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7 Attorneys for Receiver
 8 STEPHEN J. DONELL

9 UNITED STATES DISTRICT COURT
 10 CENTRAL DISTRICT OF CALIFORNIA

11
 12 SECURITIES AND EXCHANGE
 13 COMMISSION,

14 Plaintiff,

15 v.

16 ROBERT YANG; et al.,

17 Defendants,

18 and
 YANROB'S MEDICAL, INC., et al.,

19 Relief Defendants.

20 CELTIC BANK CORPORATION, a
 21 Utah corporation,

22 Plaintiff-Intervenor,,

23 v.

24 SECURITIES AND EXCHANGE
 25 COMMISSION; STEPHEN J.
 DONELL, in his capacity as Receiver for
 the estate of Suncor Fontana, LLC,
 26 Suncor Hesperia, LLC and Suncor Care
 Lynwood, LLC,

27 Defendants-In-Intervention.
 28

Case No. 5:15-CV-02387-SVW (KKx)

**OPPOSITION OF RECEIVER,
 STEPHEN J. DONELL, TO CELTIC
 BANK'S MOTION FOR LEAVE TO
 INTERVENE**

Date: June 6, 2016
 Time: 1:30 pm
 Ctrm: 6
 Judge: Hon. Stephen V. Wilson

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I. SUMMARY OF ARGUMENT

Stephen J. Donell (the "Receiver"), the Court-appointed receiver for Defendants Suncor Fontana, LLC, Suncor Hesperia, LLC, Suncor Care Lynwood, LLC, and their respective subsidiaries and affiliates (collectively, the "Receivership Entities"), hereby submits his opposition to Celtic Bank's ("Celtic") Motion for Leave to Intervene ("Intervention Motion").

Celtic is holding \$2 million in 2 demand deposit accounts in the name of Receivership Entities. The Receiver demanded Celtic turn over the funds to the Receiver pursuant to Court's December 11, 2015 Preliminary Injunction, Order Appointing Receiver, Freezing Assets, and Providing for Other Ancillary Relief (the "Appointment Order") (Docket No. 18), and Celtic refused. The Receiver filed an *ex parte* Application for an Order to Show Cause Why Celtic Bank Should Not Be Held In Civil Contempt (the "OSC") and Celtic filed an opposition to the OSC. Beyond the issue of contempt, Celtic has claims arising out of loan agreements with Receivership Entities. Like every other investor and creditor who finds itself involved in a federal equity receivership, Celtic wants to jump to the head of the line and be paid first.

Celtic's request to intervene to separately adjudicate its claims is simply not compatible with the receivership process nor contemplated in Fed. R. Civ. P. 24. Using Celtic's logic, every creditor who disagrees with a preliminary injunction order, has a claim against the receivership estate, or who otherwise disputes a receiver's actions should be permitted to intervene. The law does not support Celtic's view. SEC v. TLC Invs. and Trade Co., 147 F.Supp.2d 1031, 1041-1043 (C.D. Cal 2001), (where the ultimate goal of the receiver and court aligns with investors, intervention is unwarranted.)

Celtic's objectives and goals are not different from those of the Receiver, the Court or any other claimant. Id. The issues and concerns raised by Celtic in the

1 Intervention Motion are nothing more than a "paper tiger" designed to obscure
2 Celtic's obligations to turnover deposit account funds to the Receiver in accordance
3 with the clear terms of the Appointment Order.

4 Celtic also ignores the substantial financial burden that would be imposed
5 upon the Receivership Entities if the Receiver is forced to address its proposed
6 lawsuit and stated desire to conduct discovery. Furthermore, granting Celtic's
7 Intervention Motion opens the door to every other unhappy claimant seeking to
8 jump to the head of the line. In the end, Celtic's individual requests for intervention
9 will be paid for by all of the investors. Celtic's claims are less than 13% of the total
10 estimated claims. The Receiver's and this Court's resources should be directed
11 toward recovery of assets for the benefit of all investors and creditors, rather than
12 being side-tracked by Celtic's effort to obtain the maximum value of its claim, in
13 advance of and to the detriment of other creditors.

14 Celtic's request for intervention is expensive and entirely unwarranted. As
15 such, the Receiver requests the Court deny the Intervention Motion.

