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

United States Securities and Exchange
Commission,

Plaintiff,

v.

Jonathan Larmore, et al.,

Defendants, and

Michelle Larmore, Marcia Larmore,
CSL Investments, LLC,
MML Investments, LLC,
Spike Holdings, LLC,
and JMMAL Investments, LLC,

Relief Defendants.

Case No. 23-CV-02470-PHX-DLR

**RECEIVER'S OBJECTION TO
RELIEF DEFENDANT MARCIA
LARMORE'S MOTION TO STRIKE
EXHIBIT A TO RECEIVER'S
REPLY AND "CORRECTED"
REPLY [ECF NOS. 375-1 AND 377-1]**

¹ Admitted *pro hac vice*.

² Admitted *pro hac vice*.

Allen D. Applbaum as receiver for ArciTerra Companies, LLC (“ArciTerra”) and related entities (the “Receiver”), by and through his counsel, Archer & Greiner, P.C., submits this objection to *Relief Defendant Marcia Larmore’s Motion to Strike Exhibit A to Receiver’s Reply and “Corrected” Reply* [ECF Nos. 375-1 and 377-1] [ECF No. 380] (the “Motion to Strike”), and in support thereof, respectfully states forth as follows:

I. Introduction

1. To correct the incorrect record set forth in the Motion to Strike, the Receiver extended certain courtesies with respect to deadlines and then sought a final extension to reply to all three responses. The majority of extensions of which the movant complains and mischaracterizes, were to acquiesce to the requests of Jonathan Larmore’s counsel and to place all briefing on a single track in the interests of clarity and judicial economy. The Motion to Strike improperly conflates the Receiver’s courtesies with pursuing an unfair advantage.

II. Procedural History

2. On April 10, 2025, the Receiver filed the *Receiver’s Motion for an Order (I) Designating Additional Receivership Entities; and (II) Granting Related Relief* [ECF No. 332] (the “Motion to Designate”).

3. On April 24, 2025, Marcia Larmore filed the *Relief Defendant Marcia Larmore’s Limited Opposition to [ECF 332] Receiver’s Motion for an Order (I) Designating Additional Receivership Entities; and (II) Granting Related Relief* [ECF No. 335].

4. On April 24, 2025, Michelle Larmore filed the *Relief Defendant Michelle*

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2 *Larmore's Limited Objection to Receiver's Motion for an Orders [Dkt 332] and*
3 *Reservation of Rights [ECF No. 336].*
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5 5. On request of counsel for Jonathan Larmore for an extension, on April 24,
6 2025, the Receiver and Jonathan Larmore filed the *Notice of Consent to Extension of*
7 *Response Deadline to Receivers Motion [ECF No. 332] as Applicable to Jonathan*
8 *Larmore [ECF No. 337]*, seeking a two-week extension of Jonathan Larmore's response
9 deadline, which was granted by the Court [ECF No. 338].
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11 6. In order to conform with the response deadline for Jonathan Larmore's
12 objection, on April 29, 2025, (i) the Receiver and Marcia Larmore filed the *Notice of*
13 *Request for Extension of Deadline to Reply to Limited Opposition [ECF No. 335] to*
14 *Receiver's Motion [ECF No. 332] [ECF No. 339]*, seeking a two-week extension of the
15 Receiver's reply deadline, and (ii) the Receiver and Michelle Larmore filed the *Notice of*
16 *Request for Extension of Deadline to Reply to Limited Objection and Reservation of Rights*
17 *[ECF No. 336] to Receiver's Motion [ECF No. 332] [ECF No. 340]*, seeking a two-week
18 extension of the Receiver's reply deadline. Both were granted by the Court [ECF No. 343].
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20 7. On request of counsel for Jonathan Larmore for a second extension, on May
21 8, 2025, the Receiver and Jonathan Larmore filed the *Notice of Consent to Second*
22 *Extension of Response Deadline to Receiver's Motion [ECF No. 332] as Applicable to*
23 *Jonathan Larmore [ECF No. 347]*, seeking a one-week additional extension of Jonathan
24 Larmore's response deadline, which was granted by the Court [ECF No. 348].
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26 8. In order to conform with the reply deadline for Jonathan Larmore's
27 objection, on May 14, 2025, (i) the Receiver and Marcia Larmore filed the *Notice of Second*
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2 *Request for Extension of Deadline to Reply to Limited Opposition [ECF No. 335] to*
3 *Receiver's Motion [ECF No. 332] [ECF No. 351], seeking a one-week additional extension*
4 *of the Receiver's reply deadline, and (ii) the Receiver and Michelle Larmore filed the*
5 *Notice of Second Request for Extension of Deadline to Reply to Limited Opposition [ECF*
6 *No. 335] to Receiver's Motion [ECF No. 332] [ECF No. 351], seeking a one-week*
7 *additional extension of the Receiver's reply deadline. Both were granted by the Court*
8 *[ECF No. 353].*
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11 9. On May 15, 2025, Jonathan Larmore filed *Defendant Jonathan Larmore's*
12 *Response to Receiver's Motion for an Order Designating Additional Receivership Entities*
13 *[ECF 332] [ECF No. 354].*

