

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

Civil Action No. 1:20-cv-01327

**CO Craft, LLC dba Freshcraft,  
on behalf of itself and all other similarly situated,**

**Plaintiff**

v.

**Grubhub Inc.,  
a Delaware Corporation,**

Defendant.

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**PLAINTIFF'S RESPONSE BRIEF IN OPPOSITION TO MOVANTS LYNN SCOTT,  
LCC AND THE FARMER'S WIFE, LCC'S MOTION TO INTERVENE**

Plaintiff CO Craft, LLC dba Freshcraft (“Plaintiff”) submits its Opposition to the Motion to Intervene filed by Lynn Scott, LLC and The Farmer’s Wife, LLC (hereinafter, “Movants”) and respectfully requests, for the reasons outlined below, that the Motion be denied.

### **INTRODUCTION**

On the eve of the parties’ presentment of a proposed class settlement to this Court that will provide significant, sweeping relief to Plaintiff’s proposed Class, Movants launch an untimely attempt to intervene and derail months of hard-fought negotiations, only to baselessly argue that a settlement agreement that they have never seen, or even asked to see, is somehow deficient or fails to protect the claims advanced in the copy-cat complaint Movants filed months after the instant action.

To be clear, Movants’ real issue does not appear to lie with the adequacy of the proposed settlement, but with the fact that Movants’ counsel is not the party responsible for achieving the result. If the impetus for Movants’ attempt to intervene were truly concerns over the adequacy of the Settlement Agreement, Movants could have asked at any point to review its terms and the relief it provides. Similarly, if the real concern was the adequacy of the settlement and the relief it provides, Movants could have chosen instead to wait for preliminary approval and thoughtfully considered whether to remain members of the class, or to opt out or object. Allowing the Movants to intervene at this juncture would delay the relief afforded by the settlement agreement or endanger it entirely. Any true concerns over the adequacy and relief afforded by the settlement agreement can be addressed if and when this Court grants preliminary approval of the settlement.

As a result of these issues, and more, Movants fall far short of meeting their burden in demonstrating that intervention in this case is warranted. Notably, Movants do not and cannot establish that the settlement agreement fails to adequately represent the Movants interests, as

Movants have never even seen, or requested, details regarding the settlement. Furthermore, the Settlement Agreement completely protects any purported interest Movants may have in this litigation. Thus, Movants have failed to demonstrate factors entitling them to intervention as of right.

For similar reasons, this Court should not grant permissive intervention. The Movants will have ample opportunity to protect and assert their rights if and when this Court grants preliminary approval of the settlement. The costs of intervention, by contrast, could be substantial, as this case is at the settlement phase, and Movants propose to intervene and revert back to the discovery phase, consuming extensive judicial resources and threatening prolonged delay. For the following reasons, Movants' Motion to Intervene should be denied in its entirety.

#### **FACTUAL BACKGROUND**

Plaintiff CO Craft, LLC dba Freshcraft (hereinafter, "Plaintiff") filed its Class Action Complaint on May 11, 2020 only after months of an extensive pre-suit investigation into Freshcraft's allegations that Grubhub had featured the restaurant on its platforms and misrepresented its services. The results of Counsel's investigation revealed that there were numerous restaurants across the country that shared Freshcraft's complaints.

Immediately following the filing of Plaintiff's Complaint in May of 2020, there was an onslaught of unsolicited media attention. There were at least 30 published stories documenting Freshcraft's allegations against Grubhub, including a New York Times article that was published in June of 2020, months before the Movants filed their Complaint. After the Freshcraft action was filed, several restaurants all over the country began contacting Plaintiff's Counsel and relaying their claims that: (1) Grubhub had advertised the restaurants' content without a contractual relationship with the restaurant or without their consent, and (2) the content that was on Grubhub's

platforms was often inaccurate or misrepresented the restaurants' hours of operation, delivery options, or the services provided by the restaurant; all of which were the same as the claims advanced by Freshcraft.

