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7 **UNITED STATES DISTRICT COURT**
8 **FOR THE DISTRICT OF NEVADA**

9
10 SECURITIES AND EXCHANGE COMMISSION,
11

12 Plaintiff,

13 v.

14 MATTHEW WADE BEASLEY et. al.

15 Defendants,

16 THE JUDD IRREVOCABLE TRUST et. al,

17 Relief Defendants.

Case No. 2:22-cv-0612-CDS-EJY

**NON-PARTY KAMILLE DEAN'S NOTICE
OF MOTION AND MOTION FOR LEAVE
OF COURT TO FILE INTERPLEADER
ACTION UNDER 28 U.S.C. SECTION
959(a)**

TIME: TBD
DATE: TBD
PLACE: Courtroom 6B

18
19 TO ALL PARTIES AND THEIR ATTORNEY'S OF RECORD:

20 PLEASE TAKE NOTICE that on a time, date, and place to be set by the Court before the Honorable
21 Cristina D. Silva of the above-entitled Court located in Courtroom 6B at 333 S Las Vegas Blvd, Las Vegas,
22 Nevada 89101, Non-Party Kamille Dean will move the Court for an Order granting her Leave to File an
23 Interpleader Action in Arizona. This Motion will be made pursuant to 28 U.S.C. section 959(a) which
24 creates a mandatory obligation to seek leave of Court prior to bringing suit against the Receiver and is made
25 through a Special Appearance which does not constitute a general appearance in this case. This Motion will
be based on the following:

26 (1) The Court should grant Ms. Dean leave under 28 U.S.C. section 959(a) to file an Interpleader
27 action to resolve the numerous conflicting demands and competing issues of ownership regarding the funds
28 held in her Trust Account as mandated by Arizona law;

1 (2) Summary turnover proceedings requested by the Receiver are inappropriate to resolve
2 ownership issues, competing demands of numerous parties who are not before the Court where no
3 jurisdiction exists in this Court over them, and each of the issues regarding claims against the funds in Ms.
4 Dean's Trust Account can be resolved only in a plenary proceeding with a Complaint, cross-claims,
5 discovery, and a jury trial;

6 (3) The issue of whether funds are tainted is not before the Court and cannot be resolved in a
7 Summary Proceeding which cannot determine ownership between numerous competing parties who are not
8 before the Court and requires a full plenary proceeding which resolves claims of breach of contract,
9 interference with Attorney's Lien, and the Receiver's infliction of damages and injuries on third parties
10 competing for funds in Ms. Dean's trust account.

11 This Motion will be based on this Notice of Motion and Motion, the accompanying Memorandum of
12 Points and Authorities, the Declaration of Kamille Dean in Support of Motion to Quash, and all of the
13 records, papers, and pleadings on file with the court.

14 DATED: August 15, 2022

KAMILLE DEAN

15 

16 By: _____

17 Kamille Dean
18 Attorney in Pro Se

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I.

INTRODUCTION

Non-Party Attorney Kamilie Dean submits this Memorandum in Support of her Motion for Leave to File Interpleader Action. Ms. Dean files this Motion because she is mandated by law to seek leave of Court under 28 U.S.C. section 959(a), and her Motion for that purpose is an involuntary legal requirement where she makes a Special Appearance here which does not submit to the Courts *in personam* jurisdiction. Rather, she challenges the Court's Jurisdiction while she also seeks leave of court to bring suit against the Receiver under the mandates of section 959.

A. Statement of the Case

The facts and background of this matter are set forth in Ms. Dean's Motion to Quash Receiver's Order to Show Cause Re Contempt and Turn Over Order and Motion to Strike OSC re Contempt and Turn Over Order. Ms. Dean will set forth in this Memorandum only those facts which are necessary for a full understanding of the Receiver's jurisdictionally void conduct and the necessity of Ms. Dean seeking leave of court to file an Interpleader Complaint. Ms. Dean respectfully refers the Court to her Memorandum in Support of Motion to Quash and Memorandum in Support of Motion to Strike for a full account of the facts involved in this case.