14 10. On May 20, 2025, (i) the Receiver, Marcia Larmore and the United States
15 Securities and Exchange Commission (the "SEC") filed the *Notice of Third Agreed Request*
16 *for Extension of Deadline to Reply to Limited Opposition [ECF No. 335] to Receiver's*
17 *Motion [ECF No. 332] [ECF No. 359], seeking a two-week additional extension of the*
18 *reply deadline for the Receiver and the SEC, (ii) the Receiver, Michelle Larmore and the*
19 *SEC filed the Notice of Third Agreed Request for Extension of Deadline to Reply to Limited*
20 *Objection and Reservation of Rights [ECF No. 336] to Receiver's Motion [ECF No. 332]*
21 *[ECF No. 360], seeking a two-week additional extension of the reply deadline for the*
22 *Receiver and the SEC, and (iii) the Receiver, Jonathan Larmore and the SEC filed the*
23 *Notice of Agreed Request for Extension of Deadline to Reply to Response [ECF No. 354]*
24 *to Receiver's Motion [ECF No. 332] [ECF No. 364], seeking a two-week extension of the*
25 *initial reply deadline for the Receiver and the SEC,. All three were granted by the Court*
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2 [ECF No. 365].

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4 11. On June 5, 2025, the Receiver replied to the objections of Marcia Larmore,
5 Michelle Larmore and Jonathan Larmore together, by filing the *Receiver’s Omnibus Reply*
6 *to objections to Receiver’s Motion for an Order (I) Designating Additional Receivership*
7 *Entities; and (II) Granting Related Relief* [ECF No. 375, corrected at ECF No. 377] (the
8 “Reply”) with a reply declaration attached (the “Reply Declaration”).

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10 **III. Objection**

11 12. The decision to grant or deny a motion to strike is within the court’s
12 discretion. *Sunburst Mins., LLC v. Emerald Copper Corp.*, 300 F. Supp. 3d 1056, 1059-
13 60 (D. Ariz. 2018) (denying a motion to strike as moot in the summary judgment context).
14 Motions to strike are disfavored because they seek a drastic remedy and are often used as
15 a delaying tactic. *See Greenwich Inv. Mgmt. Inc. v. Aegis Cap. Corp.*, No. CV-22-00129-
16 PHX-MTL, 2023 WL 2614941, at *1 (D. Ariz. Mar. 23, 2023), *citing XY Skin Care &*
17 *Cosmetics, LLC v. Hugo Boss USA, Inc.*, No. CV-08-1467-PHX-ROS, 2009 WL 2382998,
18 at *1 (D. Ariz. Aug. 4, 2009).