After filing the Complaint, the parties began discussing their positions and agreed that it would be beneficial to involve an experienced mediator. The parties ultimately agreed to attend a virtual mediation with the Hon. Diane M. Welsh (ret). In July of 2020, per the parties' agreement, Plaintiff submitted Mediation Discovery to Grubhub outlining several documents that would be necessary in advance of mediation, including but not limited to, documents to ascertain how many Non-Partnered Restaurants were featured on Grubhub's platforms. Following extensive adversarial and arms' length negotiations, which included but was not limited to a three-day mediation with mediator Hon. Diane M. Welsh (ret), the parties reached a settlement agreement that represents the Plaintiff's and the proposed Class' best interests.

In the midst of these extensive settlement negotiations between Plaintiff and Grubhub, Movants filed a putative class action in the Northern District of Illinois against Grubhub on October 26, 2020, premised upon substantially similar allegations as contained in the instant Complaint, alleging causes of action under the Lanham Act (*Lynn Scott, LLC vs. Grubhub, Inc.*, No. 1:20-cv-06334, hereinafter, "Movants' Action").

In January of 2021, after prolonged negotiation and settlement discussions, Plaintiff submitted an Amended Complaint with a modified class definition that was a product of Plaintiff's continued investigation into the claims that formed the basis for Plaintiff's Complaint and the agreed-upon resolution between the parties to resolve the claims that were, or could have been, asserted in the Plaintiff's Complaint. While the class definition has been modified, the basis for Freshcraft's allegations have always been, and remain, to address Grubhub's advertisement of

Non-Partnered Restaurants’ services on its various Platforms.

As a result, Plaintiff seeks to certify a nationwide class of restaurants that did not have an unterminated contractual relationship with Grubhub (“Non-partnered Restaurants”) and were listed or included on Grubhub’s consumer-facing websites or mobile apps (“Grubhub Platforms”). Plaintiff raised a claim for false advertising under the Lanham Act alleging that Grubhub misrepresented the services provided by its restaurant and other non-partnered restaurants that were featured on its platform.

The terms of the Settlement Agreement call for significant and substantial benefits to the Plaintiff and members of its proposed Class. These terms and conditions will be outlined in the Settlement Agreement which will be part and parcel of Plaintiff’s Unopposed Motion for Preliminary Approval that must be filed, per this Court’s Order, on or before April 16, 2021.

Despite this, only after nearly a year of litigation, and despite knowledge of a nearly completed settlement between Plaintiff and Grubhub, Movants filed this Motion to Intervene with this Court on March 18, 2021, seeking to conduct “discovery into the adequacy of Freshcraft’s representation of those interests and the fairness of the settlement negotiated on their behalf.” (Def.’s Motion to Intervene, ECF No. 40, Page 1). Plaintiff responds as follows.

#### **STANDARD OF REVIEW**

Federal Rule of Civil Procedure 24 governs intervention. Under the rule, there are two types of intervention: mandatory and permissive. Intervention is mandatory when the putative intervenor “claims 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). Intervention is permissible when the putative intervenor “has a claim or defense that shares with

the main action a common question of law or fact.” Fed. R. Civ. P. 24(b)(1)(B). Permissive intervention is subject to a court’s sound discretion. *PDC Energy, Inc. v. DCP Midstream, LP*, 2014 U.S. Dist. LEXIS 199492, \*4, 2014 WL 12676230 (10th Cir. 2014) (citing *City of Stilwell v. Ozarks Rural Elec. Coop. Corp.*, 79 F.3d 1038, 1043, (10th Cir. 1996)). The rule specifically provides: “In exercising its discretion, the court must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties’ rights.” Fed. R. Civ. P. 24(b)(3).

