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10
11 **IN THE UNITED STATES DISTRICT COURT**
12 **FOR THE DISTRICT OF ARIZONA**
13

14 United States Securities and Exchange
15 Commission,

16 Plaintiff,

17 v.

18 Jonathan Larmore, et al.,

19 Defendants, and

20 Michelle Larmore; Marcia Larmore;
21 CSL Investments, LLC;
22 MML Investments, LLC;
23 Spike Holdings, LLC;
24 and JMMAL Investments, LLC,

25 Relief Defendants.
26

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

**RECEIVER'S REPLY TO
MICHELLE LARMORE'S
LIMITED OBJECTION TO
ARCITERRA RECEIVER'S SIXTH
APPLICATION FOR ALLOWANCE
AND RESERVATION OF RIGHTS
[ECF NO. 426]**

27 ¹ Admitted *pro hac vice*.

28 ² Admitted *pro hac vice*.

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Allen D. Applbaum, as Receiver for ArciTerra Companies, LLC, and related entities, by and through his counsel, Archer & Greiner, P.C., in support of the *Sixth Application of Receiver for Allowance and Payment of Professional Fees and Reimbursement of Expenses for the Period April 1, 2025 Through June 30, 2025* [ECF No. 420] (the “Sixth Fee Application”)³ and in reply to *Relief Defendant Michelle Larmore’s Limited Objection to ArciTerra Receiver’s Sixth Application for Allowance [Dkt 420] and Reservation of Rights* [ECF No. 426] (the “Limited Objection”), respectfully sets forth as follows:

I. Reply

1. As a preliminary matter, the Receiver notes that Michelle Larmore asserts no objection to the services rendered and the fees requested in the Sixth Fee Application.⁴

2. Rather, she asserts the same legal argument in her limited objections to the Receiver’s pending motions to sell property, holding up and effectively risking millions in value that the Receiver negotiated with lenders and other parties.⁵ For the reasons set forth below, the Limited Objection should be overruled.

³ Defined terms are as in the Sixth Fee Application.

⁴ See *Cunningham v. City of McKeesport*, 753 F.2d 262, 267 (3d Cir. 1985) (opposing party to a fee application must raise an issue of material fact as to hours the attorney spent or the necessity for their expenditure); *Bell v. United Princeton Properties, Inc.*, 884 F.2d 713, 719 (3d Cir. 1989) (same).

⁵ A list of the Receiver’s pending motions to which Michelle Larmore has filed limited objections on “prior exclusive jurisdiction” grounds is attached as **Exhibit A**.

1 A. Michelle Larmore Consented to the Receivership and is Estopped from
 2 Asserting the Prior Exclusive Jurisdiction Doctrine

3 3. The Larmores, including relief defendant Michelle Larmore, consented to the
 4 Receivership and the Court's first Order appointing the Receiver [ECF No. 77] (the
 5 "Receivership Order"),⁶ as stated in the Receivership Order itself:

6 WHEREAS, Defendants and Relief Defendants have consented to
 7 entry of this Order pending the Court's determination of the SEC's
 8 motion for a preliminary injunction.

9 Receivership Order, p. 2.

10 4. The Receivership Order sets forth pertinent terms that, *inter alia*, speak
 11 directly to Michelle Larmore's argument:

12 Until further Order of this Court, Allen Applbaum is hereby
 13 appointed to serve without bond as receiver (the "Receiver") for the
 14 receivership estate of the Receivership Entities (the "Receivership
 15 Estate"), including the Receivership Assets, to, among other duties
 16 and rights set forth in this Order and available under applicable law
 17 and without limiting any other provisions of this Order[:]... (c)
 18 oversee and manage, consistent with the relevant governing
 19 documents and applicable law, the Receivership Entities and
 20 Receivership Assets; (d) prevent the encumbrance or disposal of
 21 the Receivership Assets contrary to the Receiver's mandate; ... (f)
 manage litigation by and against the Receivership, the Receivership
 Entities and the Receivership Assets; (g) propose for Court
 approval a fair and equitable distribution of the remaining
 Receivership Assets.

22 *Id.* at pp. 2-3.

23 **The Receiver shall assume and control the operation of the**
 24 **Receivership Entities** and shall preserve all of their assets and
 25 claims for the benefit of the Receivership Estate. **No person**
 26 **holding or claiming any position of any type with any of the**
Receivership Entities shall have any authority to act by or on

27
 28 ⁶ A permanent receivership order was later entered at ECF No. 154.

1 **behalf of any of the Receivership Entities, except as may be**
2 **expressly authorized or delegated by the Receiver in writing.**

3 *Id.* at p. 4 (emphasis added).

4 Take any action which, prior to the entry of this Order, could have
5 been taken by the officers, directors, managers, managing
6 members, and general and limited partners, and agents of the
7 Receivership Entities, acting in their respective capacities.

