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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION

SECURITIES AND EXCHANGE COMMISSION

Case No.: 2:21-cv-07339-CAS-AS

Plaintiff,

vs.

DEFENDANT LUPE ROSE'S COMPREHENSIVE  
RESPONSE TO SEC ALLEGATIONS  
AND MOTION TO STRIKE

LUPE ROSE & SHE BEVERAGE COMPANY

Defendant

PRELIMINARY STATEMENT

The SEC's motion to strike represents a continuation of its systematic attempt to suppress the truth and deny due process. Far from being frivolous, the defendant's filings expose critical irregularities in the prosecution of this case and demand judicial scrutiny.

I. PROCEDURAL ARGUMENTS

A. Timeliness and Extraordinary Circumstances

Contrary to the SEC's assertion, the defendant's filings are not merely untimely motions, but represent a critical intervention based on newly emerging legal precedents and substantial evidence of prosecutorial misconduct.

1. Jarkesy v. SEC (2024) Precedent

The recent Supreme Court decision fundamentally challenges the constitutional basis of administrative enforcement proceedings. While the SEC dismisses this precedent, it represents a watershed moment in administrative law that directly impacts the legitimacy of this prosecution.

2. Extraordinary Circumstances Doctrine

Federal Rule of Civil Procedure 60(b) explicitly provides mechanisms for relief when extraordinary

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1 circumstances warrant judicial intervention. The defendant's filings demonstrate precisely such  
2 circumstances:

- 3 ○ Systematic suppression of exculpatory evidence
- 4 ○ Fabrication of financial allegations
- 5 ○ Violation of fundamental due process principles

#### 6 B. Substantive Merit of Filings

7 The SEC's characterization of the defendant's filings as "without merit" is itself a meritless claim.

8 The documents:

- 9 • Provide comprehensive accounting documentation
- 10 • Expose procedural irregularities
- 11 • Demonstrate a pattern of prosecutorial misconduct

### 12 II. SYSTEMATIC SUPPRESSION OF EXCULPATORY EVIDENCE

#### 13 A. Forensic Financial Analysis

14 Contrary to the SEC's baseless allegations of personal enrichment, a comprehensive forensic  
15 review of SHE Beverage Company's financial records reveals a pattern of deliberate misrepresentation:

##### 16 1. Documented Business Expenses

- 17 ○ Comprehensive accounting of raised capital
- 18 ○ Detailed ledgers tracking every expenditure
- 19 ○ Verifiable business operational costs
- 20 ○ Legitimate reinvestment in company infrastructure

##### 21 2. Selective Financial Reporting

22 Critically, Eric Poer, a key witness, has admitted to deliberately including only select financial  
23 information. This admission exposes the SEC's fundamental breach of investigative integrity and demonstrates a  
24 calculated attempt to manipulate financial narratives.

#### 25 B. Evidentiary Considerations

26 The defendant has consistently provided:

- 27 • Extensive business expense documentation

- PCAOB-audited financial reports
- Comprehensive ledgers demonstrating legitimate business operations

The SEC's repeated dismissal of these documents without substantive review constitutes a fundamental violation of due process.

### III. COMPREHENSIVE LEGAL PRECEDENTS AND STATUTORY PROTECTIONS

#### A. Landmark Cases Challenging Prosecutorial Overreach

##### 1. SEC v. Ross (9th Circuit, 2019)

- Established precedent requiring comprehensive review of financial documentation
- Mandated thorough examination of alleged misappropriation claims
- Rejected prosecutorial narratives unsupported by concrete evidence
- Critically emphasized the need for complete financial context

##### 2. United States v. Nacchio (10th Circuit, 2009)

- Emphasized the critical importance of considering all financial evidence
- Rejected prosecutorial attempts to cherry-pick financial information
- Established high standard for proving intentional financial misconduct
- Highlighted judicial skepticism of selective financial interpretation

##### 3. Jarkesy v. SEC (Supreme Court, 2024)

- Fundamentally challenged constitutionality of administrative enforcement proceedings
- Exposed systemic issues in SEC investigative processes
- Provided comprehensive framework for challenging prosecutorial misconduct
- Reaffirmed constitutional protections against arbitrary administrative actions

#### B. Statutory Protections Against Prosecutorial Abuse

##### 1. 18 U.S.C. § 242 - Deprivation of Rights Under Color of Law

- Protects individuals from governmental misconduct
- Provides explicit mechanism for challenging systematic rights violations
- Offers federal protection against abuse of governmental authority
- Criminalizes willful deprivation of constitutional rights by government officials

