IN THE SUPREME COURT OF THE STATE OF NEVADA

Supreme Court Case No.

MEI-GSR HOLDINGS, LLC, a Nevada corporation; AM-GSR HOLDINGS, LLC, a Nevada corporation; and GAGE VILLAGE COMMERCIAL DEVELOPMENT, LLC, a Nevada corporation,

Petitioners,

v.

THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF WASHOE, AND THE HONORABLE ELIZABETH GONZALEZ (RET.), SENIOR JUDGE, DEPARTMENT OJ41; AND RICHARD M. TEICHNER, RECEIVER,

Respondents,

and

ALBERT THOMAS, individually; JANE DUNLAP, individually; JOHN DUNLAP, individually; BARRY HAY, individually; MARIE-ANNE ALEXANDER, as Trustee of the MARIE-ANNIE ALEXANDER LIVING TRUST; MELISSA VAGUJHELYI and GEORGE VAGUJHELYI, as Trustees of the GEORGE VAGUJHELYI AND MELISSA VAGUJHELYI 2001 FAMILY TRUST AGREEMENT, U/T/A APRIL 13, 2001; D' ARCY NUNN, individually; HENRY NUNN, individually; MADELYN VAN DER BOKKE, individually; LEE VAN DER BOKKE, individually; DONALD SCHREIFELS, individually; ROBERT R. PEDERSON, individually and as Trustee of the PEDERSON 1990 TRUST; LOU ANN PEDERSON, individually and as Trustee of the PEDERSON 1990 TRUST; LORI ORDOVER, individually; WILLIAM A. HENDERSON, individually; CHRISTINE E. HENDERSON, individually; LOREN D. PARKER, individually; SUZANNE C. PARKER, individually; MICHAEL IZADY, individually; STEVEN TAKAKI, individually; FARAD TORABKHAN, individually; SAHAR TAVAKOL, individually; M&Y HOLDINGS, LLC; JL&YL HOLDINGS, LLC; SANDI RAINES, individually; R. RAGHURAM, individually; USHA RAGHURAM, individually; LORI K. TOKUTOMI, individually; GARRET TOM, individually; ANITA TOM, individually; RAMON FADRILAN, individually; FAYE FADRILAN, individually; PETER K. LEE and MONICA L. LEE, as Trustees of the LEE FAMILY 2002 REVOCABLE TRUST; DOMINIC YIN, individually; ELIAS SHAMIEH, individually; JEFFREY QUINN individually; BARBARA ROSE QUINN individually; KENNETH RICHE, individually; MAXINE RICHE,

individually; NORMAN CHANDLER, individually; BENTON WAN, individually; TIMOTHY D. KAPLAN, individually; SILKSCAPE INC.; PETER CHENG, individually; ELISA CHENG, individually; GREG A. CAMERON, individually; TMI PROPERTY GROUP, LLC; RICHARD LUTZ, individually; SANDRA LUTZ, individually; MARY A. KOSSICK, individually; MELVIN CHEAH, individually; DI SHEN, individually; NADINE'S REAL ESTATE INVESTMENTS, LLC; AJIT GUPTA, individually; SEEMA GUPTA, individually; FREDRICK FISH, individually; LISA FISH, individually; ROBERT A. WILLIAMS, individually; JACQUELIN PHAM, individually; MAY ANN HOM, as Trustee of the MAY ANN HOM TRUST; MICHAEL HURLEY, individually; DOMINIC YIN, individually; DUANE WINDHORST, individually; MARILYN WINDHORST, individually; VINOD BHAN, individually; ANNE BHAN, individually; GUY P. BROWNE, individually; GARTH A. WILLIAMS, individually; PAMELA Y. ARATANI, individually; DARLENE LINDGREN, individually; LAVERNE ROBERTS, individually; DOUG MECHAM, individually; CHRISINE MECHAM, individually; KWANGSOO SON, individually; SOO YEUN MOON, individually; JOHNSON AKINDODUNSE, individually; IRENE WEISS, as Trustee of the WEISS FAMILY TRUST; PRAVESH CHOPRA, individually; TERRY POPE, individually; NANCY POPE, individually; JAMES TAYLOR, individually; RYAN TAYLOR, individually; KI HAM, individually; YOUNG JA CHOI, individually; SANG DAE SOHN, individually; KUK HYUNG (CONNIE), individually; SANG (MIKE) YOO, individually; BRETT MENMUIR, as Trustee of the CAYENNE TRUST; WILLIAM MINER, JR., individually; CHANH TRUONG, individually; ELIZABETH ANDERS MECUA, individually; SHEPHERD MOUNTAIN, LLC; ROBERT BRUNNER, individually; AMY BRUNNER, individually; JEFF RIOPELLE, individually; PATRICIA M. MOLL, individually; DANIEL MOLL, individually;

Real Parties in Interest.