16 **II. ARGUMENT**

17 **A. Celtic Is Not Entitled To Intervene As A Matter Of Right.**

18 The Ninth Circuit has generally outlined four requirements for intervention as
19 a matter of right pursuant to Fed. R. Civ. P. 24(a)(2). A proposed intervenor must:
20 (1) timely file an application, (2) possess a 'significantly protectable' interest relating
21 to the property or transaction that is the subject of the action, (3) be so situated that
22 the disposition of the action may as a practical matter impair or impede its ability to
23 protect that interest, and (4) be inadequately represented by the parties to the action.
24 California ex rel. Lockyear v. U.S., 450 F.3d 436, 441 (9th Cir. 2006) (citing Sierra
25 Club v. EPA, 995 F.2d 1478, 1481 (9th Cir. 1993)). Failure to satisfy any one of the
26 requirements is fatal to a motion to intervene. Perry v. Proposition 8 Official
27 Proponents, 587 F.3d 947, 950 (9th Cir. 2009).

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1 A party seeking intervention is not necessarily entitled to the right to
2 intervene in all aspects of the proceeding. Edison Elec. Inst. v. EPA, 391 F.3d 1267,
3 1274 (D.C. Cir. 2004); U.S. V. City of Detroit 712 F.3d 925, 931-32 (6th Cir. 2013).
4 This Court has broad discretion to limit, condition or place restrictions upon Celtic's
5 role in these proceedings. Id. Under no circumstances should Celtic be afforded the
6 broad rights to intervene that it seeks. Celtic's right to participate in the receivership
7 should be the same as all other creditors in the case.

8 1. Timing.

9 The Intervention Motion is timely as to the issues related to the OSC. In
10 addition to seeking the right to file an opposition to the OSC, Celtic asks to
11 intervene in the overall case and receivership so that it may litigate claims related to
12 two loans relating to the Receivership Entities. This is entirely unnecessary:
13 Celtic's claims will be addressed pursuant to an established claims process at some
14 time in the future. In the meantime, Celtic fails to meet its burden of proof as to
15 timeliness and therefore the Intervention Motion should be denied.

16 2. Protected Interests.

17 The Receiver recognizes Celtic has a protected interest.

18 3. Impairment of a Protected Interest.

19 The third prong of Fed. R. Civ. P. 24(a)(2) requires the moving party to
20 demonstrate the disposition of the pending litigation may, as a practical matter,
21 impair its right to protect its interests. Even if the underlying action would affect the
22 perspective intervenor's interests, "their interests might not be impaired if they have
23 'other means' to protect them." Lockyear 450 F.3d at 442.

24 Celtic has failed to put forth any evidence that the Commission's lawsuit or
25 the Receiver's actions impair Celtic's ability to protect its interests. At the end of the
26 day, Celtic's sole interest in the case is its claim for money against the Receivership
27 Entities. Like all other claimants, Celtic's claims will be addressed via an
28 established claims process. Celtic and all other creditors will have an opportunity to

1 participate in that process. In the meantime, Celtic has been provided less intrusive
2 and less burdensome alternatives to participate in the case and protect its interest by
3 filing an opposition to the Receiver's Application and presumably availing itself of
4 an opportunity to be heard. See SEC v. Am. Pension Servs., Inc., 2015 U.S. Dist.
5 LEXIS 6782, *14 (D. Utah Jan. 20, 2015) (movant's interests are not considered
6 impaired or impeded solely because they disagree with the receiver's proposed
7 liquidation plans, particularly where they can avail themselves of a claims process);
8 SEC v. Nadal, 2009 U.S. Dist. LEXIS 94302, *4-5 (M.D. Fl. Sept. 24, 2009).

9 Celtic makes a failed and unpersuasive effort to distinguish itself as a secured
10 creditor and SBA lender. It even goes as far as to suggest that there are
11 constitutional implications attached to its claims, without citing to any support, of
12 course.

13 None of Celtic's attributes are unique. There are other secured creditors and
14 governmental entities with claims against the Receivership Entities. Celtic is similar
15 to other claimants involved in this receivership. Just as these other creditors must
16 comply with the Appointment Order, so too must Celtic turn over the deposit
17 accounts owned by the Receivership Entities, respect the stay, and not interfere or
18 harass the Receiver.

