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IN THE CIRCUIT COURT OF THE 9TH JUDICIAL CIRCUIT
IN AND FOR ORANGE COUNTY, FLORIDA
CIRCUIT CIVIL DIVISION

CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT,

Plaintiff,

v. **CASE NO.: 2023-CA-011818-O**

WALT DISNEY PARKS AND RESORTS U.S., INC.,

Defendant.
____/

PLAINTIFF'S RESPONSE IN OPPOSITION TO "DEFENDANT'S MOTION TO DISMISS PLAINTIFF'S [CORRECTED] COMPLAINT AS MOOT OR, IN THE ALTERNATIVE, TO STAY THIS ACTION"

Because this case is not moot and a stay is not proper, Plaintiff Central Florida Tourism Oversight District (the "District") respectfully requests that the Court deny the "Motion to Dismiss Plaintiff's [Corrected] Complaint as Moot or, in the Alternative, to Stay this Action" filed by Defendant Walt Disney Parks and Resorts U.S., Inc. ("Disney").

INTRODUCTION

Disney's motion is classic Imagineering, inviting the Court to make believe that reality is whatever Disney dreams up.

Disney first tells this Court that Senate Bill 1604 is a valid law that moots the District's claims. But to make this argument, Disney must hope that this Court will ignore Disney's claim in federal court that S.B. 1604 is unconstitutional. In reality, the District's suit is a live controversy whose resolution will have an actual effect on Disney's federal action, because if Disney's contracts are void, nearly all of Disney's claims in the federal case disappear.

Disney then tells this Court that it should stay this case in favor of Disney's federal case in Tallahassee. But to make this argument, Disney must pretend: (1) that this Court and the federal court share the "concurrent jurisdiction" needed to invoke the priority principle, when in reality the federal court would never have original jurisdiction to hear the District's state-law claims; (2) that the federal court got jurisdiction first, when in reality the District served Disney in this case well before Disney served the District's officials in the federal case; and (3) that this case and the federal case involve the same thing, when in reality this case is about whether two contracts are void under state law while Disney's federal case is about whether the Governor and other individuals violated the federal Constitution.

Because neither dismissal nor a stay is proper, Disney's motion should be denied.

BACKGROUND

Disney spills a lot of ink—nearly a third of its motion—characterizing the alleged motivations of the Governor and Legislature, which Disney claims led to the District becoming the District. But none of that is relevant to whether S.B. 1604 moots this case or whether the priority principle applies in this case, and Disney doesn't even try to show otherwise.

The relevant background is this. For 55 years, Disney enjoyed a privilege no business in Florida has ever enjoyed—the ability to hand-pick its own local government with powers rivalling that of a county or city and to wield those powers as Disney saw fit. (Compl. ¶¶ 1-16). That changed in February 2023, when the Legislature created the District and subjected Disney to independent oversight. (*Id.* ¶ 19). With the District set to assume control on February 27, 2023, Disney acted quickly and quietly to try to tie the District's hands. (*See id.* ¶¶ 19-24).

On February 8, 2023, Disney caused its prior, hand-picked government to enter into a 30-year development agreement and a set of restrictive covenants (the "Agreements"). (Compl. ¶¶

20-22). The Agreements purported to grant Disney the rights to control development in the District, to commit the District to subsidize Disney's growth at taxpayer expense, and even to give Disney the right to censor the District's speech. (*Id.* ¶¶ 23-24). As alleged in the District's complaint, the Agreements were approved in violation of Florida law governing public notice, procedures for considering development agreements, and taxpayer approval, among other things. (*See id.* ¶¶ 35-70). As a result, they were void *ab initio* and never effective. (*Id.* ¶¶ 25-26).

Shortly after taking over, the District discovered what Disney had done. (*See* Compl. ¶¶ 25-26). So, the District reviewed its options, sought the advice of counsel, and considered public comment. At a public meeting on April 19, 2023, the District heard a presentation from litigation counsel explaining how and why the Agreements violated Florida law and, consequently, were void. On April 26, 2023, it adopted legislative findings detailing the legal defects in the Agreements and concluding the Agreements were void *ab initio*.