B. Basis for Motion for Leave to File Interpleader

This Motion for Leave to File Interpleader will address the essential requirement that Ms. Dean file an Interpleader action in Arizona in order to comply with Arizona law because a summary proceeding before this Court is jurisdictionally improper. The Receiver has sought to determine ownership between numerous competing parties, who are not before the Court, for funds in Ms. Dean's Trust Account. These parties include not only the Receiver and Ms. Dean, but also Kennedy Judd, Khloe Judd, Jennifer Judd, Parker Judd, and Preston Judd.

Summary Proceedings are inappropriate to resolve the issues of ownership and other claims asserted in this proceeding. *United States v. Arizona Fuels Corp.*, 739 F.2d 455, 458-59 (9th Cir. 1984) (“a receiver must file a plenary action against a third party who possesses claimed receivership property, rather than invoking summary proceedings ancillary to the main action.” [¶] This is true when, for example, a receiver asks the court to determine the ultimate merits of the parties' claims to the property.”). The determination of the distribution of the funds held in Ms. Dean's trust account requires a full plenary proceeding which only an Interpleader action will provide, including due process requirements of a Complaint, discovery, trial by jury, and other protections afforded in an Interpleader action. *SEC v. Universal Financial*, 760 F.2d 1034, 1037 (9th Cir.1985) (to comport with due process a summary proceeding to determine ownership must

1 provide a claimant with discovery and a full trial because a claimant's rights may not be determined without
2 such protections).

3 Ms. Dean has been placed in the intolerable position of being held in Contempt of Court should she
4 not comply with the Receiver's demands while also facing civil liability to her clients and sanction by the
5 Arizona Bar should she disburse disputed funds from her Trust Account. The Receiver's actions in this case
6 are little short of draconian. The only possible means to resolve the Receiver's bad faith creation of a legal
7 vice for Ms. Dean is to grant leave for Ms. Dean to file an Interpleader action.

8 This Court cannot resolve the competing claims to the funds held in Ms. Dean's Trust Account in a
9 summary proceeding. The Court has no jurisdiction over Ms. Dean or the funds held in Ms. Dean's account
10 because of the Receiver's violation of 28 U.S.C. section 754 and failure to file Notice in Arizona within 10-
11 days of his appointment on June 3, 2022. All of the claimants to the property, including Ms. Dean's other
12 five (5) Clients, are not before the Court, and their rights may not be adjudicated in their absence. There are
13 no minimum contacts between Ms. Dean and Nevada which would support the Receiver's improper efforts
14 to hold summary proceedings before this Court. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 473
15 (1985). The Court should grant Ms. Dean leave to file an Interpleader which is mandated by Arizona law to
16 determine the competing claims to Ms. Dean's Trust Account so that this matter can be resolved according
17 to the mandates of due process of law.

16 II.

17 **THE COURT SHOULD GRANT MS. DEAN LEAVE OF COURT TO FILE AN INTERPLEADER** 18 **ACTION TO RESOLVE THE NUMEROUS ISSUES OF OWNERSHIP AND** 19 **COMPETING DEMANDS REGARDING THE FUNDS** 20 **HELD IN HER TRUST ACCOUNT**

20 A. **Summary Turnover Proceedings are Inappropriate for Ownership Issues**

21 Ms. Dean claims ownership to the fund in her account and that she has earned \$201,060 fees subject
22 to her March 25, 2022, Attorney-Client Agreement and Attorney's Lien prior to any notice of the
23 Receivership Order. The Receiver has no evidence of ownership for the funds, and yet the Receiver seeks
24 to employ the Court's summary procedures to achieve by a major violation of due process of law without the
25 full protections of a plenary proceeding to establish ownership of the funds, breach and interference with
26 contract, and violation of Ms. Dean's Attorney's Lien. The Receiver's attempt to induce this Court to
27 assume the funds in Ms. Dean's account are Receivership property is baseless. (*See Dean Declaration in*
28 *Support of Motion to Quash*). Summary proceedings may not be utilized to determine Ms. Dean's and other
absent parties' contractual and ownership rights to the property she holds.

