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UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

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| United States Securities and Exchange Commission,<br><br>Plaintiffs,<br><br>v.<br><br>Jonathan Larmore, et al.<br><br>Defendants, and<br><br>Michelle Larmore,<br><br>Relief Defendant. | No. 2:23-cv-02470-PHX-DLR<br><br>**RELIEF DEFENDANT MICHELLE LARMORE'S SUR-REPLY IN OPPOSITION TO RECEIVER'S MOTION FOR AN ORDER DESIGNATING ADDITIONAL RECEIVERSHIP ENTITIES [DKT 332]** |

Relief Defendant Michelle Larmore ("Michelle"), through counsel, hereby submits this sur-reply in opposition to *Receiver's Motion for an Order (I) Designating Additional Receivership Entities; and (II) Granting Related Relief*, dated April 10, 2025 [Docket No. 332] (the "Motion"), in further opposition to *Receiver's Omnibus Reply to Objections to Receiver's Motion for an Order (I) Designating Additional Receivership Entities; and (II) Granting Related Relief* [Docket No. 375] (the "Reply") and in support of *Relief*

*Defendant Michelle Larmore's Limited Objection to Receiver's Motion for an Order [Dkt 332] and Reservation of Rights* [Docket No. 336] (the "Objection"),[1] and states:

**Argument**

1. By the Motion, the Receiver seeks to expand the Receivership Estate to include several entities ultimately owned by Jonathan M. Larmore ("Jon") in which Michelle also has an interest by operation of Arizona community property law (the "Community Entities"). Michelle objected to the Motion because the Maricopa County Superior Court (the "State Court"), which oversees Jon and Michelle's pending dissolution of marriage proceeding (the "Dissolution Case"), has prior exclusive jurisdiction over all community assets and liabilities within the meaning of Title 25, Arizona Revised Statutes (the "Community Assets"), including the Community Entities. Michelle thus argued that the Court could not exercise jurisdiction over the Community Entities because they are subject to the prior exclusive jurisdiction of the State Court.[2]

2. The Receiver's Reply fails to refute any of these points.[3] Instead, the Receiver raises an assortment of red herrings that serve only to distract from the application of the prior exclusive jurisdiction doctrine here.

## I. The prior exclusive jurisdiction doctrine does not require that both proceedings involve identical parties.

3. The Receiver asserts that the prior jurisdiction doctrine cannot apply in this case because "it was the SEC that acted here on behalf of third parties, not *inter se* among

[1] Capitalized terms used but not defined herein have the meanings given to them in the Objection.

[2] As this Court recently noted, the prior exclusive jurisdiction doctrine is an issue of subject-matter jurisdiction. *Dave v. 2012 Bobby Shah Irrevocable Tr.*, No. CV-24-08053-PCT-DLR, 2025 WL 26706, at *3 n.7 (D. Ariz. Jan. 3, 2025). The Court is therefore obliged to resolve this issue before reaching the merits of the Motion. *See, e.g., Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 94-95 (1998) ("the first and fundamental question is that of [the court's] jurisdiction," which "spring[s] from the nature and limits of the judicial power of the United States and is inflexible and without exception") (internal quotations and citations omitted).

[3] The Receiver does not dispute that the Dissolution Case was filed before the SEC commenced this civil action and before this Court appointed the Receiver.

the divorce litigants." (Rep. ¶ 16 (citing *L.I.G. Pet Goods Trading, LLC v. Goldfarb*, No. 08-CV-5345, 2009 WL 141845, at *2 (E.D. Pa. Jan. 16, 2009).) The Receiver misreads *L.I.G.* It did not hold that the parallel proceedings must involve the same set of parties, and the Receiver cites no other authority to support such a narrow view. Just because both proceedings in *L.I.G.* involved the same parties does not make it a required condition in every case. In fact, *Princess Lida*—which created the prior exclusive jurisdiction doctrine—involved two *different* sets of parties. *Princess Lida of Thurn & Taxis v. Thompson*, 305 U.S. 456, 459, 465 (1939) (state court case filed by three trustees of fund established by divorce agreement and federal court proceeding filed by two of five trust beneficiaries against trustee). So *Princess Lida* itself refutes this argument.