Within hours of the District adopting those legislative findings, Disney responded by filing a federal lawsuit in Tallahassee against the Governor and various state officials, the District's board members in their official capacities, and the District's executive director—basically, everyone except the District itself. Disney asserts solely federal constitutional claims, seeks a declaration that the Legislature's actions (including S.B. 1604) and the District's legislative findings are unconstitutional and invalid, and seeks an injunction against their enforcement.

Consistent with the District's publicly stated intention, the District filed its complaint in this Court on May 1, 2023. It has nothing to do with the federal Constitution. The only parties are the District and Disney—the two parties to the Agreements—and the complaint is entirely about the substance of the Agreements and the mechanics by which Disney caused them to be

adopted. It asserts claims arising *solely under Florida state law* and seeks a declaration that the Agreements are void and an injunction against their enforcement. The District filed in its home venue of Orange County, where Florida law grants it the right to have its claims decided. *See Carlile v. Game & Fresh Water Fish Comm'n*, 354 So. 2d 362, 363-64 (Fla. 1977).

ARGUMENT

The bottom line is that none of the factual or legal premises upon which Disney's motion rests are true. First, S.B. 1604 does not moot this case. Disney maintains that S.B. 1604 is unconstitutional, so the District's request for a declaration that the Agreements are void remains a live issue—both because it is relevant to the federal-court case and because it presents a defense to any forthcoming breach-of-contract action by Disney in state court. Additionally, S.B. 1604 would not apply to the Agreements if this Court agrees with the District that the Agreements are void. Second, the priority principle does not apply: the principle only applies to claims over which a federal court has "concurrent jurisdiction," which the federal court hearing Disney's suit lacks; the District perfected service against Disney first; the requisite similarity of claims and parties is lacking; and exceptional circumstances—including the need for a swift decision and the District's legal right to sue in Orange County—make a stay improper. Disney's motion should be denied.

I. This Case Is Not Moot.

A. Resolving Whether The Agreements Are Void Will Affect Both The Ongoing Federal-Court Litigation And Any Subsequent Action For Breach Of Contract.

"An issue is moot when the controversy has been so fully resolved that a judicial determination can have no actual effect." *Godwin v. State*, 593 So. 2d 211, 212 (Fla. 1992). Yet even when a case is moot, courts should not dismiss if "collateral legal consequences that affect the rights of a party flow from the issue to be determined." *Id.* With that background, the Court

should not dismiss this case as moot, because a ruling on whether the Agreements are void will have "actual effects" or, at least, "collateral legal consequences" in both the currently pending federal lawsuit and any subsequent action Disney may bring for breach of contract.

In federal court, Disney asserts that various state actors violated the federal Constitution both by passing S.B. 1604 and declining to comply with the Agreements. *See Walt Disney Parks and Resorts U.S., Inc. v. DeSantis*, No. 4:23-cv-163, DE25. Those constitutional questions, however, disappear if this Court concludes that the Agreements are void. Each of Disney's contract-related claims presumes the presence of a valid contract on which the defendants unconstitutionally infringed. So if this Court determines that the Agreements are void, that ruling will have "actual effects" and "collateral legal consequences" in the federal proceeding, *Godwin*, 593 So. 2d at 212—indeed, it will knock out almost *all* of Disney's federal claims. *See* No. 4:23-cv-163, DE25 ¶¶ 176–220 (four of Disney's five counts turn on the contracts). That substantial potential impact keeps this case very much alive, regardless of S.B. 1604. In fact, any other view would seriously undermine the *Pullman* abstention doctrine, which instructs federal courts to refrain from deciding federal constitutional questions when they may be obviated by a state court's ruling on an undecided question of state law. *See R.R. Comm'n of Tex. v. Pullman Co.*, 312 U.S. 496, 501 (1941); *infra* at 16-17.