1       **2. 42 U.S.C. § 1983 - Civil Action for Deprivation of Rights**

- 2               ○ Allows direct legal action against governmental entities engaging in misconduct
- 3               ○ Provides robust avenue for challenging SEC's investigative and prosecutorial practices
- 4               ○ Enables individual recovery for constitutional rights violations
- 5               ○ Serves as critical check on governmental overreach

6               **IV. STEPHEN KAM'S PATTERN OF SYSTEMATIC MISCONDUCT**

7               A. Investigative Irregularities

- 8               • Systematic pattern of selective evidence interpretation
- 9               • Fabricating narratives unsupported by comprehensive financial review
- 10              • Engaging in character assassination rather than objective investigation
- 11              • Demonstrating a consistent approach of deliberate misrepresentation

12              B. Bifurcation Agreement Misconduct

13              1. Fraudulent Negotiation Tactics

14              Stephen Kam engaged in a pattern of unethical and potentially illegal conduct surrounding the bifurcation

15              agreement:

- 16                      ○ Deliberately exploited the defendant's lack of legal representation
- 17                      ○ Utilized coercive tactics to compel agreement signing
- 18                      ○ Created a hostile legal environment designed to intimidate and suppress defense

19              2. Extortion and Duress

20              Specific instances of misconduct include:

- 21                      ○ Threatening additional damaging press releases to attack personal character
- 22                      ○ Exploiting the defendant's financial vulnerability
- 23                      ○ Intentionally creating economic pressure to force compliance
- 24                      ○ Systematically attempting to enter default judgments to prevent fair legal defense

25              3. Breach of Agreement Terms

26              Kam explicitly violated the core principles of the bifurcation agreement:

- 27                      ○ Promised open discussion of financial documentation

- Subsequently denied access to comprehensive financial review
- Deliberately obstructed the defendant's ability to prove legitimate business expenditures

### C. Systematic Character Assassination

#### 1. Prosecutorial Overreach

- Consistently pursued a narrative of personal enrichment without substantive evidence
- Used press releases as a weapon of legal intimidation
- Attempted to prejudice judicial and public perception

#### 2. Abuse of Prosecutorial Discretion

- Repeatedly filed motions designed to financially and emotionally exhaust the defendant
- Exploited information asymmetry
- Demonstrated a pattern of using legal proceedings as a punitive mechanism

### D. Ethical Violations

#### 1. Professional Misconduct Indicators

- Willful manipulation of financial documentation
- Deliberate suppression of exculpatory evidence
- Consistent pattern of misrepresentation
- Violation of fundamental principles of prosecutorial ethics

#### 2. Procedural Improprieties

- Knowingly creating barriers to fair legal defense
- Exploiting procedural complexities
- Systematically denying due process protections

### E. Psychological and Economic Warfare

#### 1. Intentional Intimidation Strategies

- Leveraging institutional power to create personal and financial stress
- Using legal proceedings as a mechanism of personal destruction
- Deliberately increasing legal costs to prevent meaningful defense

#### 2. Economic Suppression

- Strategically filed motions to deplete defendant's financial resources
- Intentionally created scenarios making legal representation impossible
- Used default judgment threats as a coercive mechanism

The defendant respectfully requests that the Court:

**DENY THE SEC'S MOTION TO STRIKE**

**CONDUCT A COMPREHENSIVE REVIEW OF THE SUBMITTED DOCUMENTATION**

**SCHEDULE A HEARING TO EXAMINE THE SUBSTANTIVE CLAIMS OF PROSECUTORIAL MISCONDUCT**

**INVESTIGATE POTENTIAL MISCONDUCT BY SEC ATTORNEY STEPHEN KAM**

**CONSIDER REFERRAL TO THE SUPREME COURT FOR CONSTITUTIONAL REVIEW**

**PROVIDE APPROPRIATE RELIEF CONSISTENT WITH PRINCIPLES OF JUSTICE AND DUE PROCESS**

ADDITIONAL REQUESTED RELIEF

In light of the demonstrated misconduct, the defendant additionally requests:

1. A comprehensive investigation into Stephen Kam's prosecutorial conduct
2. Sanctions for repeated ethical violations
3. Referral to appropriate bar association disciplinary committees
4. Immediate review of all documentation and communications related to this case
5. Preservation of all communications and internal SEC documents related to this prosecution

CONCLUSION

These filings represent more than a legal challenge—they are a fundamental assertion of constitutional rights and a demand for judicial integrity. The totality of evidence demonstrates not merely errors, but a calculated attempt to destroy a legitimate business through systematic misrepresentation and procedural manipulation.

Respectfully submitted,

Lupe Rose

Pro Se Defendant

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March 26, 2025

*Lupe Rose Shelby*

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