## ARGUMENT

### **I. Movants Have Failed to Demonstrate Factors Entitling Them to an Intervention as of Right.**

In the Tenth Circuit, an intervention-applicant must make four showings to qualify for mandatory intervention: “(1) the application is timely, (2) the applicant claims an interest relating to the property or transaction which is the subject of the action, (3) the applicant's interest may be impaired or impeded, and (4) the applicant’s interest is not adequately represented by existing parties.” *PDC Energy, Inc. v. DCP Midstream, LP*, 2014 U.S. Dist. LEXIS 199492, \*4, 2014 WL 12676230 (10th Cir. 2014) (citing *Elliot Indus. Ltd. P'ship v. BP Am. Prod. Co.*, 407 F.3d 1091, 1103 (10th Cir. 2005) (citation omitted)). Failure to satisfy even one of these requirements is sufficient to warrant denial of a motion to intervene as a matter of right. *Id.* at 1102-03. As Movants cannot satisfy these four criteria, mandatory intervention should be denied.

#### **A. Movants’ application is not timely.**

As a threshold matter, Movants’ application is untimely. “The timeliness of a motion to intervene is assessed in light of all the circumstances, including the length of time since the applicant knew of his interest in the case, prejudice to the existing parties, prejudice to the applicant, and the existence of any unusual circumstances.” *Utah Ass’n of Counties v. Clinton*, 255 F.3d 1246, 1250 (10th Cir. 2001) (quotation omitted). “The analysis is contextual; absolute

measures of timeliness should be ignored.” *Id.* (quotation omitted). “The requirement of timeliness is not a tool of retribution to punish the tardy would-be intervenor, but rather a guard against prejudicing the original parties by the failure to apply sooner.” *Id.*

Despite knowing that this case has been pending for eleven months, Movants filed its Motion to Intervene nearly a year after this case was initially filed and only after a settlement was achieved. Plaintiff’s Complaint was filed on May 11, 2020. (ECF No. 1). Following extensive prolonged negotiations throughout the entirety of the pending litigation, Plaintiff expanded its proposed class definition on January 29, 2021, and announced settlement on February 24, 2021. (ECF Nos. 35, 36). Movants’ Motion to Intervene was not filed until March 18, 2021, ten months after this case’s inception, over six weeks after Plaintiff had expanded the proposed class definition, and over three weeks after Plaintiff announced settlement (not “less than three weeks later” as Movants assert in its motion). (ECF No. 40, p. 9).

Movants fail to provide good cause for its belated motion. Permitting intervention would reward Movants’ tardiness by derailing the orderly and prompt resolution of this case. Courts often measure an intervention-applicant’s timeliness against the “point to which the suit has progressed[.]” *Clarke v. Baptist Memorial Healthcare Corp.*, 264 F.R.D. 375, 378 (W.D. Tenn. 2009). In *Clarke*, the Court denied intervention as untimely because the case had progressed to the summary judgment stage by the time the motion to intervene was filed. Similarly, in *Dandridge v. Jefferson Parish School Board*, 249 F.R.D. 243, 247 (E.D. La. 2008), the Court denied intervention as untimely where the motion to intervene was filed just four days before the Court would either adopt or reject a proposed consent order at a fairness hearing. Likewise, here, Movants’ intervention is simply too late.

This case has been pending since May 2020. The filing of the Complaint immediately

triggered an onslaught of unsolicited media attention. A simple pre-suit investigation by Movants' counsel would have revealed the Freshcraft filing, and some would argue that it did given the similarity of the claims. Even if Movants were somehow unaware of the Freshcraft action, at a minimum, they were aware that Plaintiff had amended its class definition, and subsequently announced a settlement, and yet Movants waited several weeks to alert the parties and this Court that it wanted to participate in this case. Such a delay is untenable.