19 Celtic's Intervention Motion is premised upon an understandable but unlawful
20 desire to jump ahead of all other claimants in the case. Even were the Court to
21 believe that Celtic's desire to intervene was based upon some more noble cause, its
22 Intervention Motion must be denied because Celtic's stated basis for intervention
23 reflects a mere disagreement with the Receiver's handling of a receivership estate
24 asset and the Court's Appointment Order. Such disagreements do not amount to an
25 impairment of Celtic's claim. Moreover, Celtic has the ability to participate in the
26 claims and distribution process. This, coupled with the Court's liberal acceptance of
27 their Court filings related to the OSC, demonstrates that there is no need for
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1 intervention. As such, Celtic has not met its burden of proof with regard to
2 impairment.

3 4. Inadequate Representation.

4 Celtic has not met its burden of proof to demonstrate that their interests are
5 not adequately represented by participants in the underlying action. TLC Invs. and
6 Trade Co. 147 F.Supp.2d at 1041-42. More specifically, Celtic has not met its
7 burden of proof pursuant to the four-part test of the Ninth Circuit in considering
8 adequacy of representation: (1) whether the interest of a party is such that it will
9 undoubtedly make the intervenors arguments; (2) whether the present party is
10 capable and willing to make such arguments; and (3) whether the intervenor would
11 offer any necessary elements to the proceedings that the other parties would neglect.
12 See People of California v. Tahoe Regulatory Planning Agency, 792 F.2d 775, 778
13 (9th Cir. 1986). "The most important factor in determining the adequacy of
14 representation is how the interests compare with the interests of existing parties."
15 Arakaki v. Cayetano, 324 F.3d 1078, 1086 (9th Cir. 2003). As noted by one court,
16 "the adequacy of interest requirement is more than a paper tiger. A party that seeks
17 to intervene as of right must produce some tangible basis to support a claim of
18 purported inadequacy". Public Service Company of New Hampshire v. Douglas
19 Patch 136 F.3d 197, 206 (1st Cir. 1998) (citing Moosehead Sanitary District v. SG
20 Philips Corp. 610 F.2d 49, 54 (1st Cir. 1979)); see also TLC Invs. and Trade Co.
21 147 F.Supp.2d at 1042.

22 Moreover, where "one of the duties of the existing parties is to represent the
23 interest of the intervenor, intervention will not be allowed unless a compelling
24 showing of inadequate representation is made." In re Christina Thompson 965 F.2d
25 1136, 1143 (1st Cir. 1992). In such circumstances, mere conclusory speculation by
26 intervenors is insufficient and "the putative intervenor must exert concrete facts
27 which demonstrate that (1) the existing representation of the putative intervenors
28 interest is inhibited by the personal interest of the existing representative, (2) the

1 existing representative and opposing party are engaged in collusive activities, or
2 (3) the existing representative has failed or refused to fulfill the fiduciary duty to
3 protect the interests asserted by the putative intervenor." Id.

4 Celtic fails to present any evidence to support its allegations that the Receiver
5 and this Court are not already representing or allowing for the representation of
6 Celtic's interests, and the interest of all claimants in this receivership matter. In
7 accordance with the Appointment Order, the Receiver is presently marshalling all of
8 the assets of the receivership estate, including but not limited to the deposits at
9 banks such as Celtic. The Receiver has stated his intent to develop a claims process
10 where Celtic's and all other claimants' claims are presented to the Receiver and the
11 Court for consideration based on an established claims process. The Receiver is not
12 adverse to Celtic but rather is a neutral appointee of the Court. As such, the
13 Receiver is diligently working on behalf of Celtic and all investors and creditors to
14 recover assets and ultimately make a distribution that is fair and equitable to all
15 investors and creditors.

16 As in the TLC case, Celtic merely argues that the Receiver is not pursuing
17 Celtic's individual interest and preferred strategy. However, there is no dispute that
18 the Receiver, the Court and Celtic share the same ultimate goal: recover assets and
19 then maximize the return to all creditors. Am. Pension Servs., Inc., 2015 U.S. Dist.
20 LEXIS 6782 at *14.

