

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

FRONT RANGE EQUINE RESCUE,)
THE HUMANE SOCIETY OF THE)
UNITED STATES, MARIN HUMANE)
SOCIETY, HORSES FOR LIFE)
FOUNDATION, RETURN TO)
FREEDOM, ROMONA CORDOVA,)
KRYSTLE SMITH, CASSIE GROSS,)
DEBORAH TRAHAN and BARBARA)
SINK,)

Cause No: 1:13-cv-00639-MCA-RHS

Plaintiffs,)

vs.)

TOM VILSACK, Secretary U.S.)
Department of Agriculture,)
ELIZABETH HAGEN, Under Secretary)
for Food Safety, U.S. Department of)
Agriculture; and ALFRED A.)
ALMANZA, Administrator, Food)
Safety and Inspection Service, U.S.)
Department of Agriculture,)

Defendants.)

**BRIEF IN SUPPORT OF MOTION TO INTERVENE
BY RESPONSIBLE TRANSPORTATION, L.L.C.**

Responsible Transportation, L.L.C. (“RT”), by counsel Patrick J. Rogers LLC (Pat Rogers) and Simmons Perrine Moyer Bergman PLC (Kevin Visser and Kathleen Kleiman), hereby submits its brief in support of its Motion to Intervene as follows:

I. INTRODUCTION

RT requests that the Court allow it to intervene as a Defendant in this matter. As evidenced by the Complaint, RT is a real party in interest in this matter as one of the companies Plaintiffs attempt to prevent receiving a grant of inspection from governmental

Defendants. RT's interests will be impaired if Plaintiffs' claims succeed and the named Defendants are unable to adequately represent RT's interests.

II. BACKGROUND

RT has expended significant public and private resources to secure the necessary funding and support to operate an equine processing facility in Sigourney, Iowa. (*See* Declaration of Keaton Walker filed herewith in support of this Motion and in resistance to Plaintiffs' Motion for Temporary Restraining Order and Preliminary Injunction ("Declaration").) In December 2012, RT filed its application for a federal Grant of Inspection for equine processing with the United States Department of Agriculture ("USDA"). (*See* Declaration, ¶10.) After working for months to comply with the necessary information and documentation required by the appropriate agencies and allowing various inspections and assessments of its facilities, RT received a conditional Grant of Inspection from the USDA on July 2, 2013. (*Id.*) RT is fully prepared to commence operations, but not yet operating and would be significantly damaged absent denial of Plaintiffs' Motion. (*See* Declaration, ¶7, 17-21.) If it is forced to remain idle, RT will continue to incur damages including special damages and will not have sufficient funds to begin operations. (*Id.*) Granting the relief sought will effectively put RT out of business or, at a minimum, cause devastating economic harm. (*Id.*)

III. RULE 24 STANDARD

Pursuant to Federal Rule of Civil Procedure 24, the Court must permit intervention to anyone "claim[ing] an interest relating to ... the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability

to protect its interest, unless existing parties adequately represent that interest.” Fed. R. Civ. P. 24 (a)(2).

In order to intervene as a matter of right under Rule 24(a)(2), the movant must demonstrate the following:

- (i) the motion is timely;
- (ii) the movant claims an interest relating to the property or transaction which is the subject of the action;
- (iii) the movant's interest relating to the property may be impaired or impeded; and
- (iv) the movant's interest is not adequately represented by existing parties.

S2 Automation LLC v. Micron Technology, Inc., 2012 WL 3656462, *11 (D.N.M. 2012)(citing *Elliot Indus., Ltd. P'ship. v. Am. Prod. Co.*, 407 F.3d 1091, 1103 (10th Cir. 2005)). A liberal policy allowing intervention is typically followed by the Tenth Circuit. *Utah Ass'n of Counties v. Clinton*, 255 F.3d 1246, 1249 (10th Cir. 2001) (quoting *Coalition of Ariz. / N.M. Counties for Stable Economic Growth v. Dep't of Interior*, 100 F.3d 837, 841 (10th Cir. 1996)).

IV. ARGUMENT

A. RESPONSIBLE TRANSPORTATION MUST BE PERMITTED TO INTERVENE AS A MATTER OF RIGHT.

As demonstrated below, RT, must be allowed to intervene as a Defendant in this matter under Rule 24(a)(2).

