**IN THE UNITED STATES DISTRICT COURT**
**FOR THE WESTERN DISTRICT OF TEXAS**
**AUSTIN DIVISION**

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| **SECURITIES AND EXCHANGE COMMISSION,** | § | |
| **Plaintiff,** | § | |
| | § | |
| **vs.** | § | |
| | § | |
| **ROBERT A. HELMS,** | § | |
| **JANNIECE S. KAELIN,** | § | |
| **DEVEN SELLERS,** | § | |
| **ROLAND BARRERA,** | § | |
| **VENDETTA ROYALTY PARTNERS, LTD.,** | § | |
| **VENDETTA ROYALTY MANAGEMENT, LLC,** | § | |
| **VESTA ROYALTY PARTNERS, LP** | § | |
| **VESTA ROYALTY MANAGEMENT, LLC** | § | |
| **IRON ROCK ROYALTY PARTNERS, LP,** | § | **Civil Action No.:** |
| **IRON ROCK ROYALTY MANAGEMENT, LLC,** | § | **1:13-cv-1036-LY** |
| **ARCADY RESOURCES, LLC,** | § | |
| **BAREFOOT MINERALS, G.P.,** | § | |
| **G3 MINERALS, LLC,** | § | |
| **HALEY OIL COMPANY, INC.,** | § | |
| **LAKE ROCK, LLC ,** | § | |
| **SEBUD MINERALS, LLC, and** | § | |
| **TECHNICOLOR MINERALS, G.P.,** | § | |
| **Defendants,** | § | |
| | § | |
| **and** | § | |
| | § | |
| **WILLIAM L. BARLOW, and** | § | |
| **GLOBAL CAPITAL VENTURES, LLC,** | § | |
| **Relief Defendants, solely for the purposes of equitable relief.** | § | |
| | § | |

**PLAINTIFF'S RESPONSE TO CLOVIS CAPITAL VENTURES, LLC'S MOTION TO INTERVENE**

Plaintiff Securities and Exchange Commission ("Commission" or "Plaintiff") files this Response to Non-Party Clovis Capital Ventures, LLC's ("Clovis") Motion to Intervene [Dkt. 99]. Because Clovis's motion is barred by Section 21(g) of the Securities Exchange Act of 1934 ("Exchange Act") and because Clovis had failed to demonstrate that it needs to fully intervene, Clovis's motion should be denied.

## INTRODUCTION AND FACTUAL BACKGROUND

On August 29, the Receiver moved the Court to enter an order rejecting Clovis's purported security interest in certain assets of the receivership estate. [Dkt. 95] Shortly thereafter, Clovis's counsel contacted Plaintiff's counsel, asking if the Plaintiff would object to its motion to intervene. In the interest of resolving the issues raised in the Receiver's motion as quickly and efficiently as possible, Plaintiff's counsel agreed not to object to Clovis's intervention for the limited purpose of responding to the Receiver's motion. Now, Clovis seeks to "intervene fully in the case." [Dkt. 99 at 2]

## ARGUMENTS AND AUTHORITIES

### I. Exchange Act Section 21(g) Bars Intervention Without the SEC's Consent, Which It Does Not Give.

Clovis's attempt to intervene in this enforcement action is barred by Section 21(g) of the Exchange Act. Section 21(g) provides:

> [N]o action for equitable relief instituted by the Commission pursuant to the securities laws shall be consolidated or coordinated with other actions not brought by the Commission, even though such other actions may involve common questions of fact, unless such consolidation is consented to by the Commission.