1 The purpose of summary proceedings in a receivership is designed to permit the prompt resolution
2 of "allowing, disallowing, and subordinating claims of creditors." *United States v. Arizona Fuels*, 739 F.2d
3 455, 458 (9th Cir. 1984). "Specifically, the receivership court has the power to use summary procedures in
4 allowing, disallowing, and subordinating claims of creditors, so long as creditors have fair notice and a
5 reasonable opportunity to respond." *McFarland v. Winnebago South, Inc.*, 863 F. Supp. 1025, 1034 (W.D.
6 Mo. 1994), *aff'd* 119 Fed. Appx. 834 (8th Cir. 2004) (citing 7 Moore's Federal Practice, P. 66.08(4) (citing
Bien v. Robinson, 208 U.S. 423 (1908)).

7 In *Dold Packing Co. v. Doermann*, 293 F. 315 (8th Cir. 1923), the receiver filed an application and
8 petition attacking the validity of a contract held by a third party. The District Court issued an order to show
9 cause as to determine the validity of the contract. Dold contested the procedure and lost. 293 F. at 320-21.
10 The appellate court held that the summary procedure was improper to adjudicate the receiver's contractual
11 claim against a non-party (to the main action) possessor of claimed receivership property. 293 F. at 331.

12 In *American Brake Shoe & Foundry Co. v. New York Railways Co.*, 10 F.2d 920 (2d Cir. 1926), a
13 receiver invoked summary proceedings to claim funds held by third party fiduciaries. The Court found the
14 use of summary receivership proceedings violated the "well settled rule" that in such a situation a receiver
15 must bring an ancillary plenary suit, rather than proceeding summarily. *Id.* at 921.

16 In *S.E.C. v. Ross*, 504 F.3d 1130, 1146-47 (9th Cir. 2007), the Court held that the receiver must
17 establish ownership of the receivership property by clear and convincing evidence to utilize the receivership
18 summary proceedings. In that case the Receiver could not overcome the preliminary difficulty of
19 establishing that Bustos's earned commissions were receivership assets.

20 The Receiver has no evidence that the funds Ms. Dean holds are Receivership property. The
21 determination of ownership and competing claims in a detailed examination of contractual rights which
22 require a plenary hearing and full lawsuit where each of the parties making competing claims on the funds
23 in Ms. Dean's Trust Account are brought before the Court. Only Ms. Dean may do that because it is Ms.
24 Dean's obligation to file the Interpleader under Arizona law, and the Receiver has engaged in the flagrant
25 due process violation of the rights of all the other claimants to the funds in Ms. Dean's Trust Account.
26 There are numerous other potential claimants on the Trust Funds over whom the Receiver has no
27 jurisdiction and who the Receiver does not have knowledge. Summary proceedings are inappropriate to
28 determine ownership, the rights of absent parties, violation of attorney's lien, counterclaims against the
Receiver for misconduct, contractual rights, and rights to distribution, and a host of claims and defenses to
the funds in Ms. Dean's Trust Account.

1 **B. The Court Should Grant Ms. Dean Leave of Court to File an Interpleader**

2 **1. Arizona law mandates Ms. Dean file an Interpleader action**

3 Ms. Dean is an Arizona attorney and the Trust Account where the \$201,060 in disputed funds are
4 held in located in Phoenix, Arizona. This Court has no jurisdiction over the funds in Arizona, and the
5 Receiver's failure to file Notice of the Receivership within 10-days of the Receiver's June 3, 2022, Order is
6 fatal to the Receiver's claims of jurisdiction over these funds. The Receiver's failure has created significant
7 material injuries and prejudice to Ms. Dean which cannot be resolved by Summary Proceedings, and
8 Arizona law requires that Ms. Dean file an Interpleader action to determine the ownership of the funds held
9 in her Trust Account among the numerous competing claims asserted against those funds.

