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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

COMMODITY FUTURES TRADING
COMMISSION, and
STATE OF UTAH DIVISION OF
SECURITIES, through Attorney General
Sean D. Reyes

Plaintiffs,

v.

RUST RARE COIN INC., a Utah
corporation, and GAYLEN DEAN RUST, an
individual, DENISE GUNDERSON RUST,
an individual, JOSHUA DANIEL RUST, an
individual,

Defendants;

and

ALEESHA RUST FRANKLIN, an
individual, R LEGACY RACING INC, a
Utah corporation, R LEGACY
ENTERTAINMENT LLC, a Utah limited
liability company, and R LEGACY
INVESTMENTS LLC, a Utah limited
liability company.

Relief Defendants.

**ZIONS BANCORPORATION'S
MOTION TO INTERVENE**

Civil No. 2:18-cv-00892-TC

Honorable Tena Campbell

Pursuant to Rule 24 of the Federal Rules of Civil Procedure, Zions Bancorporation, N.A. (“Zions Bank”) hereby files this motion (the “Motion”) with supporting memorandum seeking to intervene on a limited basis as an interested party in the above-captioned proceeding. In support hereof, Zions Bank states, as follows:

STATEMENT OF RELIEF SOUGHT

Zions Bank requests that it be authorized to intervene in this case solely for the purpose of filing the Interpleader Motion attached hereto as Exhibit A. Zions Bank currently holds funds for which the Receiver has a competing claim with a Zions Bank customer.

RELEVANT FACTS

1. On November 15, 2018, at 2:50 p.m. prevailing Mountain Time, this Court entered its Order Granting Plaintiffs’ *Ex Parte* Motion for Statutory Restraining Order, Appointment of Receiver, and Other Equitable Relief (the “Restraining Order”) freezing assets of Rust Rare Coin, Inc. (“Rust Rare Coin”), its principals, and affiliates.

2. Shortly after the Restraining Order was entered, at about 3:15 p.m. prevailing Mountain Time, agents of the Utah Division of Securities (the “Serving Agents”), served a copy of this Court’s Restraining Order on Zions Bank through one of its officers in its legal department (the “Legal Officer”).

3. Upon reading the Restraining Order, the Legal Officer was concerned as to its application to Zions Bank as paragraph 24 was ambiguous. The Legal Officer asked the Serving Agents if the Restraining Order was only to freeze the accounts to prevent monies leaving the accounts or whether the Restraining Order also applied to monies being deposited into the accounts.

4. The Serving Agents at first indicated that the freeze would only apply to outgoing items but then quickly reversed their position: after discussion and a phone call, the Serving Agents informed the Legal Officer that the Restraining Order applied to prevent the transfers of all monies both out of and into the accounts.

5. The Legal Officer repeated the instruction and the Serving Agents reaffirmed the position that all accounts were to be frozen as to both outgoing and incoming monies.

6. In accordance with the instruction given, Zions Bank restricted the Rust Rare Coin accounts to prohibit all outgoing and incoming funds. These restrictions were effective as of approximately 3:40 p.m. prevailing Mountain Time.

7. The Leland S. Jacobson Trust has a depository relationship at Zions Bank.

8. Prior to entry of the Receivership Order, Leland Jacobson (the “Trustee”), as Trustee of The Leland S. Jacobson Trust (“Trust”), instructed Zions Bank to wire transfer \$1.6 million from its account to Rust Rare Coin (the “Jacobson Wire Transfer”) at 12:38 p.m. prevailing Mountain Time.

9. The direction of Leland Jacobson to wire transfer \$1.6 million was verified by four employees of Zions Bank in the branch and in the wire department of Zions Bank, utilizing a confidential protocol with verified personally identifiable numbers.

10. The Jacobson Wire Transfer was received and reflected in the Rust Rare Coin account on November 15, 2018, at 12:44 p.m. prevailing Mountain Time after which—but prior to service of the Restraining Order—Rust Rare Coin transferred monies out of its account to third parties.

11. Overnight postings in the accounting ledgers of Zions Bank occur to customer accounts of Zions Bank.

12. At approximately 3:00 a.m. prevailing Mountain Time on November 16, 2018, the Jacobson Wire Transfer attempted to post to the Rust Rare Coin account but could not because the account was closed to posting due to the Restraining Order and instructions of the Serving Agents. Thus, the funds were redirected to a general ledger suspense account.

13. Shortly after 9:00 a.m. prevailing Mountain Time on November 16, 2018, Leland Jacobson informed a Zions Bank branch employee that he was told by a friend that Rust Rare Coin had been closed under suspicion of operating a Ponzi scheme, provided a news link and stated he would like to recover the Jacobson Wire Transfer which he caused to be wired on November 15, 2019.

14. Because the Jacobson Wire Transfer was held in suspense and the allegations of operation of a Ponzi scheme, the Zions Bank wire department caused the Jacobson Wire Transfer to be returned to the account of The Leland S. Jacobson Trust.

15. At approximately 11:00 a.m. prevailing Mountain Time on November 16, 2018, counsel for the Court-Appointed Receiver contacted the Legal Officer seeking to permit the accounts of Rust Rare Coin to accept incoming transfers of funds. After discussions with the Serving Agents and others with the Utah Division of Securities, the accounts were changed effective as of about 1:15 p.m. on November 16, 2018, to accept incoming funds.

16. At this point in time, the Jacobson Wire Transfer funds remain in the account of the Trust at Zions Bank but are subject to a legal hold.