15 U.S.C. § 78u (g).

Courts have broadly applied Section 21(g) to preclude interference by private parties in Commission law enforcement proceedings without Commission consent. *See, e.g., Aaron v.*

*SEC*, 446 U.S. 680 at 717 n.9 (1980) (Blackmun, J., concurring); *Parklane Hosiery Co. Inc. v. Shore*, 439 U.S. 322, 332 (1979) (observing that "the respondent probably could not have joined in the injunctive action brought by the SEC even had he so desired") (*citing SEC v. Everest Management Corp.*, 475 F.2d 1236, 1240 (2d Cir. 1973)); *SEC v. Nadel*, No. 8:09-cv-87-T-26TBM, 2009 WL 3126266, at *1 (M.D. Fla. Sept. 24, 2009) (intervention); *SEC v. Egan*, 821 F. Supp. 1274, 1275 (N.D. Ill. 1993) (third-party complaint). Indeed, in *SEC v. Wozniak*, the Court described Section 21(g) as an "impenetrable wall" to private plaintiffs' attempts to intervene in SEC enforcement actions. 1993 WL 34702, at *1 (N.D. Ill. Feb. 8, 1993). In denying an investor's motion to intervene, the court explained that Section 21(g) is "unambiguous":

> [Its] plain meaning has been confirmed by the Supreme Court (albeit in passing) in *Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 332 n. 17 (1979) and elaborated on by Justice Blackmun (concurring in part and dissenting in part) in *Aaron v. SEC*, 446 U.S. 680, 717 n. 9 (1980). Only SEC's consent can open a door in that wall to permit a private party […] to have access to this federal court in this lawsuit.

*Id.*; *see also SEC v. Homa*, No. 99 C 6895, 2000 WL 1468726, at *2 (N.D. Ill. Sept. 29, 2000). (denying a motion to intervene in an SEC enforcement action and concluding "the language of Section 21(g) is plain and unambiguous, and therefore it must be given effect"); *SEC v. Cogley*, No. 98CV802, 2001 WL 1842476, at *5 (S.D. Ohio 2001) ("After reviewing the legislative history, and reviewing other cases that have discussed this issue, this Court comes to the inescapable conclusion that Section 21(g) bars intervention."). Accordingly, because the SEC has not consented to the requested intervention, the intervention should be denied.

## II. Clovis Has Failed to Show Why it Needs to Intervene Fully in the Case.

Both the Commission and the Receiver agreed not to oppose Clovis's request to intervene for the limited purpose of litigating the validity of Clovis's security interest by responding to the Receiver's motion. As Clovis acknowledges, it "is the only Vendetta Partners investor who secured its investment with a security interest." [Dkt. 99 at 4] Thus, the accommodation offered by the Commission and the Receiver would have allowed Clovis to fully defend the only unique legal right that it claims to have relative to other investors. Nothing more is needed.[1]

Despite this, Clovis now attempts to "intervene fully in the case and to have all the rights of the existing parties in the case." Clovis's justification for needing to fully intervene is addressed in a footnote, in which it claims to have a Rule 11 claim against the receiver. [Dkt. 99 at 7, n. 4] This purported claim is insufficient to justify intervention.

To intervene as of right under Rule 24(a)(2), a party must demonstrate "an interest relating to the property or transaction that is the subject of the action." Fed. R. Civ. P. 24(a)(2); *see also Staley v. Harris County Tex.*, 160 Fed. Appx. 410, 411-12 (5th Cir. 2005); *Ross v. Marshall*, 426 F.3d 745, 753 (5th Cir. 2005). Neither the Commission nor the Receiver opposes Clovis's intervention for the limited purpose of litigating its purported security interest. Clovis's vaguely articulated Rule 11 claim against the Receiver has nothing to do with the property or the

[1] As Clovis acknowledges, aside from the purported security interest, Clovis is identically-situated to other investors. [Dkt. 99 at 7] ("Clovis claims a right to a portion of the Receivership Property as do all the other Vendetta Partners investors") And as Clovis further admits, there are procedures in place that will allow all investors, including Clovis, to protect their interests in the receivership property. [Dkt. 99 at 5] Accordingly, Clovis cannot show that it needs to fully intervene either: (i) to protect its interests from being impaired; or (ii) that the existing parties cannot adequately represent its interests. Fed. R. Civ. P. 24(a)(2); *Staley* 160 Fed. Appx. at 411-12; *Ross* 426 F.3d at 753. Further, where—as here—a government entity is plaintiff, adequate representation is presumed. *See Baker v. Wade*, 743 F.2d 236, 241 (5th Cir. 1984).

securities transactions that are the subject of this case and therefore does constitute an interest sufficient to warrant further intervention.[2] Therefore, intervention as of right is not justified.

