

(collectively, the “HCHK Creditors”),² by their attorneys Pastore LLC, hereby move for entry of an order substantially in the form attached hereto as Exhibit A (the “Proposed Order”) pursuant to section 1109(b) of title 11 of the United States Code (the “Bankruptcy Code”) and Rule 24 of the Federal Rules of Civil Procedure as made applicable to this proceeding by Rule 7024 of the Federal Rules of Bankruptcy Procedure, allowing them to intervene in the above-captioned adversary proceeding (the “Adversary Proceeding”). In support of this motion, the HCHK Creditors respectfully represent as follows:

PRELIMINARY STATEMENT

1. As set forth below, the HCHK Creditors, as *bona fide*, good faith creditors of the HCHK Entities,³ have a direct and substantial stake in the outcome of the Adversary Proceeding and, as such, should be permitted to intervene as of right. The HCHK Creditors have claims against the HCHK Entities totaling more than \$27,000,000. The Adversary Proceeding, as set forth in the Complaint (ECF No. 1), and as further illustrated by the Motion to Compromise (ECF No. 25), seeks to sequester all the HCHK Entities’ assets and deem said assets as part of the Debtor’s estate on the theory that the HCHK Entities are mere *alter egos* of the Debtor. As the Motion to Compromise made clear, the Assignee has abandoned his fiduciary duties to the HCHK Creditors. Accordingly, the HCHK Creditors stand to suffer harm without any party representing their interests.

2. As such, the subject matter of the Adversary Proceeding directly impacts the HCHK Creditors’ claims against the HCHK Entities, and the HCHK Creditors are thus necessary parties

² Upon information and belief, there are likely additional similarly situated, *bona fide* creditors of the HCHK Entities.

³ For the convenience of the Court, any Capitalized terms undefined herein shall have the meaning ascribed to them in the Complaint. (ECF No. 1).

to this Adversary Proceeding and, therefore, should be permitted to intervene under 11 U.S.C. §1109(b).

FACTUAL BACKGROUND

The HCHK Creditors

3. The HCHK Creditors are *bona fide*, good-faith creditors of HCHK Property Management, Inc. (“HCHK Property”) and HCHK Technologies Inc. (“HCHK Technologies”), representing two of the three assignors for benefit of creditors.

4. 1332156 B.C.’s combined claim against HCHK Property and HCHK Technologies is \$20,218,097.78. Attached hereto as **Exhibit B** is a loan agreement dated July 17, 2022 between 1332156 B.C. and HCHK Property and HCHK Technologies.

5. GWGOPNZ’s combined claim against HCHK Property and HCHK Technologies is \$5,427,497.74. Attached hereto as **Exhibit C** is a loan agreement dated July 17, 2022 between GWGOPNZ and HCHK Property and HCHK Technologies.

6. Japan Himalaya’s combined claim against HCHK Property and HCHK Technologies is \$659,999.11. Attached hereto as **Exhibit D** is a loan agreement dated July 18, 2022 between Japan Himalaya and HCHK Property and HCHK Technologies.

7. Mr. Yu’s combined claim against HCHK Property and HCHK Technologies is \$1,550,000. Attached hereto as **Exhibit E** is Mr. Yu’s bank records indicating said transfer.⁴

8. Thus, in total, the above claims represent more than \$27,000,000.

The New York Court Proceedings

9. On April 20, 2023, the HCHK Entities executed Deeds of Assignment for the **Benefit of Creditors** (the “Deeds”). (ECF No. 1 ¶¶ 3, 41). The Deeds assigned all the HCHK

⁴ As of filing the Motion, counsel is awaiting additional loan documentation from Taipei, Taiwan and intends to file supplemental documentation once said documentation is received.

Entities’ assets to the Assignee. (ECF No. 1 ¶ 3). The Deeds were filed with the New York County Clerk’s Office and delivered to the Assignee on April 25, 2023. (ECF No. 1 ¶ 42). Shortly thereafter, the Assignee filed affidavits and petitions in the State Court requesting the commencement of an assignment for the **benefit of creditors** proceeding—a more than a century-old proceeding under the laws of the state of New York (the “New York Court Proceedings”), designed to provide protections to an entity’s creditors in an efficient manner. (ECF No. 1 ¶¶ 3, 43-45).⁵

10. Pursuant to the Deeds (and New York law), the Assignee’s ability “to sell or otherwise dispose of all personal property of Assignor...[is] **subject to the approval of the court, pursuant to Section 19 of the New York Debt. & Cred. Law....**” (ECF Nos. 1-14 at 35, 1-17 at 35, 1-18 at 36) (emphasis added).