On top of that, the Court's ruling will also have real effects in the breach-of-contract action that Disney will surely file against the District. One purpose of the District's declaratory-judgment suit is to preempt any such breach-of-contract claim by affirmatively vindicating a contract defense—that the Agreements are invalid. *E.g.*, *Advanced Risk Mgmt., Inc. v. Prout*, 647 So. 2d 911, 912 (Fla. 4th DCA 1994) (contracting party preemptively sought declaratory judgment that a contract was void). True, S.B. 1604 is another defense that the District may

raise, and it may well be a successful one. But that is far from guaranteed—after all, Disney contends that S.B. 1604 is unconstitutional on a bevy of grounds, *see* No. 4:23-cv-163, DE25 ¶¶ 176–209, so the parties quite obviously dispute whether S.B. 1604 will preclude Disney's claim for breach. Given that uncertainty, the District's "alternative" defense of the Agreement's invalidity remains a live issue, and this Court's ruling would resolve it. *See Sager v. Blanco*, 351 So. 3d 1129, 1136 (Fla. 3d DCA 2022) (citations omitted); *see also Morales v. Coca-Cola Co.*, 813 So. 2d 162, 164 (Fla. 4th DCA 2002) (explaining that parties are even "entitled to allege alternative *inconsistent* facts or theories in their pleadings" (emphasis added)).[1]

B. The District's Claims Are Not Moot Because They Pose Questions of Great Public Importance and They Are Capable of Repetition.

Florida courts also will not dismiss a case as moot when "the questions raised are of great public importance or are likely to recur." *Godwin*, 593 So. 2d at 212. The issue of whether Disney's Agreements are invalid meets either qualification.

To start, the validity of the Agreements is as important an issue as they come. For nearly 60 years, Disney controlled the most powerful special district in Florida history—a district with the authority to generate "power through nuclear fission." Ch. 67-764, § 9(17), Laws of Fla. (1967). Perturbed by such an extreme example of corporate capture, the People's elected representatives passed legislation untethering the District from Disney's control. But at the eleventh hour, Disney trampled over Florida's procedural and substantive law to execute one-sided contracts with the District's lame-duck board that purportedly assigned to Disney much of

[1] It does not matter that the District has not raised S.B. 1604 as a claim in this proceeding—parties need not seek declaratory judgment on every issue in a case. And regardless, the District would be within its rights to amend its complaint to add S.B. 1604 as an alternative state-law basis on which this Court could hold that the District's authority is not constrained by the Agreements. The District will gladly do so if so instructed.

the sovereign power that the State was bestowing to the District. Not only are those acts a serious attack on representative democracy, but unless these contracts are precluded, Disney would control, among other things, *all* development rights in one of the most heavily visited areas of central Florida. Few issues, in short, strike closer to the State's sovereignty or are of greater interest to its economy and citizenry.

The issues here are also likely to recur. S.B. 1604 sunsets by its own terms on July 1, 2028. That means that, unless the Legislature affirmatively reinstates S.B. 1604, it will no longer preclude the District from "complying with the terms" of the Agreements, and their validity will again take center stage in the fight over whether the District must comply with them. A dismissal thus just means kicking the can down the road when the need for judicial intervention is certain. *See, e.g.*, *McLaughlin v. Dep't of Highway Safety and Motor Vehicles*, 2 So. 3d 988, 990 (Fla. 2d DCA 2008) (holding that challenge to license suspension was not moot even though the suspension terminated because it "presents a question that is likely to recur"), *quashed on other grounds*, *Dep't of Highway Safety and Motor Vehicles v. Hernandez*, 2 So. 3d 988 (Fla. 2008); *Wexler v. Lepore*, 878 So. 2d 1276, 1280 (Fla. 4th DCA 2004) (holding candidate's challenge to vote recount process did not become moot when candidate failed to draw opposition because he would likely seek reelection).

