IN THE SUPREME COURT OF THE STATE OF NEVADA

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MEI-GSR HOLDINGS, LLC, AM-GSR HOLDINGS, LLC, and GAGE VILLAGE COMMERCIAL DEVELOPMENT, LLC, Appellants, v. ALBERT THOMAS, *et al.*, Respondents.	Case No. 86092

APPELLANTS' SUPPLEMENT TO RESPONSE TO MAY 8, 2023 ORDER TO SHOW CAUSE

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I. INTRODUCTION

There have been three developments in the district court since Appellants filed their June 13, 2023 Response to the Court's Order to Show Cause. First, the district court unnecessarily "certified" the already-final Amended Final Judgment "in an abundance of caution." The certification order does not revive the Receivership previously extinguished by operation of law in the Amended Final Judgment. Nor can the certification order create or retain jurisdiction where none exists.

Second, after needlessly certifying the Amended Final Judgment, the district court entered a so-called "Second Amended Final *Monetary* Judgment" adding new attorneys' fees and cost amounts granted in May 2023. The district court lacked jurisdiction to enter Second Amended Final Monetary Judgment because it substantively modified the Amended Final Judgment that was already before this Court on appeal. Moreover, the May 2023 fee and cost awards are independently appealable as special orders after final judgment under NRAP 3A(b)(8) so the modification was unnecessary. Like the Amended Final Judgment, the Second Amended Final Monetary Judgment does not mention – let alone continue or reappoint – the terminated Receivership.

Third, on July 10, 2023, the district court entered a "Corrected Second Amended Final Monetary Judgment" to fix mathematical errors in the Second Amended Final Monetary Judgment. Again, the Corrected Second Final Monetary

Judgment says nothing about the Receivership. Judicial silence cannot be interpreted as "*expressly*" reappointing, preserving, or retaining jurisdiction over the Receivership. Under established law and legal principles, a receivership and other preliminary relief *automatically* terminate on entry of a final judgment.

So none of these recent developments alter the conclusions (1) that the Amended Final Judgment was "final" in the first place; (2) the Receivership and December 5, 2022 preliminary injunction were terminated by operation of law; and (3) this Court has jurisdiction over this appeal. But the recent events confirm that – without an order from this Court that there is a final judgment *and* the Receivership is terminated as a result – this case will continue to unconstitutionally go off the rails in perpetuity.

In Appellants' Response to the Order to Show Cause, and again in this Supplement below, Appellants outline the clear path under Nevada law and this Court's precedents to return this case to its proper constitutional boundaries.

II. ARGUMENT

A. The District Court Unnecessarily "Certified" the Amended Final Judgment.

After Appellants pointed out in Supreme Court Case No. 85915 that the Amended Final Judgment resolved all underlying claims and dissolved all interim relief – and following this Court's Order to Show Cause in this proceeding –

Respondents moved the district court to certify the "Amended Final Judgment" as final under NRCP 54(b). Respondents' motion was designed to create an appearance that only their substantive "monetary" claims were resolved by the Amended Final Judgment but they somehow had a pending "claim" for a receivership. (Ex. 19 at 3.)[1] But as Appellants established in their Response to Order to Show Cause, a receivership is a remedy that must be tied to substantive claims. A receivership is not an independent "claim" or "cause of action." Where, as here, the substantive claims are resolved in a final judgment, a receivership terminates by operation of law. (Appellants' Resp. to Order to Show Cause at 9-17.)[2]

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[1] There is no pending request for an accounting because the October 2015 Findings of Fact, Conclusion of Law and Judgment resolved it. (Ex. 6 at APPX0073(J).)

[2] This Court has never recognized a distinction between "equitable" and "statutory" receiverships. This Court's historical practice has been to unwaveringly treat receiverships as an interim, interlocutory, and provisional *remedy* that depends on the existence of an underlying claim or cause of action. *See, e.g.*, *Johnson v. Steel, Inc.*, 100 Nev. 181, 183, 678 P.2d 676, 678 (1984) (holding "receiver *pendente lite* is an ancillary remedy used to preserve the value of assets *pending outcome of the principal case*."); *Bowler v. Leonard*, 70 Nev. 370, 384, 269 P.2d 833, 840 (1954) ("Receivership is generally regarded as a *remedy* of last resort.") (emphasis added); *Hines v. Plante*, 99 Nev. 259, 261, 661 P.2d 880, 881-82 (1983) ("The appointment of a receiver *pendente lite* is a harsh and extreme *remedy* which should be used sparingly and only when the securing of ultimate justice requires it."); *Direct Grading & Paving, LLC v. Eighth Jud. Dist. Ct.*, 137 Nev. 320, 324, 491 P.3d 13, 17 (2021) (describing a prejudgment receivership as a provisional remedy).