10 Arizona Supreme Court Rules 42 E.R. 1.5 (fees), 1.15 (safekeeping property) and Rule 43 (disputed
11 trust account funds) mandate Ms. Dean not disburse funds from her Trust Account in the face of completing
12 demands and requires she file an interpleader action. The Arizona State Bar states:

13 "If a dispute arises about funds in your trust account, you must not withdraw the disputed
14 amount. If you are holding funds that are in dispute, create ticklers to assure that you take action to
15 resolve the dispute as promptly as possible. This is another advantage of reviewing client ledgers
16 monthly - disputed amounts sitting in the trust account will come to your attention each time you do.
17 If the dispute cannot be resolved promptly, you may have an ethical obligation to interplead or file a
18 declaratory action regarding the disputed funds." State Bar of Arizona, Client Trust Accounting for
19 Arizona Attorneys., p. 9 (2014) <https://www.azbar.org/media/cldkltly/trust-account-manual-rev-8-2017.pdf>.

20 Rules ER 1.15 and 43 require an Arizona Attorney to file an interpleader action whenever there is a
21 dispute and conflicting demands to money held in the attorney's Trust Account. *Employers Reinsurance*
22 *Corp. v. GMAC Ins.*, 308 F. Supp. 2d 1010, 1016 (D. Ariz. 2004)(Arizona rules of professional conduct
23 requires attorney should segregate and hold disputed property and file interpleader where dispute cannot in
24 good faith be resolved amicably). No attorney should be placed in such a manufactured legal vice created
25 by the Receiver who knows he violated section 754 and yet improperly demands in bad faith Ms. Dean turn
26 over funds to the Receiver. *In the Matter of A Member of the State Bar of Arizona, Jesus R. Romo Vejar*,
27 2004 WL 5739531, at *3 (Sep. 2, 2004)(attorney's failure to file interpleader action of funds in trust account
28 when faced with competing demand on the money was sanctionable conduct).

The vice in which Ms. Dean has been placed is intolerable. The Receiver has engaged in
extraordinary severe efforts to hold Ms. Dean in Contempt of Court while she also faces civil liability to her
clients and sanction by the Arizona Bar should she disburse disputed funds from her Trust Account. The
Receiver's actions are an ill-conceived violation of due process. The only possible means to resolve the
Receiver's bad faith is to grant leave for Ms. Dean to file an Interpleader action.

1 **2. The issue of whether funds are tainted is not before the Court**

2 The Court has expressed its concerns in ruling on Motions filed by the law firm of Fabian VanCott
3 (Dkt. 142) and Oberheiden P.C. (Dkt. 164) for release of attorney's fees from funds they hold in their Trust
4 Account for their failure to establish that funds they hold are untainted and do not belong to the Receiver.
5 However, Ms. Dean stands in a materially different position from these other attorneys because:

6 (1) "Mr. Nick Oberheiden, Esq. filed a Certified Statement, pursuant to Paragraph 17C of the
7 Appointment Order, in which he advised the Court that Oberheiden, P.C. was holding \$2,425,000.00 in trust
8 for Judd's representation in all criminal investigations or actions to which Judd may be a party. ECF No.
9 97." (Dkt. 235, Order, p. 3, lines 11-14). Ms. Dean has expressly denied in a Certification sent to the
10 Receiver on June 24, 2022, (Exhibit "D," Declaration of Kamille Dean in Support of Motion to Quash) that
11 she held any funds belonging to Jeffrey Judd, and she expressly denied any jurisdiction by this Court over
12 her or the funds she held for her other five (5) clients who are not parties to this action;