C. The Plain Text of Senate Bill 1604 Underscores That This Case Is Not Moot.

Even if Disney were not contesting the constitutionality of S.B. 1604, this action would not be moot because S.B. 1604 does not resolve the controversy at issue in this case—the validity of the Agreements. As relevant here, S.B. 1604 provides:

> **(7) Review of development agreements.**—An independent special district is precluded from complying with the terms of any development agreement, or any other agreement for which the development agreement serves in whole or part as consideration, which is executed within 3 months preceding the effective date of a

> law modifying the manner of selecting members of the governing body of the independent special district from election to appointment or from appointment to election. The newly elected or appointed governing body of the independent special district shall review within 4 months of taking office any development agreement or any other agreement for which the development agreement serves in whole or part as consideration and shall, after such review, vote on whether to seek readoption of such agreement. ***This subsection shall apply to any development agreement that is in effect on, or is executed after, the effective date of this section. This subsection expires July 1, 2028, unless reviewed and saved from repeal through reenactment by the Legislature.***

Ch. 2023-31, *Laws of Fla.* (adding subsection (7) to section 189.031, Florida Statutes) (emphasis added).

The highlighted statutory text, which Disney's motion omitted, is fatal to Disney's mootness defense. Statutes must be interpreted in accordance with their express terms. *See, e.g.*, *1994 Beach Blvd, LLC v. Live Oak Banking Co.*, 346 So. 3d 587, 593 (Fla. 2022). And by its express terms, S.B.1604 only applies to "any development agreement … in effect on, or executed after, the effective date of this section," which was May 5, 2023. The Agreements were "entered into" on February 8, 2023, three months before the effective date. And because the Agreements were void *ab initio*, they are legal nullities that were *never* effective. *See Black's Law Dictionary* (11th ed. 2019) (defining "void ab initio" as "[n]ull from the beginning, as from the first moment when a contract is entered into").

The only way S.B. 1604 could apply to the Agreements is if they are not void *ab initio* as alleged in the District's complaint. Thus, the Court cannot accept Disney's argument that S.B. 1604 applies to the Agreements and renders this case moot without declaring that Disney is right and the District is wrong about whether the Agreements are void—i.e., without holding that Disney wins *this* case on the merits. Thus, this case cannot be moot because the practical result the District's complaint seeks—a declaration that the Agreements are void—is unaffected by S.B. 1604. *See Du Bose v. Meister*, 110 So. 546, 547 (Fla. 1926); *see also Godwin*, 593 So. 2d at

212 (explaining that a case is not moot unless “it presents no actual controversy or when the issues have ceased to exist”).

II. This Case Should Not Be Stayed.

“Comity principles dictate that ‘[w]here a state and federal court have *concurrent jurisdiction* over the same parties or privies and the same subject matter, the tribunal where jurisdiction first attaches retains jurisdiction.’ ” *Ocwen Loan Servicing, LLC v. 21 Asset Mgmt. Holding, LLC*, 307 So. 3d 923, 925 (Fla. 3d DCA 2020) (*quoting Shooster v. BT Orlando Ltd. P’ship,* 766 So. 2d 1114, 1115 (Fla. 5th DCA 2000)) (emphasis added). This principle does not apply here for the reasons summarized above and detailed below.

A. The “Principle Of Priority” Applies Only Where A Federal Court Has “Concurrent Jurisdiction” Over Claims Made In State Court, Which Could Never Be The Case Here.

The priority principle can be applied to stay a Florida state court action based upon a federal action only if the federal and state courts have “concurrent jurisdiction.” *See, e.g., Sunshine State Serv. Corp. v. Dove Invs. Of Hillsborough*, 468 So. 2d 281, 283 (Fla. 5th DCA 1985) (explaining that the principle only applies “[w]here a state and federal court have *concurrent jurisdiction*”) (emphasis added). In this context, “concurrent jurisdiction” refers to “subject-matter jurisdiction, not personal jurisdiction.” *BNSF Ry. Co. v. Tyrrell*, 581 U.S. 402, 411 (2017) (quotation omitted).