8 *Id.* at p. 5.

9 **Conduct an orderly liquidation or disposition of the**
10 **Receivership Entities and the Receivership Assets in a manner**
11 **and over a period of time calculated to maximize their value for**
12 **investors and the Receivership Estate.**

13 *Id.* (emphasis added).

14 Pay from the Receivership Assets necessary expenses required to
15 preserve and administer the Receivership Assets and Receivership
16 Estate, [any amount over \$10,000]...(iv)... authorized by this
17 Court pursuant to this Order or any other order of this Court.

18 *Id.* at pp. 5-6.

19 **Engage and employ agents, claim and noticing agents, persons,**
20 **firms and other persons and entities, including ... attorneys,**
21 **experts, liquidators, ... (collectively, “Retained Personnel”), to**
22 **assist in the carrying out of the Receiver’s duties and**
23 **responsibilities hereunder.**

24 *Id.* at pp. 5-6 (emphasis added).

25 **Sell, assign, transfer or otherwise dispose of any assets of the**
26 **Receivership Entities either directly or through one or more**
27 **Retained Personnel, subject to approval by this Court with**
28 **respect to any material assets.**

Id.

1 5. The Receivership Order expressly enjoins all persons and entities receiving
2 notice of the Receivership Order (which includes Michelle Larmore) from interfering with
3 the Receiver's control, possession and management of the Receivership Entities and
4 Receivership Assets and to hinder, obstruct or otherwise interfere with the Receiver's
5 duties, or interfering with the exclusive jurisdiction of this Court over the Receiver, the
6 Receivership Estate, the Receivership Entities and the Receivership Assets. *See* ECF No.
7 77 at pp. 10-11.
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9

10 6. Here, Michelle Larmore's invocation of the "prior exclusive jurisdiction"
11 rule in her objections have had the effect of: 1) interfering with the Receiver's efforts to
12 control, possess, or manage the Receivership Entities or Assets; 2) hindering, obstructing
13 or otherwise interfering with the Receiver's duties; and 3) interfering with the exclusive
14 jurisdiction of this Court over the Receiver, the Receivership Estate, the Receivership
15 Entities, and the Receivership Assets.
16

17 7. Further, the Larmore divorce was already commenced at the time of this
18 federal receivership and the issue Michelle Larmore raises now was settled at the outset by
19 her consent. *See* ECF Nos. 77 and 154.
20

21 8. Where a party consents to a receivership and has previously "consented to
22 the relief provided," that party cannot challenge the court's subsequent imposition of that
23 relief. *See U.S. Securities & Exch. Comm'n v. GPB Capital Holdings, LLC*, No. 23-8010-
24 CV, 2024 WL 4945247 (2d Cir. Dec. 3, 2024) (*citing Berger v. Heckler*, 771 F.2d 1556,
25 1567 (2d Cir. 1985)).
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1 9. As such, Michelle Larmore should be estopped from objecting to the Sixth
 2 Fee Application on the basis of “prior exclusive jurisdiction,” as her objection appears
 3 precluded by her consent and aimed at interfering with the Receiver’s ability to carry out
 4 his duties as set forth in the Receivership Order.
 5

6 B. The Prior Exclusive Jurisdiction Doctrine is Inapplicable and its Application
 7 Here Would Lead to An Absurd Result

8 10. As articulated in the *Receiver’s Omnibus Reply to Objections to Receiver’s*
 9 *Motion for an Order (I) Designating Additional Receivership Entities; and (II) Granting*
 10 *Related Relief* [ECF No. 375], the “prior exclusive-jurisdiction” doctrine, sometimes called
 11 the *Princess Lida* doctrine,⁷ is a rule fashioned by the courts “[t]o avoid unseemly and
 12 disastrous conflicts in the administration of our dual judicial system” (*Penn Gen. Cas. Co.*
 13 *v. Pennsylvania*, 294 U.S. 189, 198, 55 S. Ct. 386, 390 (1935)) “designed to prevent two
 14 courts from asserting overlapping and potentially conflicting authority over a single piece
 15 of property.” *Barbiero v. Kaufman*, No. 12-cv-6869, 2013 U.S. Dist. LEXIS 106831, 2013
 16 WL 3939526, at *6 (E.D. Pa. July 30, 2013), *aff’d*, 580 Fed. Appx. 107 (3d Cir. 2014).
 17

18 11. Here, under Arizona law, an interest in a limited liability company held as
 19 community property “means the right, as initially owned by a person in the person’s
 20 capacity as a member, to receive distributions from a limited liability company.” *See Ariz.*
 21 *Rev. Stat. Ann. § 29-3102(19).*
 22

23
 24
 25 ⁷ In *Princess Lida v. Thompson*, the Supreme Court held that the prior exclusive
 26 jurisdiction doctrine only applies when a state court and federal court claim concurrent
 27 jurisdiction over a specific piece of property (a “*res*”)—the court that first takes possession
 28 or control of that property exercises its jurisdiction to the exclusion of the other. *See Princess Lida of Thurn and Taxis v. Thomson*, 305 U.S. 456 (1939).