11. Pursuant to the Deeds, creditors of the HCHK Entities, including the HCHK Creditors, were to “be given notice of the assignment and the right to file verified claims, which shall set forth whether any, and, if so, what securities are held for such claim, and whether any, and, if so, what payments have been made thereon.” (ECF Nos. 1-14 at 40, 1-17 at 40, 1-18 at 41).

12. In the Assignee’s affidavits and petitions requesting the commencement of the New York Court Proceedings, the Assignee informed the State Court that:

The Assignor has also received funding from certain individual investors, who are Chinese dissidents and identify as being part of a social network and movement to expose the alleged corruption and human rights abuses of the CCP (collectively, the “Investors”)... The Assignor has represented to me that the Investors have appointed six individuals, who are comfortable disclosing their names and contact information, to serve as their agents and

⁵ See *In the Matter of the General Assignment for the Benefit of Creditors of: HCHK Technologies, Inc. to Brian Hofmeister*, Index No. 510008/2023 (N.Y. Gen. Term May 18, 2023); *In the Matter of the General Assignment for the Benefit of Creditors of: Lexington Property and Staffing, Inc. to Brian Hofmeister*, Index No. 510007/2023 (N.Y. Gen. Term May 31, 2023); and *In the Matter of the General Assignment for the Benefit of Creditors of: HCHK Property Management, Inc. to Brian Hofmeister*, Index No. 510006/2023 (N.Y. Gen. Term May 31, 2023).

representatives in this matter. I am currently investigating the relationship between the Assignor and the Investors and the Basis for their claims.

(ECF Nos. 1-14 at 7, 1-17 at 7, 1-18 at 7).

13. Further, pursuant to N.Y. DEBT. & CRED. LAW § 15(1), the court shall have the power “[t]o allow claims, disallow claims, reconsider allowed or disallowed claims, and allow or disallow them against the estate.” Additionally, the State Court maintains the power “[t]o direct upon the final settlement of the estate that the assignee pay to **the lawful creditors** their proportionate dividend.” N.Y. DEBT. & CRED. LAW § 15(7) (emphasis added). Thus, claims filed by the HCHK Creditors are subject to the strict review and approval of the State Court.

14. Further, the Assignee informed the State Court of Yvette Wang’s (“Ms. Wang”) federal incarceration on charges related to fraudulently obtaining hundreds of millions of dollars from investors. (ECF Nos. 1-14 at 8, 1-17 at 7-8, 1-18 at 7-8). In fact, it was due to Ms. Wang’s incarceration that the HCHK Entities decided to, in the exercise of their business judgment, assign all their assets to the Assignee, **an independent fiduciary, for the benefit of the HCHK Entities’ creditors**. (ECF Nos. 1-14 at 8, 1-17 at 7-8, 1-18 at 7-8).

15. In order to carry out **his fiduciary duties to the HCHK Entities’ creditors**, the Assignee sought the approval of the State Court, pursuant to New York law, to retain various professionals to assist him.⁶ The State Court issued Orders to Show Cause requiring any party objecting to the Assignee’s requests to initiate the New York Court Proceedings or to the retention

⁶ These professionals included the law firm of Cole Schotz P.C. (“Cole Schotz”), the law firm of McManimon, Scotland & Baumann, LLC (the law firm that represented that HCHK Entities, which the Assignee represented could provide “valuable historical knowledge regarding the [HCHK Entities’] businesses and operations and circumstances leading up to the [New York Court Proceedings]”) (“MSB”); and DLA, LLC (a comprehensive internal audit and accounting advisory firm) (“DLA”). (See ECF Nos. 1-14 at 12-22, 1-17 at 12-22, 1-18 at 12-22).

of the professionals identified above to submit a written objection to the State Court (the “Orders to Show Cause”). (ECF No. 1 ¶¶ 43-45).

16. Further, the Assignee marshaled close to \$39,000,000 from the HCHK Entities and safeguarded said monies in an account controlled by him. (ECF No. 25 ¶ 11).