13 (2) Kevin Anderson of the Fabian VanCott firm Certified to the Court that he was holding
14 \$376,338.73 in funds provided to him by Jeffrey Judd (Dkt. 235, Order, p. 3, lines 17-23). Ms. Dean has
15 expressly stated the funds did not come from Jeffrey Judd rather from all six (6) of her clients.. The funds
16 now belonged to her and were held for her other five (5) Clients, and not just Jeffrey Judd. Ms. Dean had
17 already earned all \$201,060 of those fees *prior* to learning of the Receivership Order. (Declaration of
18 Kamille Dean in Support of Motion to Quash and Exhibit "D");

19 (3) Ms. Dean was not part of the initial proceedings before this Court where the Court issued a
20 Temporary Restraining Order on April 13, 2022 (Dkt. 3), followed by a Preliminary Injunction on April 21,
21 2022 (Dkt. 56), finding that funds in those attorney's accounts were tainted and frozen;

22 (4) The Court has no jurisdiction over Ms. Dean and the funds held in Arizona because the Receiver
23 violated 28 U.S.C. section 754 by failing to file the Notice of Receivership in Arizona within 10-days of his
24 appointment on June 3, 2022;

25 (5) The Receiver bears the burden in this Contempt and Turn Over proceeding of establishing the
26 funds in Ms. Dean's Trust Account are receivership property, and unlike the proceedings concerning Fabian
27 VanCott and Oberheiden P.C., where the parties acknowledge the funds they held belonged to Jeffrey Judd,
28 the Receiver has not presented one scrap of evidence to meet that burden, where Ms. Dean testifies that the
funds she holds did not belong to Jeffrey Judd (*see* Dean Declaration in Support of Motion to Quash);

 (6) Ms. Dean does not request this Court to permit her to withdraw any funds from her Trust
Account, and she has not filed a Motion acknowledging the funds in her account are Receivership funds like
Attorneys Fabian VanCott and Oberheiden had done; and

1 (7) Ms. Dean claims ownership with competing demands from numerous parties not before the
2 court who assert ownership, breach of contract, breach of Attorney's liens, and other causes of action from
3 third parties to the funds which cannot be resolved in a summary proceeding. These competing claims can
4 only be resolved in a plenary Interpleader proceeding which joins all claimants, provides full due process of
5 a Complaint, discovery, and jury trial, and allows all parties to assert defense and cross-claims.

6 "[T]he burden of proof in a turnover proceeding is at all times on the receiver or trustee; he must at
7 least establish a prima facie case." *Gorenz v. Illinois Dept. of Agriculture*, 653 F.2d 1179, 1184 (7th Cir.
8 1981) (quoting 2 Collier on Bankruptcy, ¶ 23.10 (14th ed. 1976)). See also *Maggio v. Zeitz*, 333 U.S. 56,
9 63-64 (1948) ("This Court has said that the turnover order must be supported by 'clear and convincing
10 evidence,' *Oriel v. Russell*, 278 U.S. 358, 49 S.Ct. 173, 174, 73 L.Ed. 419,"). "The burden of proof in a
11 turnover proceeding is at all times on the receiver or trustee; he must at least establish a prima facie case.
12 After that, the burden of explaining or going forward shifts to the other party, but the ultimate burden or risk
13 of persuasion is upon the receiver or trustee." *In re Kana*, 2011 WL 1753208, at *2 (Bankr. D.N.D. May 6,
14 2011), quoting *Evans v. Robbins*, 897 F.2d 966, 968 (8th Cir.1990) (the receiver must demonstrate by clear
15 and convincing evidence that the assets in question are part of the receivership estate).