1 12. Moreover, “co-owners of a transferable interest held ... as community
2 property ... shall have only the rights of a transferee with respect to the interest.” *See id.* §
3 29-3401(H); *compare* Ariz. Rev. Stat. § 29-732(A) (effective to August 31, 2020); *see also*
4 *Schickner v. Schickner*, 237 Ariz. 194, 199 ¶ 23 (Ariz. Ct. App. 2015) (community property
5 consists only of limited liability company membership interests acquired during marriage,
6 not underlying corporate assets).
7

8 13. Thus, the subject of the state divorce proceeding and the subject of this
9 federal receivership concern different assets and rights to the same. The divorce
10 proceedings concern the ultimate ownership interests of the alleged community property
11 “*res*” that landed in the Receivership, while the Receivership itself concerns the operation,
12 management, and liquidation of the Receivership Entities and the assets of the Receivership
13 Entities. In short, the actual “*res*” and rights over which each court exercises jurisdiction
14 are different in the two separate proceedings.
15
16

17 14. Were the Court to conclude otherwise and apply the “prior exclusive
18 jurisdiction” doctrine here as Michelle Larmore has advocated, this would mean that the
19 assets and operations of the over-250 Receivership entities themselves would be
20 exclusively subject to the divorce court. Every foreclosure excepted from the Receivership,
21 landlord-tenant dispute and other lawsuit (over 100 of which were stayed by the
22 Receivership Order), contract, disbursement and operational decision of the Receiver
23 would be channeled to the divorce court.
24
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26 15. Such an application of the “prior exclusive jurisdiction” doctrine would
27 effectively annul the Receivership Order, cripple the Receivership, and thus effectuate an
28

absurd result. *See, e.g., Pac. Office Automation Inc. v. Pitney Bowes Inc.*, No. 3:20-CV-00651-AR, 2025 WL 1682847, at *2 (D. Or. June 16, 2025) (“An interpretation that produces an absurd result is properly rejected as a matter of law”); *see also Griffin v. Oceanic Contractors, Inc.*, 458 U.S. 564, 575 (1982) (“It is true that interpretations of a statute which would produce absurd results are to be avoided if alternative interpretations consistent with the legislative purpose are available”).

16. This is precisely why Michelle’s Larmore’s reliance upon the case law she cited in the objections, including *LIG Pet Goods*, is unavailing. *L.I.G. Pet Goods Trading, LLC v. Goldfarb*, No. CIV.A.08-CV-5345, 2009 WL 141845 (E.D. Pa. Jan. 16, 2009), is easily differentiated. In *L.I.G.*, one spouse in a divorce proceeding sought a receiver to assert rights over the other spouse’s business. Unlike the circumstances in *L.I.G.* where the other spouse opposed the appointment of a receiver and a receiver was not appointed, here the Receiver was appointed with consent including Michelle Larmore’s consent. Moreover, this receivership was initiated by Complaint of the Securities and Exchange Commission to protect ArciTerra’s investors irrespective of the Larmore divorce presumably affecting rights between the spouses as to any remnant ownership interests after creditors and investors are repaid.

17. “[W]here the issues in the subsequent suit are different from those involved in the first suit, and the subject matter is not identical, there can be no infringement of the jurisdiction of the court in which the first suit is pending, by reason of the institution of the second suit in a court of concurrent jurisdiction.” *Empire Tr. Co. v. Brooks*, 232 F. 641, 645 (5th Cir. 1916). *Cf. Colo. River Water Conservation Dist. v. United States*, 424 U.S.

1 800, 818-19 (1976); *United States v. \$3,000,000 Obligation of Qatar Nat. Bank to*
2 *Nomikos*, 810 F.Supp. 116, 118 (S.D.N.Y. 1993) (declining to apply *Princess Lida* where
3 the “federal court need not actually exercise control over the *res* in order to adjudicate
4 rights in it”); *see also Al-Abood ex rel. Al-Abood v. El-Shamari*, 217 F.3d 225 (4th Cir.
5 2000) (*Princess Lida* does not apply if the federal action “does not depend on or involve
6 exercising jurisdiction over the ‘*res*’”).
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8
9 18. For these reasons, the “prior exclusive jurisdiction” doctrine is not applicable
10 and, further, should not be applied here as it would lead to an unjust and absurd result.