Nor is permissive intervention under Rule 24(b)(1)(B), which requires the non-party to have "a claim or defense that shares with the main action a common question of law or fact." [Dkt. 99 at 7] Clovis's purported Rule 11 claim against the Receiver has nothing to do with the securities fraud and related violations that is the subject of the main action. Consequently, permissive intervention is also unavailable.[3]

## CONCLUSION

For the reasons stated above, the Court should deny Clovis's motion to intervene.

Dated: September 10, 2014

Respectfully submitted,

s/Chris Davis
CHRIS DAVIS
Texas Bar No. 24050483
TIMOTHY S. McCOLE
Mississippi Bar No. 10628
U.S. Securities and Exchange Commission
Burnett Plaza, Suite 1900
801 Cherry Street, Unit 18
Fort Worth, Texas 76102
Telephone: (817) 900-2638(cd)
Telephone: (817) 978-6453(tm)
FAX: (817) 978-4927
E-mail: McColeT@SEC.gov
For Plaintiff

[2] Clovis should have detailed these claims in an attached pleading, as required by Rule 24(c). Under Rule 24(c) a motion to intervene "*must* state the grounds for intervention *and* be accompanied by a pleading that sets out the claim or defense for which intervention is sought" (emphasis added). Clovis's contention that Rule 24(c) "normally" requires that a motion to intervene be accompanied by a pleading setting forth the claim or defense for which intervention is sought is simply wrong. [Dkt. 99 at 11, n. 6] Therefore, the Commission asks that Clovis's motion be denied for this reason as well.

[3] Clovis's reliance on the *Kings Real Estate* case is misplaced. Unlike in this case, the party seeking to intervene in that case claimed to have invested in a completely different investment from the REIT that was the subject of the Commission's lawsuit. 222 F.R.D. 660 at *662. Clovis acknowledges that it invested in VRP, but claims to have received a preferential security interest when it invested. [Dkt. 99 at 2-4] That issue can be adequately addressed by allowing the limited intervention already agreed to by the Commission and the Receiver.

**CERTIFICATE OF SERVICE**

I hereby certify that on September 10, 2014, I electronically filed the foregoing document with the Clerk of the Court for the Western District of Texas, Austin Division, by using the CM/ECF system, which will send a notice of electronic filing to the following CM/ECF participants, and that I notified non-CM/ECF participants in the manner listed below:

Chris Davis
Timothy McCole
*Counsel for Securities and Exchange Commission*

By Email:

Robert A. Helms
roberthelms1964@gmail.com
*Pro Se Defendant*

Janniece S. Kaelin
janniecekaelin@gmail.com
*Pro Se Defendant*

Deven Sellers
devensellers@gmail.com
*Pro Se Defendant*

Roland Barrera
barrera.roland@gmail.com
*Pro Se Defendant*

William Barlow
sgtgiwillie@aol.com
*Pro Se Relief Defendant*

Thomas L. Taylor III, Court-Appointed Receiver
4550 Post Oak Place Dr Ste 241
Houston, TX 77027-3117
info@vendettaroyaltyreceivership.com
*Counsel for Defendants Vendetta Royalty Partners, Ltd., Vendetta Royalty Management, LLC, Vesta Royalty Partners, LP, Vesta Royalty Management, LLC, Iron Rock Royalty Partners, LP, Iron Rock Royalty Management, LLC, Arcady Resources, LLC, Barefoot Minerals, G.P., G3 Minerals, LLC, Haley Oil Company, Inc., Lake Rock, LLC, SeBud Minerals, LLC, and Technicolor Minerals, G.P.*

William Terpening
WTerpening@nexsenpruet.com
Charles Miller
CMiller@nexsenpruet.com
Jonathan Schulz
JSchulz@nexsenpruet.com
Nexsen Pruet, PLLC
227 West Trade Street, Suite 1550
Charlotte, NC 28202
*Counsel for Clovis Capital Ventures, LLC*

*s/ Chris Davis*
Chris Davis