Any cases distinguishing between "equitable" and "statutory" receiverships are simply inconsistent with Nevada law.

The district court previously acknowledged in a May 23, 2023 Order that the Amended Final Judgment was, indeed, "a final judgment on the issues pending in the operative pleadings." (Ex. 1 to Appellants' Resp. to Order to Show Cause.) Thus, there was no need to certify an already final judgment as "final." *See Libertarian Party of Ohio v. Husted*, 808 F.3d 279, 280 (6th Cir. 2015) (stating a political party could not certify the denial of the preliminary injunction as final because it was "already a 'judgment' as defined by the Federal Rules of Civil Procedure"); *Mynes v. Brooks,* 918 N.E.2d 511, 514 (Ohio 2009) (holding there is no need to certify an order denying a stay of trial pending arbitration because it is already a final and appealable order by statute); *Green Tree Servicing, LLC. v. Kramer*, 951 N.E.2d 146, 150 (Ohio Ct. App. 2011) (same).

Even though it already considered the Amended Final Judgment to be "final," the district court granted Respondents' certification request over Appellants' opposition. (Ex. 20 at 1.) The district court stated that it was certifying the Amended Final Judgment "[i]n an abundance of caution" and reiterated its mistaken positions that (1) the Receivership survives indefinitely after a final judgment and (2) it has continuing jurisdiction to enforce the Receivership and a pre-judgment preliminary injunction from December 5, 2022. (*Id*. at 1-2.) But a certification motion cannot make substantive revisions to previously entered judgments – it can only "certify"

the order previously entered. *See Libertarian Party of Ohio*, 808 F.3d at 280 (stating a "Rule 54(b) motion cannot request that a judgment be altered").

According to the district court, Appellants somehow "[chose] the process detailed under the December 5, 2022 preliminary injunction" when they proceeded to exercise their NRS Chapter 116 statutory rights through a February 6, 2023 stipulation to terminate the unit owners association. (Ex. 20 at 2.) The district court is incorrect for four reasons.

First, Appellants opposed and appealed the December 5, 2022 injunction so they did not "choose" or "accept it." Second, the February 6, 2023 stipulation did not convert the December 5, 2022 *preliminary* injunction into a *permanent* injunction or convert the *pre-judgment* receivership into a *post-judgment* receivership. (*See generally* Ex. 21.) Third, the Receivership cannot validly proceed post-judgment because post-judgment receiverships are only "to carry the judgment into effect" "in aid of execution." NRS 32.010(3)-(4).

Here, there is no need for a receiver to execute or carry out the judgment because a full supersedeas bond has been posted to secure recovery.[3] The

[3] *See Fishman v. Las Vegas Sun, Inc.,* 75 Nev. 13, 14, 333 P.2d 988, 989 (1959) (stating judgment creditor had "right to invoke the aid, in the district court, of the provisions of Rule 69 with reference to execution and proceedings supplementary to and in aid of the judgment" when debtor was "without supersedeas"); *Senior Care Living VI, LLC v. Preston Hollow Cap., LLC*, -- S.W.3d -- , 2023 WL 1112162, at

certification order cannot manufacture continuing jurisdiction over the Receivership where no jurisdiction exists. *Emerson v. Eighth Jud. Dist. Ct.*, 127 Nev. 672, 677, 263 P.3d 224, 227 (2011) ("We have previously held that jurisdiction over matters related to the merits of a case terminates upon dismissal."); *Vaile v. Eighth Jud. Dist. Ct.*, 118 Nev. 262, 275, 44 P.3d 506, 515 (2002) ("Parties may not confer jurisdiction upon the court by their consent when jurisdiction does not otherwise exist.").[4]

Fourth, the February 6, 2023 stipulation was *before* the April 10, 2023 Amended Final Judgment. Therefore, even setting aside the other three reasons, the Receivership and December 5, 2022 preliminary injunction still dissolved when the Amended Final Judgment was subsequently entered. (*See* Appellants' Resp. to Order to Show Cause at 9-17 (analyzing authorities).)