Federal courts are courts of limited original jurisdiction that, with exceptions not applicable here, extends only to cases involving: (1) claims that arise under federal law (federal-question jurisdiction) or (2) citizens of different states (diversity jurisdiction). *See* 28 U.S.C. §§ 1331, 1332(a), 1343 (2022); *PTAFLA, Inc. v. ZTE USA, Inc.*, 844 F.3d 1299, 1305 (11th Cir. 2016)). The federal court’s jurisdiction would be “concurrent” with this court’s jurisdiction only

if the District's claims could be asserted in federal court because they either arose under federal law (federal question jurisdiction) or the District and Disney were citizens of different states (diversity jurisdiction). *See, e.g.*, *Sebor v. Rief*, 706 So. 2d 52, 54 (Fla. 5th DCA 1998); *Sunshine State*, 468 So. 2d at 283. But neither of those requirements for a federal court's original jurisdiction exist—the District's claims arise under Florida constitutional, statutory, and common law, and the District and Disney are both citizens of Florida. Not only is the District unable to bring these claims against Disney in federal court, but the "fact that [Disney] could not remove the case at bar to federal court demonstrates that the federal courts do not have concurrent jurisdiction" over this case. *Sunshine State*, 468 So.2d at 283. What this means here is that even if the District were a party to Disney's federal action *and even if the District had asserted its claims for declaratory and injunctive relief by counterclaim there*, it would still be a departure from the essential requirements of the law for this Court to stay the state court action because the federal court would not have concurrent original jurisdiction over the District's state law claims. *Id.*; *Sebor*, 706 So. 2d at 54.[2]

B. The "Principle of Priority" Does Not Apply Because Jurisdiction Attached First In State Court.

As Disney recognizes, the court where service of process is first perfected is the court that first acquires jurisdiction and gets priority. In this case, the District served Disney on May 12, 2023. In contrast, all of Disney's attempts to serve the District's officials were legally defective, until those officials accepted service on May 22, 2023. So, Disney may have been the

[2] In cases like Disney's federal suit, where jurisdiction is based on the existence of federal claims, federal courts sometimes exercise "supplemental" or "pendent" jurisdiction over state law claims over which they do not have original jurisdiction. *See* 28 U.S.C. 1367. But as the Fifth District held in *Sebor* and *Sunshine State*, this does not create "concurrent" jurisdiction permitting application of the priority principle. *See* 706 So. 2d at 54; 468 So. 2d at 283.

first to *try* to make service, but the District was the first to *actually* perfect service, when it served Disney in this state court action. A stay is therefore improper. *See Reliable Restoration, LLC v. Panama Commons, L.P.*, 313 So. 3d 1207, 1211 (Fla. 1st DCA 2021); *Shooster*, 766 So. 2d at 1116.

Service in federal court is governed by Federal Rule of Civil Procedure 4. Individuals must be served pursuant to Rule 4(e), and governmental entities must be served pursuant to Rule 4(j)(2). Instead of suing the District, Disney sued the District's five board members and administrator in their official capacities and attempted to serve them personally and, arguably, by certified mail. In the Northern District of Florida, where Disney filed its federal lawsuit, service of state officials sued in their official capacities is *not* subject to the rules for individual service under Rule 4(e) but is instead governed by Rule 4(j)(2) regulating service on governments. *See Randall v. Crist*, No. 5:03-cv-00220-MP-WCS, 2005 WL 5979678, at *2 (N.D. Fla. Nov. 1, 2005); *accord Felton v. Winter Park Police Dep't*, No. 6:22-CV-898-RBD-DAB, 2022 WL 8216907, at *3 n.3 (M.D. Fla. Aug. 2, 2022). But regardless of whether Rule 4(j)(2) or 4(e) applies, Disney's efforts failed.

1. Disney Failed To Perfect Service Under Rule 4(j)(2).

Rule 4(j)(2) requires service by "delivering a copy of the summons and of the complaint to [the local government's] chief executive officer" or in the manner provided in Florida law. To that point, section 48.111(1), Florida Statutes, establishes a hierarchy of five kinds of people who can be served with process on behalf of a local government: *first*, a registered agent; *second*, if there is no registered agent, the president, mayor, chair, or other government head; *third*, in their absence, the vice president, vice mayor, or vice chair; *fourth*, in their absence, a member of the

board, the government manager, or an in-house attorney; *and finally*, in their absence, any employee at the main office.

