

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF OKLAHOMA**

STATE OF OKLAHOMA, ex rel. Scott Pruitt, in)
his official capacity as Attorney General of)
Oklahoma,)

Plaintiff,)

v.)

No. 6:11-cv-00030-RAW

KATHLEEN SEBELIUS, in her official capacity)
as Secretary of the United States Department of)
Health and Human Services; and TIMOTHY)
GEITHNER, in his official capacity as Secretary)
of the United States Department of the Treasury,)

Defendants.)

MOTION TO INTERVENE

COME NOW, GC Restaurants SA, LLC, Old England’s Lion & Rose, LTD, Old England’s Lion & Rose at Castle Hills, LTD, Old England’s Lion & Rose at Sonterra, LTD, Old England’s Lion & Rose Forum, LLC, and Old England’s Lion & Rose at Westlake, LLC, (collectively the “Movants”) and by this Motion made pursuant to Fed. R. Civ. P. 24(b) request this Court to enter its Order allowing the Movants to intervene as Plaintiffs in this action.

In support of this Motion, the Movants state:

1. Fed. R. Civ. P. 24(b) provides in pertinent part:
 - (1) In General. On timely motion, the court may permit anyone to intervene who:
 - (A) is given a conditional right to intervene by a federal statute; or
 - (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.

2. The Movants have a claim that shares with the main action the common question of whether the final federal regulations issued under Section 36B of the Internal Revenue Code of 1986 is invalid under the Administrative Procedures Act for the same reasons set forth in Count III of the Plaintiff's Amended Complaint for Declaratory and Injunctive Relief. The Movants' proposed Complaint in Intervention raises additional reasons for the final regulations' invalidity.

3. This Court has jurisdiction over the subject matter of the Movant's claims pursuant to 28 U.S.C. §1331.

4. The proposed intervention is timely and will not unduly delay or prejudice the adjudication of the original parties' rights. Specifically:

- (a) No scheduling order has been entered;
- (b) The issues raised by the Amended Complaint have not been joined by Answer;
- (c) One of the factual predicates for the Plaintiff's claims, the rejection by Oklahoma of a state sponsored exchange only occurred within the last two weeks;
- (d) Judicial efficiency and consistent judicial determination of the common question will be advanced by intervention since the Plaintiff's arguments will be presented in one forum.

5. The pleading setting out the claims for which intervention is sought is attached as Exhibit A.

6. Movant's counsel has contacted counsel for the parties as to their potential objections. Counsel for the Plaintiff does not object. Counsel for the Defendants objects.

s/Graydon Dean Luthey, Jr.

Graydon Dean Luthey, Jr., OBA # 5568

Craig A. Fitzgerald, OBA # 15233

GABLEGOTWALS

1100 ONEOK Plaza

100 West Fifth Street

Tulsa, Oklahoma 74103-4217

(918) 595-4800

(918) 595-4990 (fax)

Attorneys for Movants,

GC Restaurants SA, LLC, Old England's Lion

& Rose, LTD, Old England's Lion & Rose at

Castle Hills, LTD, Old England's Lion & Rose

at Sonterra, LTD, Old England's Lion & Rose

Forum, LLC, and Old England's Lion & Rose at

Westlake, LLC

CERTIFICATE OF SERVICE

I do hereby certify that on December 6, 2012, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing. Based on the records currently on file, the Clerk of Court will transmit a Notice of Electronic Filing to the ECF registrants in this case.

s/Graydon Dean Luthey, Jr. _____

Graydon Dean Luthey, Jr.