1. Responsible Transportation's Motion is Timely.

Whether a motion to intervene is timely is determined by evaluating all the circumstances, including the amount of time elapsed since the proposed intervenor knew of their interest in the case, any potential prejudice to the existing parties, and the prejudice to the proposed intervenor. *Am. Assoc. of People with Disabilities v. Herrera*, 257 F.R.D. 236, 245 (D.N.M.2008).

The Complaint in this matter was originally filed on July 2, 2013, less than three weeks prior to this filing. (Dkt. #1.) RT was notified of the filing on or about July 12, 2013, and immediately consulted with its Iowa counsel to determine the appropriate steps to intervene and protect its interests. Moreover, during the Court's Status Conference on July 15 and 16, 2013, the Court set a deadline of July 19, 2013 for any motions to intervene. (Dkt. # 44.) RT's Motion to Intervene is being filed within the deadline set by the Court as well as within a reasonable time after learning of the case. Based on these circumstances, RT's Motion to Intervene is timely.

2. Responsible Transportation Has an Interest in the Subject of the Action.

In order to satisfy the second prong establishing a right to intervene, RT must "claim ... an interest relating to the property or transaction which is the subject of the action." *See* Fed. R. Civ. P. 24(a)(2); *see also Utah Assoc. of Cnty.*, 255 F.3d at 1250. The claimed interest must be "direct, substantial, and legally protectable." *Utah Assoc. of Cnty.*, 255 F.3d at 1250. However, "[t]he threshold for finding the requisite legal protectable interest is not high." *Forest Guardians v. U.S. Dep't. of Interior*, 2004 WL 3426413, at *5 (D.N.M. 2004). In fact, the mere threat of economic injury is sufficient to permit intervention. *Id.* (citing *Utahns for Better Transp. v. U.S. Dep't. of Transp.*, 295 F.3d 1111, 1115 (10th Cir. 2002)).

As set forth in the Complaint (Dkt. #1 at p. 36), Plaintiffs seek to restrain Defendants from issuing a Grant of Inspection to RT. RT is interested by virtue of its reliance upon the Grant of Inspection to operate its business. The effect of a grant of injunctive relief is to keep RT's doors closed.

3. Responsible Transportation's Interest Will be Impaired.

RT must next show that its interest may be impaired. To fulfill this element, RT must only show that impairment of its legal interest is possible if intervention is denied. *WildEarth Guardians v. U.S. Forest Serv.*, 573 F.3d 992, 995 (10th Cir. 2009). This is a minimal burden. *Id.* In fact, intervention may be allowed “based on an interest that is contingent upon the outcome of the litigation.” *San Juan Cnty., Utah v. United States*, 503 F.3d 1163, 1203 (10th Cir. 2007).

If Plaintiffs were granted the relief sought in their Complaint and Motion for Temporary Restraining Order, RT's ability to operate its business would be impaired causing significant economic injury. (*See* Declaration, ¶7, 17-21.)

4. Responsible Transportation's Interest is not Adequately Represented by the Existing Defendants.

Lastly, RT must show that its interest may not be adequately represented by the Defendants named herein. This burden is minimal, requiring only a showing that representation may be inadequate. *Forest Guardians*, 2004 WL 3426413 at *6. The mere possibility of divergence of interest satisfies this burden. *Coal. of Arizona/New Mexico Cntys. for Stable Econ. Growth v. Dep't. of Interior*, 100 F.3d 837, 845 (10th Cir.1996). The named Defendants represent the United States government. The government's interests are not identical to the private interests of a particular group merely because they are both defendants. *Wild Earth Guardians*, 573 F.3d at 996.

RT's interests in operating its business are not adequately represented by the United States government. The government's interest may be in fulfilling obligations for environment and food safety, and may include support for issued licenses and lawful commerce, but RT's interests extend beyond the government's interests to the protection of

its shareholders, employees, lenders, and grantors. RT must be allowed to represent its private interest in this litigation.

V. CONCLUSION

WHEREFORE, for all the foregoing reasons, Responsible Transportation respectfully requests that the Court enter an Order permitting it to intervene as a Defendant herein.

Respectfully submitted,
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CERTIFICATE OF SERVICE

I CERTIFY THAT on this 19th day of July 2013 a true and correct copy of the foregoing was filed through the CM/ECF filing system which shall cause all counsel to receive notification of same.

By: s/ Patrick J. Rogers
Patrick J. Rogers