A plaintiff attempting service must start at the top of the list, move down in order, and "attest to the unavailability of the statutorily prescribed officials whom she should have served first." *Felton*, 2022 WL 8216907, at *2; *see also Marfut v. Charlotte Cnty., Fla.*, No. 2:19-CV-172-JES-MRM, 2021 WL 2310162, at *2 (M.D. Fla. June 7, 2021). And the plaintiff's return of service must, on its face, show that each category of person ahead of the person upon whom service was made was in fact unavailable. *Abele v. City of Brooksville, FL*, 273 F. App'x 809, 810-11 (11th Cir. 2008); *see also City of Hialeah v. Carroll*, 324 So. 2d 639, 641 (Fla. 3d DCA 1976) ("[T]he return of service of process reflects service made on the city clerk without asserting the absence of any of the officials specified in s 48.111, Fla. Stat.").

Here, the District did not have a registered agent, so Disney was required to serve the chief executive officer of the District or the hierarchy of governing officials in the order listed in section 48.111(1). Disney did not do so and instead served the District's communications director, who was not an authorized agent to accept service of process. *See* Exhibit 1 (Declaration of Eryka Washington Perry); Exhibit 2 (Composite of the six returns of service, which are all effectively the same except for the recipient defendant's names). Moreover, the returns of service are defective because they do not state any attempt to serve the appropriate hierarchy of officials. *See* Exhibit 2. Accordingly, Disney failed to perfect service on the District's officials under Rule 4(j)(2).

2. Disney Also Failed To Perfect Service Under Rule 4(e).

Although Rule 4(j)(2) governs service in Disney's federal lawsuit under Northern District precedent, even assuming Rule 4(e) applies, Disney's service on the District's officials was also

defective under that rule. Rule 4(e) provides that service on an individual is accomplished by following state law for serving a summons in the state where the district court is located or where service is made; delivering a copy of the summons and complaint to the individual personally; leaving a copy of each at the individual's dwelling or usual place of abode with someone of suitable age and discretion who resides there; or delivering a copy of each to an agent authorized by appointment or by law to receive service of process. Fed. R. Civ. P. 4(e).

In Florida, service on an individual is made by delivering a copy of the summons and complaint personally to the individual to be served or "by leaving the copies at his or her usual place of abode with any person residing therein who is 15 years of age or older and informing the person of their contents." § 48.031(1)(a), Fla. Stat. Florida also allows substitute service on the spouse of the individual to be served, if certain conditions are met, and substitute service "on an individual doing business as a sole proprietorship at his or her place of business," if certain conditions are met. § 48.031(2), Fla. Stat. In its federal case, Disney did not effectuate service in any of the acceptable ways under Rule 4(e). *See* Exhibit 2.

3. Disney's Attempt To Effect Service By Certified Mail Is Invalid.

Finally, both the federal and Florida service rules provide a process for a plaintiff to seek a waiver of service by sending the complaint and request for waiver via certified mail. *See* Fed. R. Civ. P. 4(d); Fla. R. Civ. P. 1.070(i). This method does not apply to official capacity claims and is defective for that reason alone. *See Randall*, 2005 WL 5979678, at *2. Regardless, the certified mail Disney sent did not seek a waiver of service and is insufficient to effectuate service. *See Penn-Am. Ins. Co. v. Deslin Hotels, Inc.*, No. 6:11-CV-1990-ORL-22TBS, 2013 WL 12158616, at *1 (M.D. Fla. Jan. 10, 2013) ("Service by certified mail is not permitted under the federal rules and is generally insufficient under Florida law, unless accompanied by a waiver.

. . ."); *see also Morris*, 2010 WL 2836623, at *2 ("Mailing is not 'delivering' under Federal Rule of Civil Procedure 4.").

