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 Nos. 86092 86985 87243 87303 87566 87567

REPLY IN SUPPORT OF MOTION TO CONSOLIDATE CERTAIN APPEALS AND STAY BRIEFING PENDING RESOLUTION OF CERTAIN MOTIONS

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Respondents purport to "join" Appellants' request to consolidate the pending appeals and state "Appellants' proposed three separate consolidation of the currently outstanding appeals is agreeable to Respondents." (Resp. at 1.) But then Respondents counter-propose further merging all three proposed "tranches" into one unwieldy, massive appeal involving upwards of ten (or more) separate and unrelated issues. (*See id.*) After "agreeing" with Appellants, Respondents suggest that "all of the appeals be heard and decided together." (*Id.* at 6.) Alternatively, Respondents counteroffer that "the court should consolidate all seven of the pending appeals and set a staggered briefing schedule derived from the proposed tranches." (*Id.* at 7.) Respondents' lump-consolidation will impose complications, lose efficiencies, and slow resolution of several separable issues.

The preliminary injunction appeal in Docket 85915 involves a December 2022 district court ordered condo unit sale process that plainly conflicts with the statutory procedure set forth in NRS Chapter 116, the Uniform Common-Interest Ownership Act.[1] Preliminary injunction appeals are given priority. IOP 4(d)(2). The preliminary injunction appeal does not relate to the June 2023 contempt "trial" or the decade plus tragedy of reversible errors at issue in the "merits" appeals in Dockets 86092, 86985, 87303, and 87567. Likewise, the contempt-related appeals in Dockets 87243 and 87566

[1] (*Compare* Resp. at 4) (arguing the Receiver is involved in the process of selling the condominium units contrary to the statutory process).

do not overlap with the merits appeals. Appellants' three separate consolidations make intuitive, legal, and practical sense.

Respondents identify only one supposedly shared issue between the three groups. They claim that the status of the court-ordered receivership permeates every appeal. (Resp. at 6-7.) But this Court will already resolve that issue *i.e.* whether a final judgment automatically terminates the provisional relief of a receivership or whether a receivership *pendente lite* can extend in perpetuity beyond a final judgment despite NRS 32.010. The Court has pending before it a motion to dismiss in the preliminary injunction appeal (85915) and an Order to Show Cause in the main merits appeal (86092) where the parties are debating whether the (Amended) Final Judgment dissolved the interlocutory receivership as a matter of law. If so, the preliminary injunction is moot (and the motion to dismiss granted) and this Court has jurisdiction over the merits appeals because all claims have been resolved between all parties.

On November 16, 2023, this Court issued another Order to Show Cause in all seven dockets because Respondents' prior attempt to resurrect the receivership by treating it as a "claim" under NRCP 54(b) was defective. (Nov. 16, 2023 Order to Show Cause, Nos, 85915, 86092, 86985, 87243, 87303, 87566, 87567 at 19-20.) The Court directed the parties to seek an "amended NRCP 54(b) certification" within fourteen days. (*Id.* at 20.)

Yet even if Respondents again meaninglessly NRCP 54(b) certify the already-final final judgment, the receivership is still terminated and its continuing status will not

be involved in the meat of the pending appeals. NRCP 54(b) only applies to the certification of separate "claims." But, as this Court has repeatedly held, a receivership is not a "claim." Rather, it is an interim provisional *remedy*. *See Direct Grading & Paving, LLC v. Eighth Judicial District Court*, 137 Nev. 320, 324, 491 P.3d 13, 17 (2021) ("a provisional remedy is '[a] temporary remedy awarded before judgment and pending the action's disposition, such as a temporary restraining order, a preliminary injunction, *a prejudgment receivership*, or an attachment,' that 'is intended to maintain the status quo by protecting a person's safety or preserving property.'") (emphasis added); *Johnson v. Steel, Inc.,* 100 Nev. 181, 183, 678 P.2d 676, 678 (1984) (a "receiver pendente lite is an ancillary *remedy* used to preserve the value of assets *pending outcome of the principal case*.") (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.") (emphasis added); *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); *see also* 75 C.J.S. *Receivers*, *What is a Receivership*? § 2 ("A receivership is a remedy.").

"***An order with regard to a provisional remedy does not go to an independent claim in a multiple-claim action and cannot be given finality for purposes of appeal by Rule 54(b)***." Wright & Miller, 11A Fed. Prac. & Proc. Civ. § 2936 (3d ed.) (emphasis added). Therefore, the district court cannot certify a "receivership" because a receivership is a remedy, not a claim or cause of action.

Another superfluous "certification" will not avoid the issue squarely presented in the preliminary injunction motion to dismiss or the initial Order to Show Cause in the merits appeal (86092)—the receivership terminated as a matter of law with entry of judgment and it is no longer operative.[2]

The Court's November 16, 2023 Order to Show Cause also stayed the briefing schedules in all pending appeals. (Nov. 16, 2023 Order to Show Cause, Nos, 85915, 86092, 86985, 87243, 87303, 87566, 87567 at 20.) Thus, Appellants' additional requested relief related to staying the briefing schedule appears to have been granted. Even so, Respondents unrealistically demand that opening briefs be filed within thirty days after the pending Orders to Show Cause. (Resp. at 7-8.) It is impractical to expect both sides in less than a month to draft and file opening briefs—and answering briefs on the cross-appeals—in sprawling litigation with numerous issues of first impression spanning more than a decade. The parties' appellate counsels should stipulate to an agreeable schedule or the Court should default to the standard 120 days under NRAP 28.1(f).

For these reasons, the Court should separately consolidate and resolve the pending appeals as follows:

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[2] Respondents admit the Amended Final Judgment did not transform the interim receiver into a permanent receiver. (Resp. at 3 ("an amended 'final' judgment was entered April 10, 2023, which also omitted any reference to the still pending receivership."). As a result, the receivership is no longer "intact and active." (*Id.*) The Receivership should have concluded all activity and submitted its final bill for services. (*Compare id.* at 4.)

- Preliminary Injunction Appeal – Docket 85915
- Merits Appeals - Dockets 86092, 86985, 87303, and 87567
- Contempt Appeals – Dockets 87243 and 87566

DATED this 22nd day of November 2023.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Pisanelli Bice PLLC, and pursuant to NRAP 25(b) and NEFCR 9, on this 22nd day of November, 2023, I electronically filed the foregoing **REPLY IN SUPPORT OF MOTION TO CONSOLIDATE CERTAIN APPEALS AND STAY BRIEFING PENDING RESOLUTION OF CERTAIN MOTIONS** with the Clerk of the Court for the Nevada Supreme Court by using the Nevada Supreme Courts E-Filing system (Eflex). Participants in the case who are registered with Eflex as users will be served by the Eflex system.

/s/ Shannon Dinkel
An employee of Pisanelli Bice PLLC