4. The Receiver's focus on the *parties*, moreover, misses the whole point of the prior exclusive jurisdiction doctrine, which is determining the court that has sole jurisdiction over *property*. There is no dispute that "where the judgment sought is strictly in personam, both the state court and the federal court, having concurrent jurisdiction, may proceed with the litigation." *Id.* at 466. In contrast, the prior exclusive jurisdiction doctrine acts to limit the second court's jurisdiction where, like here, both proceedings "seek to determine interests in specific property as against the whole world (*in rem*)" or "the parties' interests in the property serve as the basis of the jurisdiction for the parallel proceedings (*quasi in rem*)." *Chapman v. Deutsche Bank Nat'l Tr. Co.*, 651 F.3d 1039, 1044 (9th Cir. 2011) (cleaned up); *see also L.I.G.*, 2009 WL 141845, at *4 (the *Princess Lida* doctrine "is a 'mechanical rule' which requires that the court in which the second suit is brought yield its jurisdiction" if "a court in a previously filed action is exercising control over the property at issue and the second court must exercise control over the same property in order to grant the relief sought") (citing *Dailey v. Nat'l Hockey League*, 987 F.2d 172, 175-76 (3d Cir. 1993)). In short, property—not parties—is what matters.

5. As discussed below, both this proceeding and the Dissolution Case necessarily involve the same property—the Community Entities and Community

Assets—because the Receiver seeks to control or sell corporate entities ultimately owned by Jon in which Michelle also has an interest.

## II. The Receiver cannot avoid that this case and the Dissolution Case both implicate control over entities in which Jon ultimately owns or controls the equity interests.

6. The Receiver next asserts that this receivership proceeding and the State Court case do not share the same subject matter. (Rep. ¶ 17 (citing *Harkin v. Brundage*, 276 U.S. 36, 43-45 (1928), and *Empire Trust Co. v. Brooks*, 232 F. 641, 646 (5th Cir. 1916)).) The two cases the Receiver relies upon—*Harkin* and *Empire Trust*—stand for the uncontroversial proposition that the prior exclusive jurisdiction doctrine does not apply where the parallel proceedings deal with different subject matter. But the Receiver takes that principle a step too far by arguing, without any basis, that a state court divorce case and a federal receivership proceeding inherently have a different subject matter *as a matter of law*. Neither *Harkin* nor *Empire Trust* supports this notion, and, in fact, neither case involved a state court divorce proceeding at all. *Harkin*, 276 U.S. at 38-39 (considering controversy between state court receivership and federal court receivership); *Empire Trust*, 232 F. at 643 (same).

7. As this Court explained in *Dave*, whether the prior exclusive jurisdiction doctrine applies "turns on what, precisely, is at issue in the state and federal court proceedings." *Dave*, 2025 WL 26706, at *3 (quoting *Goncalves By & Through Goncalves v. Rady Children's Hosp. San Diego*, 865 F.3d 1237, 1253 (9th Cir. 2017)). Michelle established that Arizona state court divorce proceedings and federal receiverships are both *in rem* proceedings that can, and often do, share the same subject matter. (Obj. ¶ 7 (citing *Schilz v. Sup. Ct.*, 144 Ariz. 65, 68 (Ariz. 1985); *Anonymous Wife v. Anonymous Husband*, 153 Ariz. 570, 572 (Ct. App. 1986), *aff'd in part, rev'd in part on other grounds*, 153 Ariz. 573 (1987); *Martin v. Martin*, 156 Ariz. 440, 446 (Ct. App. 1986), *modified on other grounds*, 156 Ariz. 452 (1988); *U.S. Sec. & Exch. Comm'n v.*

*Peterson*, 129 F.4th 599, 608 n.11 (9th Cir. 2025)).). The Receiver does not contest these points or authorities.