PETITION FOR WRIT OF PROHIBITION OR, IN THE ALTERNATIVE, MANDAMUS

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RULE 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons or entities as described in NRAP 26.1(a), and must be disclosed. These representations are made so the judges of this Court may evaluate possible disqualification or recusal.

Petitioner MEI-GSI Holdings, LLC is a privately held corporation. It has no parent corporations and no publicly held company owns 10% or more of its stock. Petitioner AM-GSR Holdings, LLC is a privately held corporation. It has no parent corporations and no publicly held company owns 10% or more of its stock. Petitioner Gage Village Commercial Development, LLC is a privately held corporation. It has no parent corporations and no publicly held company owns 10% or more of its stock.

Jordan T. Smith, Esq., Brianna Smith, Esq., and Daniel R. Brady, Esq., of the law firm of Pisanelli Bice PLLC, will appear for Petitioners in this Court. Abran Vigil, Ann Hall, and David C. McElhinney of the Meruelo Group, LLC, appeared for Petitioners in the district court.

Petitioners were previously represented, both in this Court and the district court, by: Joel D. Henriod, Daniel F. Polsenberg, and Abraham G. Smith, of Lewis Roca Rothgerber Christie, LLP; Steven B. Cohn and H. Stan Johnson of Cohen Johnson LLC; Gale A. Kern of Leach Kern Gruchow Anderson Song; Mark P. Wray

of the Law Offices of Mark Wray and Sean L. Brohawn formerly with Reese Kinz & Brohawn, LLC and with Sean L. Brohawn, PLLC.

There are no other persons or entities described in NRAP 26.1(a) that need to be disclosed.

DATED this 7th day of February 2024.

PISANELLI BICE PLLC

By: */s/ Jordan T. Smith*
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ROUTING STATEMENT

The Supreme Court should retain this matter because it raises issues of statewide public importance and first impression about the district courts' jurisdiction involving the NRS Chapter 116 dissolution of a condominium unit owners association in the default judgment context. NRAP 17(a)(11)-(12).

ISSUES PRESENTED

1. Is the district court exceeding its jurisdiction in a default proceeding by dictating the terms, through a receiver, for the dissolution of a common-interest community and sale of condo units contrary to the statutory process set forth in NRS Chapter 116 when the operative complaint filed ten years earlier contains no claim related to the termination or sale and sought no relief related to them?

2. Is the district court exceeding its jurisdiction in a default proceeding by directing a receiver to continue to rent the former units in the now dissolved common-interest community and to pay those funds to the Real Parties in Interest—through the receiver—as additional and continuing compensatory damages after the default judgment has been entered and millions of dollars in damages have been awarded?

3. Is the district court exceeding its jurisdiction by allowing a pre-judgment receiver to continue to act after a default judgment and the entry of damage awards for which more than $29 million dollars in supersedes bonds have been posted to fully secure the Real Parties in Interest?

I. INTRODUCTION AND RELIEF SOUGHT

The district court is acting far in excess of its jurisdiction and Petitioners need this Court's immediate and extraordinary intervention. A default judgment was entered in this long-running litigation nine years ago and approximately $18 million in compensatory and punitive damages have been awarded to Real Parties in Interest ("Real Parties"). Yet the district court has not relinquished jurisdiction. Through a *pre-judgment* receiver, the district court is arrogating the authority after a default to dictate the dissolution and sale terms of a condominium unit owners association even though the operative pleading contains no allegation, claim, or prayer for relief related to those issues. Nor could it. The dissolution and sale process arose 6 years after the operative complaint and five years after the default. Worse, the receiver-controlled process created by the district court conflicts with the statutory dissolution process set forth in NRS Chapter 116 and applies to non-parties with no connection to this suit.

While preventing Petitioners from winding up the unit owners association, and allowing the dissolution process to stall under the receiver's (mis)management, the district court continues awarding ongoing damages to Real Parties in the form of rents *after* default and *after* monetary judgments have been already entered. But Nevada law is clear: in default proceedings, the district court has jurisdiction only to

grant relief specifically sought in the operative complaint. The district court does not have jurisdiction to grant unpled remedies for unpled claims. Likewise, the district court lacks jurisdiction to award ongoing damages after default and damages have been entered. Should new alleged claims arise later, the aggrieved party must file a new lawsuit. It cannot forever "bootstrap" new claims into a pre-existing default judgment using a never-ending zombie-receiver. Thus, Petitioners' right to a writ of prohibition or mandamus is clear and indisputable.