11 C. The Determination of Michelle Larmore’s Interests in the Divorce
12 Proceeding is Irrelevant to the Receivership and the Duties of the Receiver

13 19. The entire premise of Michelle Larmore’s objection based upon the “prior
14 exclusive jurisdiction” doctrine is that how the divorce court rules on her claims to
15 community property that may be in the Receivership (such as an ownership interest)
16 actually matters to Receivership. In other words, she argues that her potential community
17 property share would become her separate property which should be excluded from the
18 Receivership because it was her husband who committed all the wrongdoing. However,
19 this house of cards easily falls for two reasons.
20

21
22 20. First, according to the Receiver’s analysis so far, Michelle Larmore used a
23 company American Express account and other company assets including a private plane
24 and watercraft for personal and non-business expenditures to furnish a lavish lifestyle. The
25 Receiver continues to investigate these points. To the extent warranted upon completion
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1 of his investigation, the Receiver would commence proceedings to recover the value
2 stripped from the estates at the expense of creditors and investors.

3
4 21. Second, her share of the community assets that are in the Receivership are
5 not exempt from the Receivership and the Receivership Order. Indeed, where there is a
6 divorce in Arizona, each former spouse remains individually liable to creditors of the
7 former community. *Community Guardian Bank v. Hamlin*, 182 Ariz. 627, 631 (Ariz. Ct.
8 App. 1995); *In re Oliphant*, 221 B.R. 506, 509 (Bankr. D. Ariz. 1998). As such, an
9 obligation of the former community may be collected from post-divorce separate property
10 of each former spouse. *See Arizona Revised Statutes Annotated* § 25–215(B) (emphasis
11 added).

12
13 22. So, to the extent the community benefited from wrongful acts of one
14 community member, both community members' shares of the community estate are liable
15 for the wrongdoing. *See Cadwell v. Cadwell*, 126 Ariz. 460, 463 (Ariz. Ct. App. 1980).
16 This is because under Arizona law, “[d]ebt incurred by one spouse while acting for the
17 benefit of the marital community is a community obligation,” whether or not the other
18 spouse approves it.” *Lorenz-Auxier Fin. Group, Inc. v. Bidewell*, 772 P.2d 41, 43 (Ariz. Ct.
19 App. 1989).

20
21 23. For these reasons, the divorce proceedings between the Larmores have no
22 impact on the Receivership, regardless of what rights may be allocated between Michelle
23 Larmore and Jonathan Larmore in those proceedings. In short, the divorce proceedings are
24 a red herring here and the Court should overrule and deny Michelle Larmore’s objections
25 based on “prior exclusive jurisdiction.”
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II. Conclusion

24. For all the above reasons, the Court should overrule Michelle Larmore's "prior exclusive jurisdiction" objections, including the Limited Objection, grant the Receiver's Sixth Fee Application and provide such other and further relief as is just and proper.

Dated: September 4, 2025

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Exhibit A**List of Pending Motions**

Receiver's Motion for an Order (I) Designating Additional Receivership Entities; and (II) Granting Related Relief [ECF No. 332]	April 10, 2025
Receiver's Motion for Orders (I) Approving the Auction and Bidding Procedures for the Sale of Substantially All Assets of Fudge Is Us PG, LLC; (II) Approving the Sale of Substantially All Assets of Fudge Is Us PG, LLC, Free and Clear of All Liens, Claims, Encumbrances and Interests; and (III) Granting Related Relief [ECF No. 369]	May 31, 2025
Receiver's Motion for Orders (I) Approving the Auction and Bidding Procedures for the Sale of Substantially All Assets of VBH PG, LLC; (II) Approving the Sale of Substantially All Assets of VBH PG, LLC, Free and Clear of All Liens, Claims, Encumbrances and Interests; and (III) Granting Related Relief [ECF No. 370]	May 31, 2025
Receiver's Second Motion for an Order (I) Designating Additional Receivership Entities; and (II) Granting Related Relief [ECF No. 372]	June 4, 2025
Receiver's Motion for Orders (I) Approving (A) the Engagement and Compensation of Marcus & Millichap Real Estate Investment Services as Broker to Sell the Real Properties Subject to the CMBS Loan Serviced by 3650 REIT Loan Servicing LLC And (B) the Sale and Auction Procedures for the Sale of the Properties; (II) Approving (A) the Sale of the Properties, Free and Clear of All Liens, Claims, Encumbrances and Interests, (B) the Engagement and Compensation of the Defeasance Consultant, and (C) the Use of the Sale Proceeds to Defeasance and Satisfy the CMBS Loan; and (III) Granting Related Relief [ECF No. 394]	July 2, 2025
Receiver's Sixth Application of Receiver for Allowance and Payment of Professional Fees and Reimbursement of Expenses for the Period April 1, 2025 Through June 30, 2025 [ECF No. 420]	August 15, 2025