16 In its August 5, 2022, Order (Dkt. 235) regarding Fabian VanCott and Oberheiden P.C., the Court
17 found that Judge James C. Mahan had frozen funds on April 13, 2022, belonging to Jeffrey Judd because the
18 funds in those attorney's accounts were tainted. The Court's Order expressly found that "Judd has not
19 provided sufficient information to show that the funds are not untainted." (Dkt. 235, 8-5-22 Order, p. 7,
20 lines 14-15). However, the burden of proof in Ms. Dean's case is directly the opposite, and it is the
21 Receiver who has the burden of showing the funds in Ms. Dean's account are receivership property and are
22 somehow tainted. The Receiver has not presented one scrap of evidence to assume that burden.

23 Ms. Dean was not a party to this proceeding when the Court entered the April 13, 2022, Temporary
24 Restraining Order (Dkt. 3), followed by the April 21, 2022, Preliminary Injunction (Dkt. 56), and she had
25 no notice or opportunity to present evidence that the funds in her account are not tainted, do not belong to
26 Jeffrey Judd, and are not Receivership property. Unlike the other attorneys, Ms. Dean has not made any
27 request to withdraw funds from her Trust Account, and she only seeks an Order permitting her to file an
28 Interpleader action where all of the issues of ownership, taint, and competing claims made by numerous
parties who are not and cannot be brought before this Court will be determine in a single plenary proceeding
which provides for a Complaint, counter-claims, discovery, trial by jury, and due process of law.

3. The Court should grant leave to permit Ms. Dean to file an Interpleader

The Receiver's refusal to permit Ms. Dean to resolve this matter according to Arizona law has been intolerable. In the absence of leave of court or the Receiver's permission which the Receiver has refused to provide, Ms. Dean must seek permission from this Court to file an Interpleader action. This Court should grant leave to permit Ms. Dean to file an Interpleader action which is the only plenary proceeding which can adjudicate the numerous competing demands over the funds in Ms. Dean's Trust Account.

Established by the Supreme Court over a century ago, the *Barton* doctrine set forth in *Barton v. Barbour*, 104 U.S. 126 (1881), provides that "before suit is brought against a receiver[,] leave of the court by which he was appointed must be obtained." 104 U.S. at 128 (citing *Davis v. Gray*, 83 U.S. 203 (1872)). The *Barton* Court explained that a court approval requirement was necessary to ensure a consistent and equitable administration of the receivership property. *Id.* at 128–29. Although Congress has never expressly codified the *Barton* doctrine, implicit in a provision of the Judicial Code, 28 U.S.C. § 959(a), is a general rule that a party seeking to sue a receiver or trustee must first obtain permission from the appointing court. Section 959(a) provides:

"Trustees, receivers or managers of any property, including debtors in possession, may be sued, without leave of the court appointing them, with respect to any of their acts or transactions in carrying on business connected with such property. Such actions shall be subject to the general equity power of such court so far as the same may be necessary to the ends of justice, but this shall not deprive a litigant of his right to trial by jury." 28 U.S.C. § 959(a).

This provision, originally enacted in 1887, just six (6) years after *Barton*, was in direct response to the concerns raised in Justice Miller's dissent in *Barton*. *In re VistaCare Grp., LLC*, 678 F.3d 218, 226 (3d Cir. 2012). Justice Miller stated it would be fundamentally unfair to require a party to obtain court permission to pursue claims against the receiver arising out of the receiver's operation of a business. *Id.* at 138. In contrast, Justice Miller agreed with the majority that "[w]hen a receiver [was] appointed to wind up a defunct corporation ... [and] his sole duty [was] to convert the property into a fund for the payment of debts, ... a very strong reason exist[ed] why the court which appointed him should alone control him in the performance of his duty." *Id.*

In this case, the Receiver's actions are an attempt to gather and administer purported Receivership funds, and therefore leave of Court is required to bring an Interpleader action against the Receiver. Ms. Dean has been subjected to innumerable conflicting demands for distribution of her funds from her Trust Account and there is no possible means of resolving those demands, ownership claims, damage claims, and violation of Attorney's Lien claims in a summary proceeding before this Court. It is essential that the Court grant Ms. Dean leave of Court to bring an Interpleader action in Arizona which will have jurisdiction over

1 all parties and be able to resolve all claims and disputes in a single plenary proceeding which comports with
2 the mandates of due process of law.