Because Disney failed to effect service on the District's officials in the federal action before the District served Disney with its complaint in this action, this Court acquired jurisdiction first. *See Reliable Restoration*, 313 So. 3d at 1211; *Shooster*, 766 So. 2d at 1116; *see also Fasco Indus., Inc. v. Goble*, 678 So. 2d 916, 917 (Fla. 5th DCA 1996) ("Whether one or multiple defendants are involved in a lawsuit, . . . jurisdiction lies in the court where service is first perfected against *all* defendants.") (emphasis added). Accordingly, a stay under the principle of priority is unwarranted.

C. The Requisite Identity Of Parties and Claims Is Lacking.

As noted earlier, the priority principle applies only when the federal case is substantially similar to the state case in terms of the parties and claims involved. That is not true here.

The gravamen of Disney's federal claims is that various public officials violated the Contracts Clause, the Takings Clause, the Due Process Clause, and the First Amendment. In contrast, the District's state-law action is about whether the Agreements are void as a matter of Florida law. The validity or invalidity of the Agreements turns solely on whether the prior Disney-controlled board followed Florida law in entering the Agreements. Thus, the "nucleus of facts," *Roche v. Cyrulnik*, 337 So. 3d 86, 88 (Fla. 3d DCA 2021), is different in federal versus state court. Under these circumstances, it would be a departure from the essential requirements of the law to grant a stay. *See Sebor*, 706 So. 2d at 54 (explaining that it was a departure from the essential requirements of law to stay state-law claims based upon a federal suit raising federal claims even though the state law questions "may be relevant in the final resolution of the federal lawsuit").

Moreover, four out of five of Disney's federal claims ask the federal court to assume that the Agreements are valid. Those federal claims become moot and no relief can be issued against the District officials if this Court declares that the Agreements are void—which, again, is a pure matter of state law over which the federal court lacks concurrent jurisdiction. *See Sebor*, 706 So. 2d at 54 (concluding principle of priority does not apply where "[t]he crux of the controversy" differs between the state and federal lawsuits).

D. Exceptional Circumstances Would Warrant Denying A Stay.

Even when the priority principle applies, a court has discretion to deny a stay when exceptional circumstances exist. *In re Guardianship of Morrison*, 972 So. 2d 905, 910 (Fla. 2d DCA 2007). "The most common example of such special circumstances is undue delay by the court with priority." *Id.*

Delay in this case is untenable because the District is a local governmental entity that should be exercising its lawful powers for the good of all citizens of the District, as required by Florida law. The Agreements purport to tie the District's hands and to prevent it from governing in ways—for example, through zoning regulations—that Disney disfavors. The ongoing uncertainty caused by Disney's attempt to straitjacket the District in this way needs to be clarified quickly so that the District can get on with the business of government without Disney claiming that the Agreements hamstring the District's legislative authority. The state-law issues in this suit are straightforward, most do not require any factual development, and the District will soon seek a final summary judgment. That Disney decided to file a federal suit is no reason to prevent the District from receiving finality on the state law questions at issue in this case. After all, the District must continue governing while Disney's case winds its way through the federal system. *See generally Smith v. St. Vil*, 765 So. 2d 60, 61 (Fla. 4th DCA 2000) (recognizing, in a

case not involving the principle of priority, that "[a]lthough the decision whether to grant or deny a stay is within the discretion of the trial court . . . delay of the entire proceedings may constitute a departure from the essential requirements of law and cause irreparable injury that cannot be remedied on final appeal").

Furthermore, under the well-established *Pullman* abstention doctrine, the federal court should abstain from deciding Disney's federal lawsuit, until this Court first resolves the state law issues presented here. *See Pullman*, 312 U.S. at 501 (1941). Under *Pullman*, a federal court refrains from deciding federal constitutional questions when the case may be disposed of based on the resolution of state law questions by a state court. *See id.*; *see also Gold-Fogel v. Fogel*, 16 F.4th 790, 799 n.11 (11th Cir. 2021) ("*Pullman* abstention . . . refers to abstention 'in cases presenting a federal constitutional issue which might be mooted or presented in a different posture by a state court determination of pertinent state law.'") (quoting *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800, 814 (1976)). "*Pullman* abstention requires two elements: (1) an unsettled question of state law and (2) that the question be dispositive of the case and would avoid, or substantially modify, the constitutional question." *Duke v. James*, 713 F.2d 1506, 1510 (11th Cir. 1983).

