electronically filed the foregoing **MOTION TO INTERVENE AND MEMORANDUM IN SUPPORT** was filed with the Court and served via ECF on all parties who have requested notice in this case.

/s/ Teresa Hansen

I hereby certify that on that on the 24th, day of August 2016, a true and correct copy of the foregoing **MOTION TO INTERVENE AND MEMORANDUM IN SUPPORT** was served upon the persons named below at the address set out below by U.S. mail:

Wayne L. Palmer
8816 South 2240 West
West Jordan, UT 84088

/s/ Teresa Hansen