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 Michelle Larmore*

UNITED STATES DISTRICT COURT
 DISTRICT OF ARIZONA

United States Securities and Exchange
 Commission,

Plaintiff,

v.

Michelle Larmore,

Relief Defendant.

No. 2:23-cv-02470-PHX-DLR

**RELIEF DEFENDANT MICHELLE
 LARMORE’S OMNIBUS OBJECTION
 TO RECEIVER’S MOTIONS FOR
 ORDERS:**

**(1) APPROVING THE AUCTION AND
 BIDDING PROCEDURES FOR THE
 SALE OF SUBSTANTIALLY ALL
 ASSETS OF FUDGE IS US PG, LLC
 [ECF #369]**

**(2) APPROVING THE AUCTION AND
 BIDDING PROCEDURES FOR THE
 SALE OF SUBSTANTIALLY ALL
 ASSETS OF VBH PG, LLC [ECF
 #370]; AND**

**(3) DESIGNATING ADDITIONAL
 RECEIVERSHIP ENTITIES [ECF
 #372]**

Relief Defendant Michelle Larmore (“Michelle”), through counsel, hereby submits
 this omnibus objection (the “Objection”) to Receiver’s motions for orders: (i) *Approving
 the Auction and Bidding Procedures for the Sale of Substantially All Assets of Fudge Is*

1 *US, PG, LLC* [ECF #369]; (ii) *Approving the Auction and Bidding Procedures for the Sale*
 2 *of Substantially All Assets of VBH PG, LLC* [ECF #370] (together, the “Sale Motions”);
 3 and (iii) *Designating Additional Receivership Entities* [ECF #372] (the “Expansion
 4 Motion,” and collectively with the Sale Motions, the “Motions”), and states as follows:

5 **Introduction**

6 1. Over two years ago, Michelle commenced a dissolution of marriage
 7 proceeding against defendant Jonathan M. Larmore (“Jon”) in the Maricopa County
 8 Superior Court (the “State Court”). Jon is the ultimate equity holder in several entities and
 9 properties that are now presently under the Receiver’s control as well as others that the
 10 Receiver wants to place in receivership. As a consequence, Michelle holds significant
 11 equity interests by operation of Arizona community property law in those assets. Michelle
 12 has, through her counsel, worked very cooperatively with the Receiver team, and expects
 13 that this will continue as this case moves forward. This is, perhaps, because Michelle and
 14 the Receiver share the objective of preserving the assets of the receivership estate
 15 (“Estate”) and liquidating them for the benefit of creditors and equity holders.

16 2. But the Motions present a serious jurisdictional issue that the Court must
 17 decide before ruling on their merits. *See, e.g., Steel Co. v. Citizens for a Better Env’t*, 523
 18 U.S. 83, 94-95 (1998) (“[c]ourts address the issue of subject matter jurisdiction first,
 19 as...the nature and limits of the judicial power of the United States...is inflexible and
 20 without exception”). The Receiver seeks to put three additional entities in receivership and
 21 to sell substantially all their assets—as well as the assets owned by other entities already
 22 in the receivership—notwithstanding the fact that Jon owned or controlled the equity in
 23 and/or assets of each of those entities. As Michelle has pointed out previously,¹ the equity
 24 in and/or assets of the entities that are the subject of the Motions is community property
 25 over which the State Court has prior exclusive jurisdiction. The Court must therefore deny

26
 27 ¹ ECF #336.

1 the Motions for lack of subject-matter jurisdiction.

2 **Argument**

3 3. On March 14, 2023, Michelle commenced an action for legal separation from
 4 Jon in the State Court, styled *In re Marriage of Larmore*, No. FC2023-001520 (the
 5 “Dissolution Case”). In the Dissolution Case, the State Court determined that all assets and
 6 liabilities acquired by the Larmores after the date of the Larmores’ marriage (November
 7 25, 1998) and through March 14, 2023, are community assets and liabilities within the
 8 meaning of Title 25, Arizona Revised Statutes (the “Community Assets”) and that it has
 9 continuously exercised *in rem* jurisdiction over the Community Assets and their proceeds
 10 since March 14, 2023. [See Docket No. 268-1 at ¶ 18] See, e.g., *Schickner v. Schickner*,
 11 237 Ariz. 194, 199, 348 P.3d 890, 895 (Ct. App. 2015) (“[p]roperty takes its character as
 12 separate or community at the time of acquisition and retains that character throughout the
 13 marriage.”). Michelle commenced the Dissolution Case approximately eight months before
 14 the SEC filed this civil action, over nine months before the Court appointed the Receiver
 15 and purported to take exclusive jurisdiction of the Community Assets and over two years
 16 before the Receiver filed the instant motion.