Movants' late entry into this case prejudices Plaintiff and the proposed Class. Such an intervention at this late stage of the proceedings, after a settlement has already been reached following extensive, prolonged negotiations, impedes Plaintiff's and the proposed Class's abilities to achieve a favorable resolution to their claims. The prejudice to Plaintiff and the proposed Class is significant. This Court should not facilitate Movants' strategy of impacting Plaintiff's Class settlement. The Court has broad discretion to find that Movants' Motion to Intervene is untimely. *See Sanguine, Ltd. v. United States Dep't of Interior*, 736 F.2d 1416, 1418 (10th Cir. 1984) (citing *NAACP v. New York*, 413 U.S. 345, 366, 37 L. Ed. 2d 648, 93 S. Ct. 2591 (1973)) ("The trial court must determine timeliness in light of all of the circumstances, including the length of time since the applicant knew of his interest in the case, prejudice to the existing parties, prejudice to the applicant, and the existence of any unusual circumstances.") (internal citations omitted). Plaintiff respectfully requests that the Court do so.

**B. Movants do not assert an interest sufficient to warrant intervention as of right.**

The U.S. Court of Appeals for the Tenth Circuit has held that to intervene as a matter of right, Movants must show it has an interest in the proceedings which is "direct, substantial, and legally protectable." *City of Stilwell v. Ozarks Rural Elec. Coop. Corp.*, 79 F.3d 1038, 1042 (10th Cir. 1996) (citing *Alameda Water & Sanitation Dist. v. Browner*, 9 F.3d 88, 90 (10th Cir. 1993)).

The U.S. Supreme Court has stated that it is a significantly protectable interest. *Donaldson v. United States*, 400 U.S. 517, 531 (1971).

Movants' Motion to Intervene is based upon a purported inclusion in Plaintiff's amended class definition. (Def.'s Mot. at p. 9). However, here, Movants' interests in this litigation are entirely "contingent on Plaintiff prevailing which thus makes [Movants'] interest collateral to that at issue in this matter." *PDC Energy, Inc. v. DCP Midstream, LP*, 2014 U.S. Dist. LEXIS 199492, \*5-6, 2014 WL 12676230 (D. Colo. Sept. 3, 2014) (ECF No. 16 at 3 ("In this lawsuit against [DCP Midstream], PDC Energy, which is a successor in interest to [Petroleum Development Corporation], has asserted a number of claims against [DCP Midstream] which, *if successful*, would entitle the members of the PDC settlement class to their proportionate royalty share of any such recovery by PDC Energy against [DCP Midstream].") (Emphasis added.) "Such an interest is insufficient to support intervention as a matter of right." *PDC Energy, Inc.*, 2014 U.S. Dist. LEXIS at \*5 (citing *Mitchell v. Faulkner*, Case No. 07 Civ. 2318, 2009 U.S. Dist. LEXIS 17374, 2009 WL 585882, at \*4-5 (S.D.N.Y. Mar. 5, 2009) (holding that prospective intervenors lacked a sufficient "interest" to support intervention as a matter of right because their claims were contingent upon the plaintiff's recovery from the defendant).

To intervene as a matter of right, Movants must show they have an interest which is "*direct, substantial, and legally protectable.*" *City of Stilwell v. Ozarks Rural Elec. Co-op Corp.*, 79 F.3d 1038, 1042 (10th Cir. 1996) (internal quotation and citation omitted and emphasis added). Because Movants' purported interest is contingent upon Plaintiff's success, or Grubhub otherwise fulfilling its obligations under the Settlement Agreement, Movants have failed to demonstrate a 'direct' interest. *PDC Energy, Inc.*, 2014 U.S. Dist. LEXIS at \*5 (citing Black's Law Dictionary 525 (9th ed. 2009) (defining "direct" as "free from extraneous influence").

**C. Denying intervention would not impair nor impede Movants' asserted interests.**

As previously noted, Movants do not have a legally protectable interest that warrants intervention as of right. Thus, their alleged interest cannot be placed in jeopardy by this litigation because the interest they allege is not implicated in this case.