8. And, more to the point, the prior exclusive jurisdiction doctrine can result in a federal receivership court yielding to a state divorce court when the divorce case is first filed and the two proceedings involve the spouses' equity interests in corporations. *See, e.g.*, *L.I.G.*, 2009 WL 141845, at *5 (no jurisdiction to appoint receiver over certain businesses that constituted marital property where state court overseeing previously-filed divorce proceeding had prior exclusive jurisdiction over same businesses); *Cavalino v. Cavalino*, 601 F. Supp. 74, 77-78 (N.D. Ga. 1984) (federal court had "no power" to assert jurisdiction over husband's action seeking appointment of receiver to compel sale of marital residence where state court already had exclusive authority over same residence pursuant to previously-filed divorce proceeding). That is exactly the situation here.

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

10. Just so here. The same property—the Community Entities and Community Assets—are the subject of litigation before both this Court and the State Court. Both proceedings thus share the same subject matter.

11. The Receiver suggests that community property somehow consists only of equity interests—but not any underlying corporate assets—acquired during marriage. (Rep. ¶ 20 (citing *Schickner v. Schickner*, 237 Ariz. 194, 199 (Ct. App. 2015)).) For one thing, "community property includes *all assets acquired during marriage* except by gift, devise, or descent." *Kohler v. Kohler*, 211 Ariz. 106, 108 (Ct. App. 2005) (citing Ariz. Rev. Stat. § 25-211(A)(1) (emphasis added). There is no statutory basis to limit community property as the Receiver suggests. And, moreover, the Receiver misinterprets *Schickner*. There, the court held that any distributions a husband received from his entities during marriage on account of his equity interests were "attributable to the community as profits derived from existing community assets and subject to equitable division." *Schickner*, 237 Ariz. at 201 (citing Ariz. Rev. Stat. § 25-211(B)(2)). But the court did not hold that *only* equity interests and distributions, to the exclusion of any underlying corporate assets, may constitute community property. Such a rule would belie reason, especially where entities (like certain Community Entities here) are closely held by a married couple. *See, e.g.*, *Mori v. Mori*, 124 Ariz. 193, 196 (1979) (finding that accounts receivable of divorced husband's professional law corporation constituted marital assets to be included in distribution of community property); *Schickner*, 237 Ariz. at 199 ("when community property 'is used to acquire new property,' the new property is community property") (quoting Ariz. Rev. Stat. § 25-211(B)(2)).

12. In any event, the Receiver does not elaborate how this hypothetical distinction is even relevant. Adding the Community Entities to the Receivership Estate would inherently impinge upon Michelle's equity interests in those entities, which the Receiver concedes are Community Assets. So this proceeding necessarily involves the same subject matter as the Dissolution Case.

## III. Michelle could not "relinquish[]" the prior exclusive jurisdiction argument because it implicates the Court's subject matter jurisdiction.

13. The Receiver asserts that Michelle "relinquished" the prior exclusive jurisdiction argument because she consented to the appointment of the Receiver and related relief. (Rep. ¶ 18.) This is wrong for at least two basic reasons.

14. First, the prior exclusive jurisdiction doctrine implicates the Court's subject-matter jurisdiction,[4] and it is axiomatic that "rules of subject matter jurisdiction are sui generis" and "*can never be waived or forfeited*." *United States v. Bastide-Hernandez*, 39 F.4th 1187, 1190 (9th Cir. 2022) (emphasis added); *see also United States v. Cotton*, 535 U.S. 625, 630 (2002) (same); *McCusker v. Cupp*, 506 F.2d 459, 459-60 (9th Cir. 1974) (a party "may not by conduct waive a lack of jurisdiction or consent to jurisdiction which does not in fact exist"). As a matter of law, Michelle could not forfeit the argument that the prior exclusive jurisdiction doctrine applies, especially considering the underlying principle that this Court's purported jurisdiction over the Community Entities "does not in fact exist." *McCusker*, 506 F.2d at 459-60; *Sexton v. NDEX West, LLC*, 713 F.3d 533, 536 (9th Cir. 2013) ("when one court is exercising *in rem* jurisdiction over a res, a second court will not assume *in rem* jurisdiction over the same *res*") (quotations and citations omitted).