17 4. The earlier-filed Dissolution Case has a significant jurisdictional
 18 consequence. It means the State Court has *exclusive* jurisdiction over the Larmores’
 19 Community Assets, including each of the entities that are the subject of the Motions. This
 20 Court therefore lacks subject-matter jurisdiction to expand the receivership to include those
 21 entities or to authorize the Receiver to sell their assets.

22 5. The equity interests in the entities that are the subject of the Motions were at
 23 all relevant times owned by Jon and thus are Community Assets. The Holley Declaration
 24 (Exhibit A to the Expansion Motion) indicates that Jon was the sole member or organizer
 25 of: Brewhouse I, LLC (“Brewhouse I”) and Village Brewhouse, LLC (“Village
 26 Brewhouse”) (Holley Decl. ¶¶ 17, 31.) Moreover, Brewhouse I, of which Jon is the sole
 27 member is, in turn, the sole member of Brewhouse Fishville, LLC (“Brewhouse Fishville”).

(*Id.* ¶¶ 19.) Michelle understands that, in January 2022, Jon purported to transfer the assets of Brewhouse I, Village Brewhouse and Brewhouse Fishville to a newly created entity, VBH PG, LLC (“VBH PG”), which is now associated with the Village Brewhouse operations (*id.* ¶¶ 11-14) and the subject of one of the Sale Motions [ECF #370]. Michelle further understands that, at or around the same time, Jon transferred the assets of the confectionery business known as “Simply Sweet” into a newly created entity, Fudge Is US, PG, LLC (“Fudge PG”), which is the subject of the other Sale Motion [ECF #369].

6. Because there is no dispute that Jon owned or controlled the equity in and/or assets of Brewhouse I, Village Brewhouse, Brewhouse Fishville, VBH PG and Fudge PG, they constitute Community Assets under Arizona law (collectively, the “Community Entities”). A.R.S. § 25-211(A) (subject to irrelevant exceptions, “[a]ll property acquired by either husband or wife during the marriage is the community property of the husband and wife....”); *see, e.g., Wisner v. Wisner*, 129 Ariz. 333, 335-36 (1981) (husband’s shares in professional medical corporation were community property subject to equitable division); *Berg v. Berg*, No. 1 CA-CV 21-0320 FC, 2022 WL 1498136, at *2 (Ariz. Ct. App. May 12, 2022) (husband’s equity in LLC was community property); *Roden v. Roden*, 190 Ariz. 407, 409 (Ct. App. 1997) (corporate stock held in husband’s name was community property).

7. As the State Court was the first court to assert *in rem*/quasi *in rem* jurisdiction over the Larmore’s community property assets, the Community Entities are subject to the prior *exclusive* jurisdiction of the State Court. “The ancient and oft-repeated...doctrine of prior exclusive jurisdiction holds that when a court of competent jurisdiction has obtained possession, custody, or control of particular property, that possession may not be disturbed by any other court.” *Applied Underwriters, Inc. v. Lara*, 37 F.4th 579, 591 (9th Cir. 2022) (cleaned up) (quoting *State Eng’r v. S. Fork Band of Te-Moak Tribe of W. Shoshone Indians*, 339 F.3d 804, 809 (9th Cir. 2003)), *cert. denied*, 143 S. Ct. 748 (2023). Or, as this Court very recently put it, “where a court has custody of specific property, that court has

1 prior exclusive jurisdiction over all in rem or quasi in rem proceedings against that
 2 property.” *Dave v. 2012 Bobby Shah Irrevocable Tr.*, No. CV-24-08053-PCT-DLR, 2025
 3 WL 26706, at *3 (D. Ariz. Jan. 3, 2025) (Rayes, J.) (citing *Princess Lida of Thurn & Taxis*
 4 *v. Thompson*, 305 U.S. 456, 466-67 (1939)).

5 8. And “where one court first takes proper *in rem* jurisdiction over a res, another
 6 court is precluded from exercising its jurisdiction over the same res.” *Applied*
 7 *Underwriters*, 37 F.4th at 591 (quoting *Kline v. Burke Constr. Co.*, 260 U.S. 226, 229
 8 (1922) and citing *Princess Lida*, 305 U.S. at 466-67). That preclusion is “a mandatory
 9 jurisdictional limitation that prohibits federal and state courts from concurrently exercising
 10 jurisdiction over the same *res*.” *Id.* (citing *Chapman v. Deutsche Bank Nat’l Tr. Co.*, 651
 11 F.3d 1039, 1043 (9th Cir. 2011)). Where the prior exclusive jurisdiction doctrine applies,
 12 it is a defect in a federal district court’s subject-matter jurisdiction. *Id.* at *3 n.7 (citing
 13 *Applied Underwriters*, 37 F.4th at 587).