Even if this Court finds that Movants' interest is sufficient to support intervention as of right, Movants cannot show that their interests will be impaired if they are denied intervention. To demonstrate an impairment of their interest, Movants must show that such interest would be prejudiced if they did not participate in the main action. *Utah Ass'n of Counties v. Clinton*, 255 F.3d 1246, 1253 (10th Cir. 2001). However, "question of impairment is not separate from the question of existence of an interest." *Utah Ass'n of Counties*, 255 F.3d at 1253. Here, Movants "nevertheless cannot show that disposition of this action 'may as a practical matter impair or impede [Movants'] ability to protect [their] interest.'" *PDC Energy, Inc.*, 2014 U.S. Dist. LEXIS at \*8 (quoting *Coalition of Ariz./N.M. Counties for Stable Econ. Growth v. Dep't of Interior*, 100 F.3d 837, 844 (10th Cir. 1996) (citation omitted)).

While Movants contend the terms of the proposed settlement agreement will impair or impede "their ability to obtain adequate relief," (Def.'s Mot. at 9), here, Movants are completely unaware of the terms of the Settlement Agreement. Movants even admit that the "terms of the settlement have not been disclosed." (*Id.* at 8). Movants have never requested to review, or have any idea, of the terms delineated in the Settlement Agreement, or the effect of those terms. Thus, Movants clearly mischaracterize the proposed Settlement Agreement in an attempt to derive a significantly protectable interest. However, ultimately, Movants have failed to demonstrate an interest that entitles them to intervention and failed to establish how that interest may be impaired or impeded.

Contrary to the assertions of Movants, the proposed Settlement Agreement does not ‘severely compromise’ the relief sought in Movants’ underlying case. Again, this argument lacks any substance whatsoever when Movants are oblivious to the terms contained in the Settlement Agreement and have never even asked to see the agreement. Plaintiff is adamant that the Settlement Agreement will provide significant, immediate relief to the putative class. Should any class member wish to opt-out and not be included in the settlement, they retain the ability to exercise that option. Accordingly, Movants have failed in their burden to demonstrate that denial of intervention would impair or impede their purported interests.

**D. Movants’ interests are adequately represented by Plaintiff.**

The fourth Rule 24(a) factor – whether Movants’ interests are adequately represented by the existing parties – manifestly precludes intervention as of right. Plaintiff has more than adequately represented Movants interests, and Plaintiff’s own interests align perfectly with that of Movants in seeking injunctive relief.

Although the burden of demonstrating inadequate representation is minimal, a presumption of adequacy of representation exists where “‘the objective of the applicant for intervention is identical to that of one of the parties.’” *City of Stilwell, Okla. v. Ozarks Rural Elec. Coop. Corp.*, 79 F.3d 1038, 1042 (10th Cir. 1996) (quoting *Bottoms v. Dresser Indus., Inc.*, 797 F.2d 869, 872 (10th Cir. 1986)); *see also Coal. of Ariz./N.M. Counties for Stable Econ. Growth v. Dep’t of Interior*, 100 F.3d 837, 845 (10th Cir. 1996). “Under such circumstances, we presume representation is adequate.” *Tri-State Generation & Transmission Ass’n v. N.M. Pub. Regulation Comm’n*, 787 F.3d 1068, 1072 (10th Cir. 2015) (citing *Bottoms*, 797 F.2d at 872-73; *San Juan Cnty., Utah v. United States*, 503 F.3d 1163, 1204 (10th Cir. 2007) (opinion of Hartz, J.); *Id.* at 1227 & n.1 (Ebel, J., dissenting). “Thus, even though a party seeking intervention may have

different ‘ultimate motivation[s]’ ... where its objectives are the same, we presume representation is adequate.” *Tri-State Generation & Transmission Ass’n*, 787 F.3d at 1072-1073 (quoting *Ozarks*, 79 F.3d at 1042).

Here, Movants and Plaintiff share the same interests in seeking the proposed injunctive relief. It is undisputed that Movants share the “same ultimate objective” as Plaintiff – obtain relief from Defendant Grubhub for their purported violations of the Lanham Act. During settlement negotiations, Plaintiff vigorously fought for these very principles, adequately representing the interests of Movants the Plaintiff. Thus, Plaintiff is entitled to a presumption of adequate representation.