3 **C. This Motion for Leave to File Interpleader Action is Not a General Appearance**

4 Ms. Dean seeks the mandatory permission of the Court to file an Interpleader action in Arizona
5 where jurisdiction exists over all the parties and the funds in Ms. Dean's Trust Account are located. She
6 does not seek affirmative relief, and she does not file a responsive pleading by seeking the mandatory leave
7 of the Court required by 28 U.S.C. section 959(a). *Sec. & Exch. Comm'n v. United Fin. Grp., Inc.*, 576 F.2d
8 217, 220 (9th Cir. 1978) (action against federal receiver may be maintained only with leave of the
9 receivership court unless the claim falls within the exception of the receiver doing business under 28 U.S.C.
10 s 959(a)). Because Ms. Dean does not seek affirmative relief on the merits by filing her request for leave to
11 file Interpleader in Arizona, this Motion is not a general appearance and does not subject Ms. Dean to
12 jurisdiction in Nevada.

13 Where a party specially appears and does not seek affirmative relief or does not file a responsive
14 pleading, the party may make a special appearance which does not constituted a general appearance. *Benny*
15 *v. Pipes*, 799 F.2d 489, 492 (9th Cir. 1986), *amended*, 807 F.2d 1514 (9th Cir. 1987) ("An appearance
16 ordinarily is an overt act by which the party comes into court. and submits to the jurisdiction of the court.
17 This is an affirmative act involving knowledge of the suit and an intention to appear.") (*quoting* 28
18 Fed.Proc. (L.Ed.) § 65.137 at 526 (1984). *See Davis v. Cleveland, C., C. & St. L. Ry. Co.*, 217 U.S. 157,
19 170 (1910) ("the appearance of the principal defendant [at a motion to quash], as shown by the record, was a
20 special, and not a general, appearance, and that the same did not subject said principal defendant and its
21 property to the jurisdiction of the court."). A general appearance requires that a party seek affirmative relief
22 which invokes the general jurisdiction of the Court. *Maiz v. Virani*, 311 F.3d 334, 341 (5th Cir. 2002)
23 (parties did not take affirmative action, and therefore do not make a general appearance, where they do not
24 file a motion requesting a beneficial ruling from the trial court); *Rivera v. Wells Fargo Bank, N.A.*, 2016 WL
25 11431200, at *3 (W.D. Tex. Aug. 12, 2016) (appearing in matters ancillary and prior to the main suit does
26 not constitute a general appearance in the main suit). Where no Rule 12 motion is filed or responsive
27 pleading seeking affirmative relief, a preliminary motion does not constitute a general appearance. *Exch.*
28 *Ctr., LLC v. Chen*, 2021 WL 2438794, at *3 (E.D. La. June 15, 2021) ("Thus, it is clear that Chen was
contemplating bringing a motion to challenge personal jurisdiction. Further, Chen has not filed a responsive
pleading or any Rule 12 motions prior to the instant motion [to set aside default]. *See Fed. R. Civ. P.*
12(h)(1)(B). Accordingly, the Court finds that Chen has not waived his right to challenge this Court's
exercise of personal jurisdiction.").