14 9. Whether the prior exclusive jurisdiction doctrine applies “turns on what,
 15 precisely, is at issue in the state and federal court proceedings.” *2012 Bobby Shah*
 16 *Irrevocable Tr.*, 2025 WL 26706, at *3 (quoting *Goncalves By & Through Goncalves v.*
 17 *Rady Children’s Hosp. San Diego*, 865 F.3d 1237, 1253 (9th Cir. 2017)). If both courts are
 18 “simultaneously exercising jurisdiction over the same property,” then “the prior exclusive
 19 jurisdiction doctrine applies[.]” *Id.*

20 10. Here, the earlier-filed Dissolution Case and the receivership created in this
 21 civil action are both *in rem* proceedings. In Arizona, marital dissolution cases are *in rem*
 22 proceedings. *See, e.g., Schilz v. Superior Court*, 144 Ariz. 65, 68, 695 P.2d 1103, 1106
 23 (Ariz. 1985); *Anonymous Wife v. Anonymous Husband*, 153 Ariz. 570, 572, 739 P.2d 791,
 24 793 (Ct. App. 1986), *aff’d in part, rev’d in part on other grounds*, 153 Ariz. 573, 739 P.2d
 25 794 (1987); *see also Martin v. Martin*, 156 Ariz. 440, 446, 752 P.2d 1026, 1032 (Ct. App.
 26 1986) (Arizona court may divide community property “even if that property is located in
 27 another state”), *modified on other grounds*, 156 Ariz. 452, 752 P.2d 1038 (1988). Federal

1 receiverships are also inherently *in rem* proceedings. *See, e.g., U.S. Sec. & Exch. Comm’n*
 2 *v. Peterson*, 129 F.4th 599, 608 n.11 (9th Cir. 2025) (“The district court has in rem, or
 3 quasi-in-rem, jurisdiction over the property in the receivership res, including the
 4 receivership entity[’s] legal claims, and to resolve any pending claims to that res.”)
 5 (cleaned up).

6 11. “Generally, state and federal courts should not interfere with or restrain each
 7 other’s proceedings.” *2012 Bobby Shah Irrevocable Tr.*, 2025 WL 26706, at *3. But the
 8 Motions, if granted, would do exactly that.

9 12. The Motions ignore the fact that the State Court was the first court to assume
 10 jurisdiction over the Community Assets, which necessarily includes the Community
 11 Entities. And nor does it matter, as the Holley Declaration avers, that the Community
 12 Entities are supposedly “integral to the operation of an asset” under the Receiver’s control
 13 or that they were allegedly “instrumental in the movement of funds through ArciTerra....”
 14 (Holley Decl. ¶ 9.) None of those alleged facts can undo the defect in the Court’s
 15 jurisdiction over these entities that has existed since the outset of this case. The first court’s
 16 prior exclusive jurisdiction over an asset is not divested by a later court’s appointment of a
 17 receiver to use or possess those same assets or the asset’s relative importance to the
 18 receiver. On the contrary, “defects pertaining to the subject matter jurisdiction of the court
 19 cannot be waived and may be raised at any time.” *Demarest v. HSBC Bank USA, N.A.*, 920
 20 F.3d 1223, 1226 (9th Cir. 2019) (cleaned up).

21 13. The Community Assets remain subject to the exclusive jurisdiction of the
 22 State Court. As a result, this Court would be without subject-matter jurisdiction to “take
 23 exclusive jurisdiction and possession”² over the same assets and make them part of the
 24 receivership, let alone authorize their sale. *See, e.g., L.I.G. Pet Goods Trading, LLC v.*
 25 *Goldfarb*, No. 08-CV-5345, 2009 WL 141845, at *5 (E.D. Pa. Jan. 16, 2009) (finding lack

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 27 ² Docket No. 77 at ¶ 1; Docket No. 154 at ¶ 1.

1 of jurisdiction to appoint receiver over certain businesses that constituted marital property
 2 where state court overseeing previously-filed divorce proceeding had prior exclusive
 3 jurisdiction over same businesses); *Cavalino v. Cavalino*, 601 F. Supp. 74, 77 (N.D. Ga.
 4 1984) (finding that federal court had “no power” to assert jurisdiction over husband’s
 5 action seeking appointment of receiver to compel sale of marital residence where state
 6 court already had exclusive authority over same residence pursuant to previously-filed
 7 divorce proceeding); *see also Wick v. Wick*, 107 Ariz. 382, 384-85 (1971) (“In the exercise
 8 of its powers in a divorce action the trial court has full authority to adjudicate a complete
 9 dissolution of the marriage relationship, including a determination of the rights of the
 10 parties to . . . a division of community property.”); *Lawwill v. Lawwill*, 21 Ariz. App. 75,
 11 77 (1973) (“Where the parties themselves treated the property as community property and,
 12 as far as the record shows, it was considered community property both by them and the
 13 court during the divorce trial, the court is thereby vested with jurisdiction to award it to one
 14 or the other of the spouses.”).