The only effect of the certification order is that it double-confirms that this Court has jurisdiction over the appeal and all interlocutory orders, rulings, and decisions that pre-date the Amended Final Judgment. The certification order also solidifies that the Receivership and December 5, 2022 preliminary injunction automatically terminated upon entry of the final judgment.

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*13 (Tex. App. Jan. 31, 2023) (stating trial court abused its discretion continuing receiver after debtor posted bond sufficient to supersede the judgment).

[4] *abrogated on other grounds by Senjab v. Alhulaibi*, 137 Nev. 632, 497 P.3d 618 (2021). New claims cannot be added to the Complaint post-default. NRCP 54(c).

B. The District Court Substantively Modified the Amended Final Judgment After it was on Appeal.

On May 11 and May 30, 2023, the district court entered two orders awarding Respondents more than $3 million in attorneys' fees and costs. (Ex. 22 at 4; *see generally* Ex. 23.)[5] Although both orders are separately appealable as special orders entered after final judgment under NRAP 3A(b)(8), the orders directed Respondents to submit *yet another* amended judgment (or two) consistent with them.

In a confession that the Amended Final Judgment did, in fact, terminate the Receivership, Respondents' proposed "Second Amended Final *Monetary* Judgment" tried to add a sentence to continue the Receivership even though the Receivership was not at issue in the fee and cost motions that supposedly precipitated the need for another amended judgment. (Ex. 24 at 2) (adding "The Court retains jurisdiction over the receivership until the Court issues an order discharging the Receiver."). Respondents' attempt to slip the Receivership into a subsequent "final" judgment is an acknowledgement that the Amended Final Judgment terminated the Receiver in the first place. If Respondents' original legal position was correct, there would be no need for this rogue attempted addition.

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[5] Notice of entry of these orders was filed June 13, 2023. Appellants filed a notice of appeal as to those orders (as well as the novel Second Amended Final Monetary Judgment and the Corrected Second Amended Final Judgment) on July 11, 2023.

Appellants objected to entering another amended final judgment. (Ex. 25.) Aside from entering a "*Second* Amended Final Monetary Judgment" when there had never been a "first" "monetary" judgment, the district court lacked jurisdiction to enter a new judgment that substantively revised a judgment already on appeal with new fee and cost amounts.[6] *See Mack-Manley v. Manley*, 122 Nev. 849, 855, 138 P.3d 525, 529-30 (2006) ("Although, when an appeal is perfected, the district court is divested of jurisdiction to revisit issues that are pending before this court, the district court retains jurisdiction to enter orders on matters that are collateral to and independent from the appealed order, i.e., matters that in no way affect the appeal's merits.").

A new judgment was also unnecessary to render the May fee and cost awards appealable. "The order awarding attorney fees and costs [is] independently appealable as a special order after final judgment." *Campos-Garcia v. Johnson*, 130 Nev. 610, 612, 331 P.3d 890, 891 (2014) (citing NRAP 3A(b)(8)). As a result, there was no need to modify the Amended Final Judgment with the new amounts.

The district court largely overruled Appellants' Objection and entered a "Second Amended Final Monetary Judgment." (Ex. 26.) Notably, this document did not adopt Respondents' attempt to belatedly continue the Receivership. (*Compare*

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[6] This is all the more true after the Amended Final Judgment had been "certified" – assuming the certification was valid.

id., *with* Ex. 24 at 2.) Thus, the Receivership remains terminated just as it was after the Amended Final Judgment was entered.