The Commencement of the Adversary Proceeding

17. After receipt of Orders to Show Cause, rather than submit written objections to the State Court, on June 8, 2023 the Trustee commenced this adversary proceeding by filing a Complaint (ECF No. 1), *Ex Parte* Motion for Temporary Restraining Order and Preliminary Injunction (the “*Ex Parte* TRO”) (ECF No. 4) and several related motions.

18. The Complaint seeks a declaratory judgment that the HCHK Entities are *alter egos* of the Debtor, or an order that the Debtor equitably owns the HCHK Entities, and related injunctive relief. (ECF No. 1). The Complaint explicitly alleges that the Deeds “represent null and void transfers” of the HCHK Entities’ assets. (ECF No. 1 ¶ 67). Accordingly, the Trustee’s own Complaint takes pains to dispute the powers and authority of the Assignee. For example, the Complaint alleges that the Assignee is merely the “purported” representative of the HCHK Entities. (ECF No. 1 ¶¶ 15, 41, 72, 73 and 80). Similarly, it alleges that the Assignee has “ostensibly” been assigned the assets of the HCHK Entities. (ECF No. 1 ¶ 3 n. 3).

19. The Complaint alleges that “[i]f the Trustee prevails on his *alter ego* claim, it will mean that the HCHK Entities will be merged with the Debtor’s estate and all of the assets of the HCHK Entities will constitute estate property as of [the Petition Date].” (ECF No. 1 ¶ 57). In other words, the Complaint seeks to make the HCHK Entities’ assets available to satisfy the claims of all the creditors of the Debtor. The Trustee estimates there are approximately 1300 such claims. (ECF No. 26 ¶ 15).

20. Thus, the recovery available to the HCHK Creditors on their claims may be very substantially reduced if the Trustee is successful.⁷ Their rights are certainly impinged.

21. On June 12, 2023, this Court issued an Order granting in part the *Ex Parte* TRO (the “TRO Order”), which in part “restrained and enjoined [the Assignee and the other Defendants] from commencing or continuing the [New York Court Proceedings].” (ECF No. 18 at 14).

22. The TRO Order further required the Assignee to “immediately notify the State Court of the issuance of this TRO.” (ECF No. 14 at 15). The HCHK Creditors have not been served with any such notice to the State Court and, indeed, have no confirmation that such notice was in fact provided or, if it was, what it said.⁸

The Motion to Compromise

23. On June 23, 2023, a mere 15 days after the Trustee initiated the Adversary Proceeding, the Trustee filed the Chapter 11 Trustee’s Motion, Pursuant to Bankruptcy Rule 9019, Regarding Settlement with Assignee of HCHK Entities Under New York Court Assignment Proceedings (“Motion to Compromise”). (ECF No. 25).

24. The Motion to Compromise seeks to “[p]romptly...transfer the HCHK Funds to the Trustee Accounts..., including cash deposited in accounts at ConnectOnce Bankcorp., Inc., in the approximate amount of \$38,835,734.27.” (ECF No. 25 Exh. 1 ¶ 5).

⁷ The HCHK Creditors do not concede that if the Trustee prevails on his *alter ego* claims or equitable ownership claims, the assets of the HCHK Entities necessarily will or should be consolidated with the Debtor’s estate. The HCHK Creditors reserve all rights to object to any attempt by the Trustee to so consolidate.

⁸ The dockets of the New York Court Proceedings are not visible to the HCHK Creditors (and a request to the New York court clerk was met with the clerk’s response that the dockets could not be made visible online). Accordingly, counsel for the HCHK Creditors requested from Assignee’s counsel copies of what was filed in the New York Court Proceedings. Assignee’s counsel provided four documents and represented that they were “the only documents” filed with the Court (other than certificates of service associated with the four documents). No copy of a notice of the TRO to the State Court was provided.

25. Moreover, pursuant to the Motion to Compromise, and despite the incongruity that under the TRO the Assignee was enjoined from continuing to prosecute the New York Court Proceedings (and by logical extension that should apply to the Assignee subsequently entering into (*i.e.*, post TRO) a settlement that would effectively negate the New York Court Proceedings and the protections it affords to *bona fide* HCHK Creditors) the Assignee has agreed to “take no position and file no pleadings with respect to the relief sought by the Trustee in (a) the Complaint, (b) the TRO Motion, or (c) any Dispositive Motion filed in the Adversary Proceeding....” (ECF No. 25 Exh. 1 ¶ 7). The Assignee further agreed not to assist any other party opposing the relief sought by the Trustee. (*Id.*).