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20 13. The Motion to Strike recites that this Court previously decided not to
21 consider certain exhibits attached by Jonathan Larmore and Marcia Larmore to a reply
22 brief, noting that “it is improper to attach new evidence to a reply brief.” ECF No. 224 at
23 1, cited in the Motion to Strike at paragraph 2. The Court cited to *MJG Enterprises, Inc.*
24 *v. Cloyd*, 2010 WL 3842222, at *6 n.1) (D. Ariz. Sept. 2010), which cites to *Cedano–Viera*
25 *v. Ashcroft*, 324 F.3d 1062, 1066 n. 5 (9th Cir. 2003) (declining to consider new issues
26 raised for the first time in a reply brief) (*citing Thompson v. Commissioner*, 631 F.2d 642,
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649 (9th Cir. 1980) (on tax appeal)); *United States v. Wright*, 215 F.3d 1020, 1030 n. 3 (9th Cir. 2000) (declining to consider an argument raised for the first time in reply brief); and *Provenz v. Miller*, 102 F.3d 1478, 1483 (9th Cir. 1996) (a court *may* refuse to consider new evidence submitted with a reply brief). In *Provenz*, the court acknowledged that the district court should not consider the new evidence without giving the non-movant an opportunity to respond, *id.* at 1483, and therefore the court considered *both parties'* submissions. See also *Sunburst*, 300 F. Supp. 3d at 1060 (unfair to allow new evidence without allowing the other party an opportunity to respond).

14. Here, it is the Larmores who were in control of the entities, transfers, records and documents that the Receiver brought to light in the Reply Declaration. None of this is new to them. There is no prejudice. Much of the so-called “new evidence” in the Reply Declaration is also reported in the Receiver’s status reports and analyzed in light of the issues raised in the objections.

15. Nevertheless, to address the concerns raised in the Motion to Strike, the Receiver is prepared to consent to the filing of a sur-reply by the objecting parties to assure no concerns as to prejudice to any party.³

³ “The Local Rules do not provide for sur-replies, and because sur-replies are highly disfavored, courts generally do not allow them absent extraordinary circumstances, such as to respond to new evidence or arguments raised for the first time in a reply brief.” *Smoketree Holding LLC v. Apke*, No. CV-22-02123-PHX-DLR, 2024 WL 776772, at *1 (D. Ariz. Feb. 26, 2024) (denying sur-reply in another circumstance, after close of discovery), *citing Sims v. Paramount Gold and Silver Corp.*, No. CV 10-356-PHX-MHM, 2010 WL 5364783, at *8 (D. Ariz. Dec. 21, 2010). But, to the extent Marcia Larmore claims prejudice, the proper course here would be a sur-reply rather than to strike the Reply Declaration. Michelle Larmore has indicated she may seek to file a sur-reply and sought the Receiver’s consent; the Receiver consents.

IV. Conclusion

16. The Receiver painstakingly is working to analyze transactions effectuated by ArciTerra, and the Larmores through the ArciTerra entities, which aggregate well-more than \$100 million in transactions, in order to address the losses to public investors. The Receiver seeks a full and fair examination of the facts as he advances his charge as directed in the Receivership Order.

WHEREFORE, the Receiver respectfully requests that this Court (a) deny the Motion to Strike, (b) grant the Motion to Designate, and (c) grant the Receiver such other relief as is just and proper.

Dated: June 12, 2025

ARCHER & GREINER, P.C.

By: 

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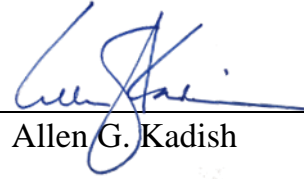
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Counsel for Allen D. Applbaum as Receiver

CERTIFICATE OF SERVICE

I hereby certify that on June 12, 2025, I caused the foregoing document to be electronically transmitted via the Clerk of the Court using the CM/ECF systems, which will provide electronic mail notice to all counsel of record.



Allen G. Kadish