In failing to overcome this presumption, Movants rely upon a misguided interpretation and mischaracterization of *Ross v. Convergent Outsourcing, Inc.*, 323 F.R.D. 656 (D. Colo. 2018). In *Ross*, this Court examined the parties’ Joint Motion for Conditional Class Certification and Preliminary Approval of Class Settlement, as well as proposed intervenors motion for intervention. *Id.* at 658. While the *Ross* plaintiff “initially sought to bring claims on behalf of a class limited to ‘persons in the State of Colorado,’” the parties’ joint motion for class certification and preliminary approval of settlement sought “certification of a nationwide class of more than 3.7 million individuals.” *Id.*

Movants’ misrepresentation of this Court’s holding in *Ross* begins by referencing discussion of a “reverse auction” as reasoning for granting a motion to intervene. However, this Court’s discussion in *Ross* of a potential reverse auction only came in assessing whether or not to grant the parties’ motion for preliminary approval, not their motion to intervene. *Ross*, 323 F.R.D. at 660-661. Moreover, the *Ross* Court premised its review in the context that “the proposed settlement agreement significantly broadens the class that plaintiff initially sought to represent,

thereby diluting the original Colorado class members' potential recovery, and provides for the release of similar claims in numerous pending class actions, all to defendants' benefit." *Id.* A closer examination of these facts reveals drastic differences in the present case.

First, Freshcraft's amendment to its class definition is entirely different from the situation the Court examined in *Ross*. Here, it was readily apparent at the outset of this case that Plaintiff was negotiating for a much larger class definition than originally anticipated. Even still, this amendment does not compare to the enormous leap plaintiffs made in *Ross*, going from a small, local class to a nationwide settlement encompassing millions of individuals. Second, neither Movants nor the original class members' potential recovery is diluted at all by this Settlement Agreement. Potential class members may enjoy the substantial injunctive relief provided by the settlement, or they can opt-out and pursue their claims.

Further, this Court's decision to grant the motion to intervene in *Ross* was based on other severe issues in the *Ross* plaintiffs' settlement agreement which are not present in the instant case. First, absent intervention, the proposed interveners in *Ross* faced a settlement that would result in "little to no actual recovery" and the settlement would impair their ability to pursue meaningful recovery." *Ross*, 323 F.R.D. at 661-662. Neither of these issues are present here, nor can the Movants argue that it is when they have chosen to remain ignorant about what the Settlement Agreement entails or affords to the proposed Class. Second, the *Ross* intervenors' claims of inadequate representation were premised upon this significant dilution of potential recovery, which is not present in the instant case.

Furthermore, Movants have failed to demonstrate an adversity of interest, collusion, or nonfeasance, much less the strong showing required to rebut the presumption of adequacy of representation that rises in these circumstances.

Movants present a faint contention that Plaintiff's purported failure to notify this Court of Movants' Action, which was filed after Plaintiff's, was somehow done in an attempt to avoid scrutiny during the settlement approval process. (Def.'s Mot. at 10-11). Movants also contend the present Settlement Agreement is "suspicious" as representative of a "quick settlement, settlement of the least well-developed case, or settlement with the least experienced plaintiffs' counsel." *Id.* at 11. These false insinuations bear no weight in law or merit, as Movants' failure to demonstrate the factors necessary to overcome the presumption of adequate representation dooms Movants' intervention as of right. Movants do not and cannot credibly allege or show adversity of interest, collusion, or nonfeasance with respect to Plaintiff. Movant fails to identify any legal or factual argument that they intend to make that Plaintiff will not.

Here, no collusion occurred. Negotiations were conducted at arms' length and continued over the course of many months. This is a well-developed case, as parties on both sides extensively advocated for their respective positions and analyzed each side's strengths and weakness. Moreover, this is not a "large scale settlement" disposing of Movants' rights; they are entirely free to opt-out of the Settlement Agreement. Additionally, Plaintiffs' counsel is extremely well-versed in class action litigation and has been appointed class counsel in numerous class actions in courts across the country. Movants have failed in their burden to overcome the presumption of adequacy of representation.