26. The Motion to Compromise provides that the Assignee sought and obtained the Trustee’s agreement to a broad “exculpation” clause, which provided that if the Trustee were successful in the Adversary Proceeding, “all creditors and/or equity holders of the HCHK Entities will be barred and enjoined and restrained from commencing, prosecuting or asserting any request, claim, or cause of action...against the Assignee” (with a limited exclusion for claims arising from fraud, willful misconduct or gross negligence). (ECF No. 25 Exh. 1 ¶ 13).

27. At the hearing on the Motion to Compromise, counsel for the Assignee denied that the exculpation clause was “a release of third party claims,” such as claims of the HCHK Creditors. The Trustee, however, in his written Reply, acknowledged that the exculpation clause (and a related channeling injunction clause) “relate to claims [the HCHK Creditors] may have against the Assignee.” (ECF No. 45 ¶ 3 n.7).

28. In response to objections by the HCHK Creditors and the United States Trustee, the Assignee agreed to modify the language of the exculpation clause and channeling injunction. However, as set forth in the HCHK Creditors’ Objection to the Revised Proposed Order, the

proposed, modified order continues to unfairly burden the HCHK Creditors, without providing them any consideration or benefit. (*See* ECF No. 58).

29. Thus, even if the Motion to Compromise is denied, the Assignee has already made his intentions clear—to him, fighting for the HCHK Creditors is not worth the hassle. Rather, the Assignee believes he “may be exposed to claims relating to his handling of estate property” if the Court issues a final judgment in favor of the Trustee and is focused on ensuring that he cannot be held liable without regard to his fiduciary duty that is owed only to the creditors of the HCHK Entities and no one else. (ECF No. 46 ¶ 15). Accordingly, the HCHK Creditors are left without representation of their interests in the Adversary Proceeding.

ARGUMENT

I. THE HCHK CREDITORS ARE ENTITLED TO INTERVENE AS OF RIGHT UNDER RULE 24(a)(1)

30. Pursuant to F.R.C.P. 24(a)(1), on timely motion, the Court must permit anyone to intervene who “is given an unconditional right to intervene by a federal statute.” Section 1109(b) of the Bankruptcy Code creates an unconditional statutory right for “parties in interest” to intervene in adversary proceedings if request is made in a timely fashion. *In Term Loan Holder Comm. v. Ozer Grp., L.L.C. (In re Caldor Corp.)*, 303 F.3d 161, 169 (2d Cir. 2002); *Blankenship v. Endo Int’l pcl (In re Endo Int’l plc)*, Nos. 22-22549 (JLG), 23-07007 (JLG), 2023 Bankr. LEXIS 1199, at *14-15 (Bankr. S.D.N.Y. May 4, 2023).

a. This Motion to Intervene is Timely Under Federal Rule 24(a)(1)

31. The HCHK Creditors’ Motion is timely. Timing requirements for a motion to intervene are “flexible and the decision is one entrusted to the district judge’s sound discretion.” *U.S. v. Yonkers Bd. of Educ.*, 801 F.2d 593, 594–95 (2d Cir. 1986); *N. River Ins. Co. v. O&G Indus., Inc.*, 315 F.R.D. 1, 4 (D. Conn. 2016).

32. Courts consider four factors when determining if a motion to intervene is timely: “(1) how long the applicant had notice of the interest before it made the motion to intervene; (2) prejudice to existing parties resulting from any delay; (3) prejudice to the applicant if the motion is denied; and (4) any unusual circumstances militating for or against a finding of timeliness.” *RTM Capital Partners, Inc. v. Barnes*, No. 3:21-CV-1462 (RNC), 2021 U.S. Dist. LEXIS 229684, at *9 (D. Conn. Nov. 30, 2021) (quoting *United States v. Pitney Bowles, Inc.*, 25 F.3d 66, 70 (2d Cir. 1994)). “The most significant criterion is whether the delay in moving for intervention has prejudiced any of the existing parties.” *Sec. Inv’r Prot. Corp. v. Bernard L. Madoff Inv. Sec. LLC*, 550 B.R. 241, 248 (Bankr. S.D.N.Y. 2016); see also *Allco Fin. Ltd. v. Etsy*, 300 F.R.D. 83, 86 (D. Conn. 2014).

