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NOT FOR PUBLICATION
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

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Premier Information Management, Inc.,)

No. CV-08-02265-PHX-FJM

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Plaintiff,)

ORDER

11

vs.)

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Bank of America, N.A.,)

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Defendant.)

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The court has before it Danette Miller’s motion to intervene (doc. 55), plaintiff Premier Information Management, Inc.’s response (doc. 56), defendant Bank of America, N.A.’s notice of joinder in plaintiff’s response (doc. 57), and Miller’s reply (doc. 59). We also have before us the parties’ stipulation for dismissal of action with prejudice (doc. 58).

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I.

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Plaintiff filed this action in November 2008 alleging that defendant engaged in improper conduct with respect to securities transfers in 2005 and 2006. On January 22, 2010, the parties filed a notice of settlement in advance of the close of discovery set for March 19, 2010. On February 9, 2010, Miller, a former executive officer and former shareholder of plaintiff, moved to intervene as of right or permissively under Rule 24, Fed. R. Civ. P. Miller’s former husband, Thomas Miller, is plaintiff’s Chief Executive Officer. She maintains that she does not wish to disrupt the parties’ settlement. Rather, she seeks

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1 information concerning the confidential settlement's terms and asserts an interest in 10% of
2 its proceeds under an alleged agreement from August 2007.

3 II.

4 Intervention as of right and permissive intervention require a timely motion. Rule 24,
5 Fed. R. Civ. P. We evaluate timeliness based on the stage of the proceedings, prejudice to
6 other parties, and the reason for and length of the delay. United States v. Oregon, 913 F.2d
7 576, 588 (9th Cir. 1990).

8 Miller's motion comes over a year after this action was filed, after a notice of
9 settlement, and about one month before the close of discovery. Although she disclaims any
10 intention to disrupt the parties' settlement, intervention at this point would cause an undue
11 delay. Miller had every opportunity to learn the timing of the parties' settlement
12 negotiations. The parties publically requested a settlement conference with a Magistrate
13 Judge in July 2009 (doc. 33), which was publically scheduled in December 2009 (doc. 49).
14 At this point, intervention would also prejudice the parties by calling their settlement into
15 question so close to the dispositive phase of this action.

16 Moreover, Miller fails to state a valid reason for her lengthy delay in seeking
17 intervention. "A party seeking to intervene must act as soon as he knows or has reason to
18 know that his interests might be adversely affected by the outcome of the litigation." Id. at
19 589 (quotation omitted). In her motion, Miller suggests that she believed that her interests
20 were being protected through Thomas Miller until their divorce proceedings. In an August
21 2007 email offered in support of her alleged agreement to receive a portion of any settlement,
22 however, Miller said that she wanted such an agreement taken care of before she filed for a
23 divorce because she had "no trust in Tom to be honest during a divorce proceeding."
24 Motion, Ex. A at 1. She obviously knew in 2007 that her interests would not be protected
25 through Thomas Miller in any potential action. And she concedes that she knew this by the
26 time that their divorce became final in July 2009, over six months before she sought
27 intervention. In her reply, Miller contends instead that she first learned that her interests
28 were not being protected when the settlement was reached and its terms were kept

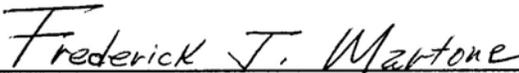
1 confidential. As a former shareholder with an alleged personal interest in a potential
2 settlement, however, she should have known that plaintiff was not representing her interests
3 in this action. Because it is untimely, we deny Miller's motion to intervene as of right or
4 permissively.

5 Finally, plaintiff requests an award of attorneys' fees incurred in responding to
6 Miller's motion. We deny plaintiff's request because it is not warranted under the
7 circumstances.

8 Accordingly, **IT IS ORDERED DENYING** Danette Miller's motion intervene (doc.
9 55).

10 Pursuant to the parties' stipulation (doc. 58), and for good cause shown, **IT IS**
11 **FURTHER ORDERED DISMISSING** this action with prejudice. Each party shall bear
12 its own attorneys' fees and costs.

13 DATED this 16th day of March, 2010.

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 Frederick J. Martone
18 United States District Judge
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