Pullman's requirements are met here, where this Court's declaration on the unsettled issue of state law—i.e., whether the Agreements were void *ab initio*—likely would moot at least four of Disney's five federal claims. *See Trump for President, Inc. v. Boockvar*, 481 F. Supp. 3d 476, 502 (W.D. Penn. 2020) ("[W]hen a court is confronted with some claims that implicate *Pullman* principles, the court has the authority and discretion to stay the entire action."); *see also Harrison v. NAACP*, 360 U.S. 167, 177 (1959) (applying *Pullman* where the state court's construction of the statutes at issue "might avoid *in whole or in part* the necessity for federal

constitutional adjudication, or at least materially change the nature of the problem") (emphasis added). Moreover, *Pullman* applies even when—unlike here—jurisdiction first attaches in federal court. *See Duke*, 713 F.2d at 1510 (explaining that, where the two requirements for abstention are shown, "[f]actors which might favor abstention include the availability of 'easy and ample means' for determining the state law question, the existence of a pending state court action that may resolve the issue, or the availability of a certification procedure, whereby the federal court can secure an expeditious answer") (quoting *Pullman*, 312 U.S. at 501).

The fact that Disney did not plead any state law claim in federal court does not make a difference under *Pullman*. *See Pustell v. Lynn Pub. Schs.*, 18 F. 3d 50, 53 n.5 (1st Cir. 1994) ("Plaintiffs cannot avoid [*Pullman*] abstention by excluding crucial state law issues from their pleadings."). Instead, the federal court should apply *Pullman* to abstain from addressing constitutional questions that will be moot if this Court decides the state-law issues in the District's favor. *See Ford Motor Co. v. Meredith Motor Co., Inc.*, 257 F.3d 67, 72 (1st Cir. 2001) ("Where there is an action *pending* in state court that will likely resolve the state-law questions underlying the federal claim, [the Supreme Court has] regularly ordered abstention." (quoting *Harris Cnty. Comm'rs Ct. v. Moore*, 420 U.S. 77, 83 (1974))). It makes no sense for this Court to entertain a stay when it is the federal court that should stay under *Pullman*.

Separately, resolution of these issues in this forum is warranted based upon the District's home venue privilege. The District filed suit against Disney in Orange County because both the District and Disney are officially located in Orange County and because all the relevant conduct by the District, Disney, and the prior Disney-controlled board occurred in Orange County. The District has chosen to exercise its home venue privilege by filing its state-law claims in this

Court—and that choice should be honored. *Cf. MSP Claims 1, LLC v. Halifax Health, Inc.*, No. 17-20706-CIV-LENARD-GOODMAN, 2017 WL 7803813, at *4-5 (S.D. Fla. Oct. 13, 2017).[3]

CONCLUSION

The District's complaint is not moot and Disney is not, alternatively, entitled to a stay. This Court should deny Disney's motion and order it to answer.

Dated: June 19, 2023

Respectfully submitted,

/s/ Alan Lawson

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[3] Footnote 6 of Disney's motion alternatively asks for a stay divorced from the principle of priority. Even assuming that decisions like *Sebor* leave room for the Court to grant such a stay, the same exceptional circumstances that preclude applying the principle of priority to stay this case also doom a discretionary stay.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was electronically filed with the Clerk of Court by using the ECF system, which will provide electronic notification to Alan Schoenfeld, Esquire at alan.schoenfeld@wilmerhale.com, Daniel Petrocelli, Esquire at dpetrocelli@omm.com, Adam Losey, Esquire at alosey@losey.law, Jonathan Hacker, Esquire at jhacker@omm.com, and Stephen Brody, Esquire at sbrody@omm.com at closey@losey.law this 19th day of June 2023

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