33. Here, all four factors weigh in favor of a finding that this motion is timely. The Adversary Proceeding was brought on June 8, 2023, less than six weeks prior to the filing of this motion. (ECF No. 1). Further, the HCHK Creditors did not know their interests were not adequately protected in the Adversary Proceeding until the Motion to Compromise was filed on Friday, June 23, 2023. (ECF No. 25). Once the Motion to Compromise was filed and the HCHK Creditors learned of the Assignee’s capitulation, they retained counsel and appeared through counsel at the Tuesday, June 27, 2023 Status Conference—four days after the HCHK Creditors were put on notice.

34. There is no prejudice to existing parties resulting from any delay. The Adversary Proceeding is in its nascent stages, no non-*ex parte* substantive relief has been granted, and the HCHK Creditors made their intentions to intervene known at the June 27, 2023 Status Conference. Further, the HCHK Creditors filed an Objection to the Motion to Compromise on July 5, 2023 (ECF No. 40), which noted the HCHK Creditors’ intention to intervene. (See ECF No. 45 ¶ 3 n.6,

in which the Trustee acknowledges that the HCHK Creditors reserve the right to intervene.) The HCHK Creditors will file any pleadings in this Adversary Proceeding in accordance with any scheduling order entered with regard to the existing parties.

35. The HCHK Creditors, however, will be prejudiced if the Motion is denied, as the HCHK Creditors' interests are not adequately represented by any existing parties, which is evident by the Assignee's acquiescence in the Motion to Compromise. Thus, the HCHK Creditors stand to have their combined claims of over \$27,000,000 significantly diluted with the Debtor's creditors, of which there are approximately 1,300. (ECF No. 26 ¶ 15).

36. Finally, there are no unusual circumstances militating against a finding of timeliness. Therefore, all factors favor a finding that the Motion is timely, satisfying the first element of Federal Rule 24(a).

b. The HCHK Creditors Are Entitled to Intervene as a "Party in Interest" Under Section 1109(b) of the Bankruptcy Code and Federal Rule 24(a)(1)

37. The HCHK Creditors are "parties in interest," as they hold "a direct financial stake in the outcome" of the Adversary Proceeding, as they have substantial claims against HCHK Technology, Inc. and HCHK Property Management, Inc. (*See* Exhs. B, C, D, E).

38. The term "party of interest is not defined in the Bankruptcy Code." *Doral Center, Inc. v. Ionosphere Clubs, Inc. (In re Ionosphere Clubs, Inc.)*, 208 B.R. 812, 814 (S.D.N.Y. 1997) (noting that the list in section 1109 is not exhaustive); *see also Roslyn Sav. Bank v. Comcoach Corp. (In re Comcoach Corp.)*, 698 F.2d 571, 573 (2d Cir. 1983) ("The term 'party in interest' is not defined in the Code."). Accordingly, courts interpret the term "on an ad hoc basis...to ensure that anyone who has a legally protected interest that could be affected by a bankruptcy proceeding is entitled to assert that interest with respect to any issue to which it pertains...." *In re Reyes*, No. 14-13233, 2015 Bankr. LEXIS 2575, at *3 (Bankr. S.D.N.Y. Aug. 4, 2015) (citations and internal

quotations marks omitted); *see also In re Johns-Manville Corp.*, 36 B.R. 743, 747-748 (Bankr. S.D.N.Y. 1984), *aff'd*, 52 B.R. 940 (S.D.N.Y. 1985) (explaining that “parties in interest” is an “elastic” concept and that the “listing of examples of parties in interest in Code Section 1109 is not meant to exclude other types of interested parties from the purview of that section”).