15 14. *L.I.G.* is on all fours with this case. Two months after initiating divorce
 16 proceedings against her husband in state court, a wife filed a motion in federal court seeking
 17 appointment of a receiver over certain entities she co-owned with the husband, alleging
 18 that he had engaged in wrongdoing that threatened to dissipate the value of corporate assets.
 19 *L.I.G.*, 2009 WL 141845, at *1. Based on the “mechanical” *Princess Lida* doctrine, the
 20 court denied the receivership motion because the parallel proceedings were “*in rem* actions
 21 such that both courts must have control of the property which [wa]s the subject of the
 22 litigation as envisioned by the *Princess Lida* court.” *Id.* at *5 (internal quotations and
 23 citations omitted). The earlier-filed divorce action was *in rem* “in that the state court was
 24 asked to make binding dispositions of the marital assets-including the businesses-that
 25 w[ould] involve determining ownership and distributing to each spouse his or her equitable
 26 share,” and the later-filed receivership action was *in rem* because appointing a receiver
 27 would require the federal court “to exercise control over property disputed by [the husband

1 and wife]-namely, the businesses, the funds required to operate the businesses, and other
2 assets incident to their functioning.” *Id.* Just so here.

3 15. The prior exclusive jurisdiction doctrine—and the principles of comity it
4 upholds (*Sexton v. NDEX W., LLC*, 713 F.3d 533, 536 (9th Cir. 2013))—prevents a
5 unilateral divestiture of the State Court’s power over those assets, even if there is a broader
6 federal remedial objective at work. *Cf. Henderson ex rel. Henderson v. Shinseki*, 562 U.S.
7 428, 434 (2011) (“federal courts have an independent obligation to ensure that they do not
8 exceed the scope of their jurisdiction, and therefore they must raise and decide
9 jurisdictional questions that the parties either overlook or elect not to press”); *Von Dunser*
10 *v. Aronoff*, 915 F.2d 1071, 1075 (6th Cir. 1990) (“where there is no jurisdiction over subject
11 matter, court has no discretion to ignore that lack of jurisdiction.”) (citation omitted).

12 Conclusion

13 16. Michelle reiterates that she supports this receivership and wants to see it
14 accomplish its intended aims of recompensing allegedly harmed investors. But, ultimately,
15 “the authority of a SEC receiver is defined by the entity or entities in the receivership,” and
16 the “receiver has no greater rights or powers than the corporation itself would have.” *Sec.*
17 *& Exch. Comm’n v. Horwitz*, No. 2:21-CV-2927-CAS-PDX, 2023 WL 11694914, at *5
18 (C.D. Cal. Aug. 11, 2023). Here, though, when the Court appointed the Receiver, the
19 Larmores’ equity in the various ArciTerra entities now in receivership (specifically
20 including the Community Entities) was *already* subject to division and distribution by the
21 State Court under Title 25 of the Arizona Revised Statutes.

22 17. Michelle believes that she and the Receiver could reach a compromise that
23 would consensually resolve the defect in the Court’s power over the Community Assets in
24 such a way that does not prejudice investors yet recognizes her property rights that exist as
25 a matter of law and the undisputed fact that ***Michelle is not subject to the asset freeze.***
26 After all, Arizona law is clear that “the community is generally entitled to the profits and
27 gains attributable to community assets.” *Schickner*, 237 Ariz. at 199 (quoting *In re*

1 *Marriage of Fong*, 121 Ariz. 298, 305 (Ct. App. 1978)). Under ordinary circumstances, the
2 State Court would have divided the proceeds of the Community Assets, and Michelle could
3 use that cash to live her life and pay her usual expenses. But the intercession of the
4 receivership has prevented that from happening.

5 18. Michelle must therefore object to the Receiver's request to add VBH PG to
6 the receivership and sell its assets as well as the Receiver's request to sell the assets
7 belonging to Brewhouse I, Village Brewhouse, Brewhouse Fishville and Fudge PG.
8 Accordingly, the Court should deny the Motions for lack of jurisdiction.

9
10 RESPECTFULLY SUBMITTED on June 16, 2025.

11 MITCHELL | STEIN | CAREY | CHAPMAN, PC

12 By: /s/ Lee Stein

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CERTIFICATE OF SERVICE

I certify that on June 16, 2025, I electronically transmitted a PDF version of this document to the Clerk of Court, using the CM/ECF System for filing, and which will be sent electronically to all registered CM/ECF participants as identified on the Notice of Electronic Filing.

/s/ B. Wolcott