## **II. This Court Should Deny Permissive Intervention Under Rule 24(b).**

Similarly, Movants have failed to demonstrate that they are entitled to permissive intervention under Rule 24(b). Fed. R. Civ. P. 24(b)(1)(B) states that a court may permit anyone to intervene who has a claim or defense that shares with the main action a common question of law or fact. In deciding whether to permit intervention, the Court must consider whether the

intervention will unduly delay or prejudice the adjudication of the original parties' rights. Fed. R. Civ. P. 24(b)(3).

There is no basis for intervention—as of right or pursuant to the Court's discretion—where, as here, the proposed intervenor's interests will be adequately represented by the named defendant. Not only is adequate representation by the existing parties fatal to intervention as of right under Rule 24(a), but it is also often the basis for denying permissive intervention under Rule 24(b).

Here, this Court should deny Movants' request for permissive intervention because Movants' "claims would only clutter the existing litigation." *PDC Energy, Inc.*, 2014 U.S. Dist. LEXIS at \*11 (citing *Lower Ark. Valley Water Conservancy Dist. v. United States*, 252 F.R.D. 687, 691 (D. Colo. 2008); *Arney v. Finney*, 967 F.2d 418, 421-22 (10th Cir. 1992)). Movants' request unduly delays and prejudices adjudication of the original parties' rights in that it essentially asks this Court to ignore "the potential for burdensome or duplicative discovery." *Tri-State Generation & Transmission Ass'n*, 787 F.3d at 1072-1075. Further, Movants' claims would unduly delay swift adjudication of this matter." *Id.* at \*11-12 (citing *Ralston v. Salba Corp. N.A.*, Case No. 09 CV 02142, 2010 U.S. Dist. LEXIS 47945, 2010 WL 1644627, at \*5 (D. Colo. Apr. 21, 2010)).

Clearly, the adjudication of the rights of the parties will be unduly delayed and prejudiced if intervention is permitted. Settlement will be delayed a considerable amount of time should Movants be permitted to step in and "conduct discovery" into the settlement negotiations. As a result, the class will not receive the benefits provided by the Settlement Agreement. On the other hand, Movants will not be prejudiced by being denied intervention, as they can continue to preserve and protect their rights by participating in this settlement, or Movants can adequately

convey their interests to this Court by opting out of the Settlement Agreement. Finally, “permissive intervention is not as appropriate if the applicant’s interests are adequately represented by existing parties.” *Lower Ark. Valley Water Conservancy Dist.*, 252 F.R.D. at 691. As discussed thoroughly above, Plaintiff adequately represents Movants’ interest (if any).

Movants have failed to demonstrate any basis for permissive intervention. Movants have “completely failed to establish with ‘sufficient probability’ inadequate representation.” *Shump v. Balka*, 574 F.2d 1341, 1345 (10th Cir. 1978). Here, “intervention could delay the proceedings many months,” “there is no evidence whatsoever of fraud or collusion in any respect and the representation afforded the class is adequate.” *Id.* Movants’ application to intervene should be denied.

### CONCLUSION

The Movants have failed to satisfy their burden to establish they should be permitted to intervene as of right. Similarly, permissive intervention must also be denied as intervention would unduly delay and prejudice the adjudication of this case. For the foregoing reasons, Movants Lynn Scott, LLC and The Farmer’s Wife, LLC’s Motion to Intervene should be **DENIED** in its entirety.

DATED: April 8, 2021

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on April 8, 2021, I electronically filed the foregoing document using the CM/ECF system, which will send notification of such filing to all current counsel of record. Pursuant to D.C. Colo. L. Civ. R. 6.1©, I hereby certify that I also served a copy of this motion on my client.

/s/ Laura L. Sheets

Laura L. Sheets