39. “‘The general theory behind [section 1109] is that anyone holding a direct financial stake in the outcome of the case should have an opportunity...to participate in the adjudication of any issue that may ultimately shape the disposition of his or her interest.’” *Savage & Assocs., P.C. v. K & L Gates LLP (In re Teligent, Inc.)*, 640 F.3d 53, 60 (2d Cir. 2011) (*quoting* Alan Resnick & Henry J. Sommer, *Collier on Bankruptcy* ¶ 1109.01 (16th ed. 2011)); *accord FutureSource LLC v. Reuters Ltd.*, 312 F.3d 281, 284 (7th Cir. 2002); *In re Alpex Computer Corp.*, 71 F.3d 353, 357 (10th Cir. 1995); *In re Hutchinson*, 5 F.3d 750, 756 (4th Cir. 1993)). Thus, a party will qualify as a “party in interest” under section 1109 when it has a direct financial stake in the proceeding.

40. If judgment is entered for the Trustee as sought in the Complaint, the HCHK Entities’ assets will be deemed property of the Debtor’s estate and divided among not just the HCHK Entities’ creditors, but all the Debtor’s creditors. (ECF No. 1 ¶¶ 68, 73; *see also* ECF No. 45 ¶ 5 n.8). The HCHK Creditors’ recovery is all but certain to be very dramatically reduced, with the obvious practical result being that the HCHK Creditors’ ability to recover on their claims will be substantially impinged.

41. This result might be appropriate if it were based on actual findings, supported by actual evidence, that the HCHK Entities are in fact *alter egos* of the Debtor or equitably owned by the Debtor. As it stands now, however, if the HCHK Creditors are not granted the right to intervene, their loss will flow from mere, unproven, allegations, the result of the Trustee’s success (which included the Trustee seemingly coopting the Assignee to abandon the interests of the

HCHK Creditors) in suppressing any opposition to his claims in the Adversary Proceeding. The HCHK Creditors should be allowed to challenge these *alter ego* allegations to ensure a fair and just outcome. The facts will be what the facts will be—but absent the right to present these facts, the HCHK Creditors justifiably fear that the facts will be shaded.

42. It is indisputable that the HCHK Entities do not currently have any actual, real legal representation in the Adversary Proceeding. Their purported fiduciary, the Assignee, has capitulated and wholly-abandoned his statutory and fiduciary duties to act solely in the best interests of the HCHK Creditors. This clear breach of fiduciary duty is evidenced by the Assignee's agreement to the Motion to Compromise, which (1) seeks to immediately transfer nearly \$39,000,000 of the HCHK Entities' monies to the Trustee, (2) reflects the Assignee's agreement not to contest the relief sought by the Trustee, and (3) provides the Assignee significant immunity from liability for said actions.

43. All of the Assignee's actions in furtherance of the proposed settlement were done on a rushed basis and, upon information and belief, without any meaningful consultation with any of the HCHK Entities' creditors. No expedition was required, *inter alia*, in that the HCHK Entities' assets are under the complete control of the Assignee and are going nowhere fast as the New York Court Proceedings are still in an entirely nascent state.

44. In his request for Court approval of his settlement with the Assignee, the Trustee explicitly argued that the Settlement Agreement preserved the HCHK Creditors' rights to contest the *alter ego* claims at the heart of the Adversary Proceeding. (ECF No. 45 ¶ 4). The Trustee went so far as to argue that this Court would offer the HCHK Creditors "due process" in connection with the Adversary Proceedings and recognized that the HCHK Creditors reserved the right to intervene and oppose the relief sought by the Complaint. (ECF No. 45 ¶ 3 and n.6).

45. The Assignee went one step further. He justified his agreement not to oppose the Trustee's claims partly on the ground that the Trustee will have "to prove his claims" of *alter ego* or equitable ownership of the HCHK Entities before the HCHK Entities' assets are merged with the Debtor's estate. (ECF No. 46 ¶¶ 12-13). Of course, the Assignee omits to mention that with the Assignee effectively joining forces with the Trustee, absent intervention by the HCHK Creditors, the Trustee's path in the Adversary Proceeding may well be entirely unimpeded by any defense.

46. Accordingly, the Assignee's defense of the Motion to Compromise rests on the representation or assumption that someone else will, in fact, put the Trustee to his proof. (The Assignee has made clear that he will not be the one to do so.)

47. Moreover, the HCHK Entities made no objection to the Settlement Agreement, which further illustrates the lack of representation afforded to the HCHK Creditors.