21 Celtic's arguments are indeed nothing more than the "paper tiger" recognized
22 by other courts. Setting aside the drama and the rhetoric and considering the actual
23 facts, the record is clear that the interests of Celtic as to each of the matters
24 described in its motion are already being fully and completely considered by the
25 Receiver and the Court. As such, the claims of inadequate representation are
26 unfounded and without tangible basis in the facts presently before the Court.

27 There is no evidence whatsoever that the Receiver's interests or the interests
28 of this Court administering this federal receivership are separate and apart from the

1 interests of Celtic. Like all claimants, Celtic wants to maximize its return on its
2 claims. Celtic may not agree with the Court's Appointment Order or the Receiver's
3 immediate strategy for recovery and distribution, but this does not suggest the Court
4 and the Receiver are not acting in the best interest of Celtic and all claimants. Id.

5 **B. Permissive Intervention Is Not Warranted.**

6 Fed. R. Civ. P. 24 (b)(1)(B) states that the Court may permit intervention by
7 someone who "has a claim or defense that shares with the main action a common
8 question of law or fact." Fed. R. Civ. P. 24 (b)(1)(B). Permissive intervention is
9 discretionary. *See Spangler v. Pasadena City Bd. of Educ.*, 552 F.2d 1326, 1329
10 (9th Cir. 1977). In determining whether to exercise its discretion, a court may
11 consider, among other things, whether the proposed intervenor's interests are
12 adequately represented by other parties, whether intervention will prolong or unduly
13 delay litigation, and whether intervenor will significantly contribute to full
14 development of the underlying factual issues. *See Id.* A party seeking permissive
15 intervention has the burden of establishing the basis for intervening. *See Citizens*
16 *For Balanced Use v. Montana Wilderness Assoc.*, 647 F.3d 893, 897 (9th Cir. 2011).

17 Celtic cannot make these required showings. As discussed above, there is no
18 reason to believe the Receiver and this Court cannot be fair and impartial in
19 considering the claims and assertions of Celtic on a fully developed factual record.
20 *Am. Pension Servs., Inc.*, 2015 U.S. Dist. LEXIS 6782 at*14 (denying intervention
21 where movant failed to establish that its economic interests were not adequately
22 represented by the receiver). Celtic's argument is premised on nothing more than an
23 assertion that its interests are impaired because it disagrees with the Receiver's
24 turnover demands. Such assertions are simply insufficient to satisfy Celtic's burden
25 for intervention, permissive or otherwise. Id.

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III. CONCLUSION.

In light of the foregoing, the Receiver requests the Court to deny the Intervention Motion.

Dated: May 16, 2016

ALLEN MATKINS LECK GAMBLE
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DAVID R. ZARO
JOSHUA A. DEL CASTILLO
KENYON HARBISON

By: /s/ David R. Zaro

DAVID R. ZARO
Attorneys for Receiver
STEPHEN J. DONELL

PROOF OF SERVICE

Securities and Exchange Commission v. Robert Yang, Suncor Fontana, et al.
USDC, Central District of California – Case No. 5:15-cv-02387-SVW (KKx)

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 515 S. Figueroa Street, 9th Floor, Los Angeles, California 90071-3398.

A true and correct copy of the foregoing document(s) described below will be served in the manner indicated below:

**OPPOSITION OF RECEIVER, STEPHEN J. DONELL, TO
CELTIC BANK'S MOTION FOR LEAVE TO INTERVENE**

1. **TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING ("NEF")** – the above-described document will be served by the Court via NEF. On **May 16, 2016**, I reviewed the CM/ECF Mailing Info For A Case for this case and determined that the following person(s) are on the Electronic Mail Notice List to receive NEF transmission at the email address(es) indicated below:

- **Zachary T. Carlyle**
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2. **SERVED BY U.S. MAIL OR OVERNIGHT MAIL and EMAIL (indicate method for each person or entity served):** On _____, I served the following person(s) and/or entity(ies) in this case by placing a true and correct copy thereof in a sealed envelope(s) addressed as indicated below. I am readily familiar with this firm's practice of collection and processing correspondence for mailing. Under that practice it is deposited with the U.S. postal service on that same day in the ordinary course of business. I am aware that on motion for party served, service is presumed invalid if postal cancellation date or postage meter date is more than 1 (one) day after date of deposit for mailing in affidavit.

I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on **May 16, 2016** at Los Angeles, California.

s/ Martha Diaz

Martha Diaz