The Second Amended Final Monetary Judgment's silence about the Receivership is not an "express" re-appointment, preservation, or retention of jurisdiction over the Receivership. *See Dulberg v. Ebenhart*, 417 N.Y.S.2d 71, 74-75 (N.Y. App. Div. 1979) (finding no order continuing receiver after final judgment and stating "The boilerplate language in the original order of appointment—'until the further order of this Court'-- does not specifically refer to the tenure of the receivership and does not convey, with the requisite specificity, an intent that the receivership be continued after the final judgment."). [7]

Making matters worse, on July 10, 2023, a "Corrected" Second Amended Final Monetary Judgment was entered fixing certain mathematical errors. (Ex. 27.) Again, this document says nothing about the Receivership. By operation of law, the Receivership has expired. *See Dulberg*, 417 N.Y.S.2d at 75-76. ("Thus, it is clear on the record … that not only was there no court order authorizing the receiver to initiate

[7] Even though Appointment Order cites the subsection for post-judgment receivers, NRS 32.010(3), this was clearly an error because there was no "judgment" in 2015 when the Receiver was appointed. If anything, this erroneous invocation of this authority invalidates the entirety of the Receivership and raises concerns that the district court prejudged the merits of the decision by appointing a post-judgment receiver before a judgment has been entered. This citation does not provide justification to continue the Receivership after judgment when a supersedeas bond has been entered fully securing Respondents' recovery. *See supra* note 3.

this proceeding, but that the receivership had terminated prior to the initiation of this proceeding.").

C. The Path to Constitutionally Correct this Litigation.

Entering the new, oddly titled "Corrected Second Amended Final Monetary Judgment" document has further complicated this case's messy procedural history. It will necessitate even more notices of appeal and appellate wrangling. If the Receivership and the unlawful extra-NRS Chapter 116 preliminary injunction process from December 5, 2022 continue as Respondents and the district court envision, there is literally no end in sight to this litigation. It would be an unprecedented and unconstitutional morass.

Under the Nevada Constitution, district courts have "original jurisdiction in all ***cases*** excluded by law from the original jurisdiction of justice[ ] courts." Nev. Const. art. VI, § 6(1) (emphasis added). In other words, courts only have jurisdiction over a "case." *Comstock Mill & Mining Co. v. Allen*, 21 Nev. 325, 31 P. 434, 434 (1892). Since the founding of Nevada, a "case" has been defined "to be an action, suit, or proceeding. It embraces everything, from the filing of the complaint to the entry of satisfaction of the judgment. They are all steps in, or parts of, the same case." *Id*. '"To the existence of such a case[,] parties are necessary; also pleadings and proceedings. Trials, orders, judgments, etc., usually follow. These together

constitute the case…."' *Id*. at 435 (quoting *Calderwood v. Peyser*, 42 Cal. 110, 115 (1871)).

It is surprising this must be said: A final judgment is the end of a "case." *See id.*; *see also Greene v. Eighth Jud. Dist. Ct.*, 115 Nev. 391, 395, 990 P.2d 184, 186 (1999) (stating a final judgment "puts an *end* to an action at law." (emphasis in original) (quoting *Black's Law Dictionary* 843 (6th ed.1990))); *Emerson*, 127 Nev. at 677, 263 P.3d at 227 ("We have previously held that jurisdiction over matters related to the merits of a case terminates upon dismissal."). The Amended Final Judgment terminated this "case" and the district court's jurisdiction. Appellants' notice(s) of appeal have properly transferred jurisdiction to this Court.

An order from this Court stating that (1) the Amended Final Judgment is "final" and (2) had the effect of terminating the Receivership and December 5, 2022 preliminary injunction is the only way that this case gets brought to heel without serial writ petitions seeking prohibition.

Such an order would end the district court quagmire and force the parties to follow the NRS Chapter 116 process to dissolve and sell the unit owners associations as the Legislature intended. If the Plaintiffs-Respondents are injured by the NRS Chapter 116 statutory process (they won't be), their recourse is to file a new lawsuit in accordance with the Nevada Constitution and Rules of Civil Procedure. The alternative is *not* to force Appellants to continue forever with the unlawful process

currently underway. Following the law established by the Legislature is not an injustice.

III. CONCLUSION

For these reasons, this Court may properly exercise jurisdiction over this appeal, including the January 26, 2023 and March 27, 2023 Orders, because there is a final judgment that resolved all claims and terminated all interim remedies like the Receivership and the December 5, 2022 preliminary injunction.

DATED this 12th day of July 2023.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Pisanelli Bice PLLC, and that on this 13th day of July 2023, I caused to be served through the Court's CM/ECF website true and correct copies of the above and foregoing **APPELLANTS' SUPPLEMENT TO RESPONSE TO MAY 8, 2023 ORDER TO SHOW CAUSE** to all parties registered for e-service.

/s/ Shannon Dinkel
An employee of Pisanelli Bice PLLC