15. Second, Michelle has consistently maintained that she does not oppose the receivership or related relief *so long as the Receiver excludes all Community Assets and Community Entities from the Receivership Estate*. (*See, e.g.*, Obj. ¶¶ 9-10.) To that end, Michelle has repeatedly reserved all rights with regard to this Court's assertion of jurisdiction over, and any attempt by the Receiver to add, any additional Community

[4] *Dave*, 2025 WL 26706, at *3 n.7 ("Dave mistakenly asserts that 'prior exclusive jurisdiction' is not a matter of subject matter jurisdiction. It is.") (citing *Applied Underwriters, Inc. v. Lara*, 37 F.4th 579, 587 (9th Cir. 2022)).

Assets or Community Entities. (*See, e.g.*, Obj. ¶ 13.) At no point has Michelle withdrawn or otherwise modified this position, and the Receiver does not demonstrate otherwise.

## IV. Even if Michelle is jointly liable for community debts, that does not divest the State Court of its prior exclusive jurisdiction.

16. Finally, the Receiver suggests that Michelle is liable to creditors of the marital community, citing precedent to the effect that a spouse is liable for the obligations of "the former community." (Rep. ¶ 21 (citing Ariz. Rev. Stat. § 25-215(B); *Community Guardian Bank v. Hamlin*, 182 Ariz. 627, 631 (1995); *In re Oliphant*, 221 B.R. 506, 509 (Bankr. D. Ariz. 1998); *Cadwell v. Cadwell*, 126 Ariz. 460, 463 (Ct. App. 1980); and *Lorenz-Auxier Fin. Grp., Inc. v. Bidewell*, 160 Ariz. 218, 220 (Ct. App. 1989)).) This argument is entirely beside the point.

17. A spouse's potential liability to the marital community's creditors is not an exception to the prior exclusive jurisdiction doctrine, and the Receiver cites no authority that it is. Nor could it be. The Receiver's argument is premised on the notion that a state statute could somehow affect a federal court's subject matter jurisdiction. That is clearly incorrect. "Only Congress may determine a lower federal court's subject-matter jurisdiction." *Kontrick v. Ryan*, 540 U.S. 443, 452 (2004) (citing U.S. Const. Art. III, § 1). Michelle's potential liability to community creditors is irrelevant to whether this Court has jurisdiction over the Community Entities or the Community Assets. Notably, the Receiver has never articulated any specific claims against Michelle and did not do so in the Reply. To the extent that such liability exists,[5] it will be for the State Court to sort

[5] Citing Ariz. Rev. Stat. § 25-215(B), the Receiver asserts that "an obligation of the former community may be collected from postdivorce separate property of each former spouse." (Rep. ¶ 21 (citing Ariz. Rev. Stat. § 25-215(B).) That is not what the statute says. Section 25-215(B) provides that "community property is liable for the *pre-marital* separate debts or other liabilities of a spouse...to the extent of the value of that spouse's contribution to the community property which would have been such spouse's separate property if single." Ariz. Rev. Stat. § 25-215(B) (emphasis added). The Larmores were married in 1998—over 27 years ago—so this statute only applies to Jon and Michelle's *pre-1998* separate debts or other liabilities. *See, e.g., First Fid. Bank v. Toll*, No. 1 CA-CV 14-0184, 2015 WL 2450510, at *4 n.4 (Ariz. Ct. App. Apr. 23, 2015)

out. *Cf. Burden v. Serafin*, No. 22-CV-03479-DMR, 2023 WL 4002727, at *5 (N.D. Cal. May 22, 2023) (abstaining from exercising jurisdiction, reasoning that determining the parties' rights and obligations over certain property would "inevitably interfere with the state court's responsibility to confirm and allocate marital assets and liabilities") (citing *H.C. ex rel. Gordon v. Koppel*, 203 F.3d 610, 613 (9th Cir. 2000)).

**Conclusion**

18. For the foregoing reasons, Michelle respectfully requests that the Court deny the Motion for lack of jurisdiction over the Community Entities and grant such further relief as the Court deems necessary and appropriate.

RESPECTFULLY SUBMITTED on June 30, 2025.

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(citing *Schilling v. Embree*, 118 Ariz. 236, 238 (Ct. App. 1977)). According to the SEC, Jon's alleged misconduct began in approximately *2017*. [ECF #1 at ¶ 3]

**CERTIFICATE OF SERVICE**

I certify that on June 30, 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*