17. Regarding the scope of the Receiver's authority, the Restraining Order states in relevant part that the Receiver shall

Take exclusive custody, control, and possession of the Receivership Estate, which includes but is not limited to complete authority to collect, receive, and take possession of all goods, chattels, rights, credits, money, effects, land, leases, books, records, work papers, and records of accounts, including electronically-stored information, contracts, financial records, funds on hand in banks and other financial institutions, and other

papers and records of the Receivership Defendants, including any financial interests of investors in the Silver Pool or other investors now held by or under the direction, possession, custody, or control of the Receivership Defendants

18. Based upon this authority, the Receiver has attempted to take custody, control, or possession of the Jacobson Wire Transfer funds. The Receiver contends that the Jacobson Wire Transfer funds belong to the Receivership Estate.

19. In the Receiver's Initial Status Report, the Receiver indicated that he is "in the process of seeking to recover an additional \$1.6 million, which the Receiver expects Zions Bank will interplead into the court." Dkt. no. 98 at 9, ¶ 26.

20. The Trustee contends that the Jacobson Wire Transfer funds belong to the Trust.

21. Accordingly, Zions Bank has claims of two competing interests to the Jacobson Wire Transfer funds.

22. Counsel for Zions Bank has discussed its intent to intervene and file an interpleader motion with counsel for the Receiver and counsel for the Trust. A draft Receivership interpleader motion is attached hereto as Exhibit A.

ARGUMENT

The Court Should Permit Zions Bank to Intervene Under Rule 24(b)

Rule 24(b) of the Federal Rules of Civil Procedure states:

(1) *In General*. On timely motion, the court may permit anyone to intervene who:

....

(B) has a claim or defense that shares with the main action a common question of law or fact.

....

(3) *Delay or Prejudice*. In exercising its discretion, the court must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights.

In deciding whether an individual or entity should be permitted to intervene under Rule 24(b), courts use a two-step process: "First, the district court must decide whether the applicant's claim or defense and the main action have a question of law or fact in common If this

threshold requirement is met, then the court must exercise its discretion in deciding whether intervention should be allowed.” *Stallworth v. Monsanto Co.*, 558 F.2d 257, 269 (5th Cir. 1977) (internal citation and quotation marks omitted) (emphasis added). The Tenth Circuit Court of Appeals follows a “somewhat liberal line in allowing intervention.” *Utah Ass’n of Counties v. Clinton*, 255 F.3d 1246, 1249 (10th Cir. 2001) (internal quotations omitted). Indeed, the U.S. Supreme Court has held that intervention may be proper even if the intervener has no “personal, financial or pecuniary interest” in the subject of the litigation. *SEC v. United States Realty & Improvement Co.*, 310 U.S. 434, 461 (1940).

I. There are common questions of law and fact.

The Receiver is charged with taking “*exclusive* custody, control, and possession of” all property belonging to the Receivership Estate. The Interpleader Motion seeks to answer the question of whether the Jacobson Wire Transfer funds belong to the Receivership, which will necessarily be part of this action.

II. Relevant factors favor this Court exercising its discretion to allow intervention.

Courts consider the following general factors in deciding whether to permit intervention:

the nature and extent of the intervenor's interest, whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties, whether the applicant will benefit by the intervention, whether the intervenor's interests are adequately represented by the other parties, and whether the intervenors will significantly contribute to the full development of the underlying factual issues in the suit and to the just and equitable adjudication of the legal questions presented.

Utah by Department of Health v. Kennecott Corp., 801 F. Supp. 553, 572 (D. Utah 1992)

Each of these factors weigh in favor of permitting limited intervention for the sole purpose of having this Court determine the party rightfully entitled to possession of the funds. Permitting intervention for this limited purpose will not unduly delay or prejudice the parties’

rights or delay this proceeding. And as the Receiver indicated in the Receiver's Initial Status Report, interpleading the Jacobson Wire Transfer funds is the expected course for dealing with these funds. *See* Receiver's Initial Status Report at 9, ¶ 26, dkt. no. 98, filed Jan. 31, 2019 ("The Receiver is also in the process of seeking to recover an additional \$1.6 million, which the Receiver expects Zions Bank will interplead into the Court."). In fact, intervention for this limited purpose is the most efficient manner in which to resolve the entitlement to the funds.

CONCLUSION

For the reasons set forth herein, Zions Bank respectfully requests that the Court grant this Motion and allow Zions Bank limited intervention in this case. Zions Bank also requests any other and further relief as is just and proper under the circumstances.

DATED this 12th of February, 2019.

DORSEY & WHITNEY LLP

/s/ Steven T. Waterman

Steven T. Waterman

Attorneys for Zions Bancorporation, N.A.

CERTIFICATE OF SERVICE BY CM/ECF

IT IS HEREBY CERTIFIED that service of the above ZIONS BANCORPORATION'S MOTION TO INTERVENE was electronically filed with the Clerk of the Court through the CM/ECF system on February 12, 2019, which sent notice of the electronic filing to all counsel of record.

CERTIFICATE OF SERVICE BY EMAIL

I FURTHER CERTIFY that service of the above ZIONS BANCORPORATION'S MOTION TO INTERVENE was emailed on February 12, 2019 to:

Tom Seiler
tseiler@safmlaw.com
Attorneys for Leland S. Jacobson Trust

/s/ Karen Bingham