1 In *Sternberg v. Langston*, 2019 WL 5426480, at *3 (E.D. La. Oct. 23, 2019), the Court stated:

2 “Rule 12(g) provides that ‘a party that makes a motion under this rule must not make another
3 motion under this rule raising a defense or objection that was available to the party but omitted from
4 its earlier motion.’ Fed. R. Civ. P. 12(g)(2) (emphasis added). Further, Rule 12(h) provides that a
5 party may also waive ‘any defense listed in Rule 12(b)(2)-(5) by ... failing to either: (i) make it by
6 motion under this rule; or (ii) include it in a responsive pleading.’ Fed. R. Civ. P. 12(h)(1)(B).
7 Thus, the plain language of Rule 12 provides that the defense of lack of personal jurisdiction is
8 waived where a party files a Rule 12 motion or responsive pleading but fails to assert it, or where a
9 party fails to file a Rule 12 motion at all. *Mississippi ex rel. Hood v. Entergy Miss., Inc.*, No. 3:08-
10 CV-780, 2017 WL 2973998, at *1 (S.D. Miss. July 11, 2017); *cf. Alliantgroup, L.P. v. Feingold*, No.
11 H-09-0479, 2009 WL 1109093, at *6 (S.D. Tex. Apr. 24, 2009) (‘[Defendant’s] motion for extension
12 of time to answer is not a responsive pleading and his failure to object to jurisdiction in that motion
13 did not waive his objection to a lack of personal jurisdiction.’).”

14 Ms. Dean seeks a mandatory order under section 959(a) which requires leave of Court before she is
15 able to bring suit against the Receiver in Arizona, and she does not thereby submit to the Nevada Court’s
16 jurisdiction. *Visser v. Caribbean Cruise Lines, Inc.*, 2014 WL 12921353, at *8 (W.D. Mich. Apr. 4, 2014)
17 (“Unlike a general appearance, a notice of removal does not constitute one of the ‘submissions, appearances,
18 and filings’ that give a plaintiff a reasonable expectation that the defendant ““will defend the suit on the
19 merits or cause the court to go to some effort that would be wasted if personal jurisdiction is later found
20 lacking[.]”” *See Gerber*, 649 F.3d at 519 (citation omitted).”). Ms. Dean cannot bring her mandatory
21 Interpleader required under Arizona law without obtaining leave of Court to file suit against the Receiver,
22 and by seeking such leave she does not acknowledge or submit to jurisdiction in Nevada or otherwise seek
23 affirmative relief from the Court. Ms. Dean does not make a general appearance in this case by requesting
24 leave of court to bring her Interpleader complaint.

25 III.

26 CONCLUSION

27 For the foregoing reasons, Non-Party Kamille Dean requests that her Motion for Leave to File
28 Interpleader Action be granted.

DATED: August 15, 2022

KAMILLE DEAN

By: 

Kamille Dean

PROOF OF SERVICE

I, Maureen Jaroscak, am an attorney at law. I am over the age of 18 and not a party to the within action. My business address is 1440 Harbor Boulevard, Suite 900, Fullerton, CA 92835.

On August 15, 2022, I served the following document described as:

- (1) NON-PARTY KAMILLE DEAN’S NOTICE OF MOTION AND MOTION TO QUASH JURISDICTION OVER KAMILLE DEAN AND ORDER TO SHOW CAUSE RE CONTEMPT AND TURN OVER ORDER (DKT 210);
- (2) NON-PARTY KAMILLE DEAN’S NOTICE OF MOTION AND MOTION TO STRIKE OSC RE CONTEMPT AND TURN OVER ORDER (DKT. 210) FOR JURISDICTIONAL DEFECTS;
- (3) NON-PARTY KAMILLE DEAN’S NOTICE OF MOTION AND MOTION FOR LEAVE TO FILE INTERPLEADER COMPLAINT;
- (4) NON-PARTY KAMILLE DEAN’S OBJECTION TO THE AFFIDAVITS OF KARA HENDRICKS (DKT. 210-2) AND DAVID ZARO (DKT. 210-3)

on all interested parties in this action by serving a true copy through electronic service by gmail.com on the email addresses and parties indicated below. The machine indicated the electronic transmission was successfully completed as follows:

SEE ATTACHED SERVICE LIST:

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on August 15, 2022, at Fullerton, California.

/s/ Maureen Jaroscak

Maureen Jaroscak

SERVICE LIST

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