48. Thus, the HCHK Creditors' interests are far from adequately represented in the Adversary Proceeding. Instead, their interests are being threatened by the Trustee's *alter ego* allegations and what appears to be the Assignee's rampant self-dealing. If the HCHK Creditors cannot intervene, they stand to suffer significant harm.

49. Therefore, the HCHK Creditors have a right to intervene in the Adversary Proceeding under the relevant statutes. *See, e.g., Brandt v. Hongkong & Shanghai Banking Corp. (In re China Fishery Grp. Ltd.)*, Nos. 16-11895 (JLG), 16-11914 (JLG), 18-01575-JLG, 2018 Bankr. LEXIS 4063, at *10 (Bankr. S.D.N.Y. Dec. 27, 2018) (remarking that section 1109(b) granted "parties in interest" a statutory right to intervene in an adversary proceeding); *Official Comm. of Asbestos Claimants of G-I Holding, Inc. v. Heyman*, 2003 U.S. Dist. LEXIS 21164, at *5-6 (S.D.N.Y. Nov. 25, 2003) (same).

50. Further, while Federal Rule 24(c) provides that a motion to intervene be accompanied by a pleading “that sets out the claim or defense for which intervention is sought,” a waiver of that requirement is appropriate in cases such this, where the proposed intervenors are seeking to intervene merely to vindicate their rights under section 1109(b) of the Bankruptcy Code. *See In re Endo Int’l plc*, 2023 Bankr. LEXIS 1199, at *17 (Bankr. S.D.N.Y. May 4, 2023) (citing *Adelphia Commc’ns Corp. v. Rigas (In re Adelphia Commc’ns Corp.)*, 285 B.R. 848, 856 n. 18 (Bankr. S.D.N.Y. 2002)). The HCHK Creditors respectfully request that the Court waive any requirement that they file a proposed pleading.

II. ALTERNATIVELY, THE HCHK CREDITORS ARE ENTITLED TO PERMISSIVE INTERVENTION UNDER FEDERAL RULE 24(b)(1)(B)

51. While the HCHK Creditors’ entitlement to intervene as of right is clear, they also respectfully request, in the alternative, that they be permitted to intervene pursuant to Federal Rule of Civil Procedure 24(b)(1)(B), which allows permissive intervention of anyone who “has a claim or defense that shares with the main action a common question of law or fact.” F.R.C.P. 24(b)(1)(B). The Court’s permissive intervention analysis is informed by the same four factors considered in connection with motions for intervention as of right. *Certified Multi-Media Sols., Ltd. v. Preferred Contractors Ins. Co. Risk Retention Grp. LLC*, No. 14-cv-5227(ADS)(SIL), 2015 U.S. Dist. LEXIS 129050, at *15 (E.D.N.Y. Sep. 24, 2015). Those factors are: “(1) whether the application is timely filed, (2) whether the party seeking intervention shows an interest in the action, (3) whether that party demonstrates that the interest may be impaired by the disposition of the action, and (4) whether that party has shown that the interest is not protected adequately by the existing parties to the action.” *R Best Produce, Inc. v. Shulman–Rabin Mktg. Corp.*, 467 F.3d 238, 240 (2d Cir. 2006), *quoting In re Bank of N.Y. Derivative Litig.*, 320 F.3d 291, 300 (2d Cir. 2003).

52. The phrase “claim or defense” is not to be read technically, and only requires “some interest on the part of the applicant.” *Louis Berger Grp., Inc. v. State Bank of India*, 802 F. Supp. 2d 482, 488 (S.D.N.Y. 2011) (internal quotation marks and citation omitted); *see also Red Rock Sourcing LLC v. JGX, LLC*, 2023 U.S. Dist. LEXIS 17948, at *11 (S.D.N.Y. Feb. 1, 2023).

53. For all of the reasons stated in Point II, *supra*., the HCHK Creditors should be permitted to intervene because (a) they have a substantial financial interest in the subject matter of the Adversary Proceeding; (b) without intervention, their interest will be impaired by the disposition of the Adversary Proceeding; (c) their interest is not adequately protected by the parties to the Adversary Proceeding; and (d) this motion is timely.

CONCLUSION

For all of the foregoing reasons, the HCHK Creditors respectfully request that their Motion to Intervene be granted.

Dated: July 17, 2023
Stamford, Connecticut

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