Along with preventing irreversible harm to Petitioners, issuing prohibition or mandamus will reiterate and clarify important areas of law—the jurisdictional limitations in default proceedings, particularly as applied to receiverships in the NRS Chapter 116 context. If allowed to continue running amuck, the district court's extra-jurisdictional actions, abetted by the receiver, set a bad precedent for other litigants and courts given the high-profile nature of this proceeding in the Second Judicial District and across the State.

Petitioners tried to appeal some of the district court's and receiver's jurisdictional excesses. This Court, however, disagreed that there was a final, appealable judgment in light of a strange NRCP 54(b) certification.[1] Still, this Court

[1] *See generally MEI-GSR Holdings, LLC v. Thomas, et al.*, Nos. 85915, 86092, 86985, 87243, 87303, 87566, 87567 & 87685 (Order Resolving Motions, Dismissing and Consolidating Appeals, and Reinstating Briefing Dec. 29, 2023).

overtly noted that it "express[ed] no opinion on the propriety of the district court's actions."[2]

The district court's actions are inappropriate and without jurisdiction, and Petitioners have no plain, speedy, or adequate remedy in the form of an appeal. Therefore, this Court should entertain this Petition and issue a writ of prohibition or mandamus instructing the district court to vacate and/or unwind its orders directing the receiver to (1) oversee the termination of the GSRUOA; (2) continue renting the former condominium units; (3) transmit a portion of that rental revenue to the Real Parties as a form of compensatory damages; and (4) prevent the sale or transfer of units with non-parties.

II. STATEMENT OF FACTS

A. The Common-Interest Community and Unit Rental Program

In 2005, previous owners of the Grand Sierra Resort ("GSR") created a program to sell 670 hotel rooms within the GSR as private condominiums. (1 PA 121). Pursuant to Nevada's Uniform Common-Interest Ownership Act, the previous owners adopted Bylaws and CC&Rs creating a common-interest community that was governed by the Grand Sierra Resort Unit Owners' Association ("GSRUOA"). (3 PA 556-57). Unit Owners had the option to enter an agreement to rent out their

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[2] *Id.* at *24 n.2.

units and share the rental proceeds with MEI-GSR Holdings, LLC ("MEI-GSR") ("Terminated Rental Agreement")[3] (collectively with the Bylaws and CC&Rs "Governing Documents"). (2 PA 289, 296).

Under the original Terminated Rental Agreement, MEI-GSR would maintain a rental program that ensured the units "are fairly and equitably offered for rental." (*Id.* at 291). However, under the operative Rental Agreement at the time litigation commenced, MEI-GSR would rent the individually owned units "after Company owned units and hotel rooms . . . have been rented." (*Id.* at 312). Regardless, as both rental agreements made clear, "there are no rental income guarantees of any nature," and "neither the Company nor manager guarantees that owner will receive any minimum payments under this agreement or that owner will receive rental income equivalent to that generated by any other unit in the hotel." (*Id.* at 301, 322).

As part of its management, MEI-GSR was obligated to maintain the units and common areas in a first-class quality consistent with the prevailing industry standards. (3 PA 551-52). To pay for necessary expenses, MEI-GSR would calculate various fees and assessments that the unit owners had to pay for the maintenance of the units and common areas. (*Id.* at 559-61). Despite the Real Parties' obligation to

[3] MEI-GSR assumed the responsibilities of the Declarant in the Governing Documents upon its purchase of the GSR.

pay certain fees and expenses, GSR's prior owners were lax with enforcement causing, in part, financial strain on the GSR. (4 PA 816-17).

B. Real Parties Sue and Obtain a Default.

By 2011, GSR was a bank-owned property on the verge of being "closed and boarded up." (*Id.*). Petitioners purchased the property and saved a Reno landmark from going under.[4] (*Id.*). Without Petitioners' purchase and substantial investment, Real Parties would have lost their units and the money put into them. To build and maintain GSR as a world class-resort, Petitioners implemented the CC&RS, including charging fees and assessment as allowed under the Governing Documents.

Rather than being grateful that, at last, they could maintain and increase the value of their units through Petitioners' substantial financial commitments,[5] Real Parties became angry that they were finally being asked to pay their share of costs as required by the Governing Documents. So they thanked Petitioners by filing suit

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[4] Indeed, MEI-GSR's member, non-party Alex Meruelo, is a noted philanthropist that has invested hundreds of millions of dollars in Reno, Nevada, including building a privately financed sports and entertainment arena adjacent to GSR that will serve as the home for UNR's basketball team. Carly Sauvageau & Howard Stutz, *Grand Sierra to build 10,600-seat Reno area, host Nevada Basketball*, THE NEVADA INDEPENDENT (9/27/2023 4:49 p.m.) https://thenevadaindependent.com/article/grand-sierra-owner-announces-plans-to-build-a-10600-seat-arena-in-reno.

[5] Prior to Petitioners' investment, Real Parties' units were valued between $8,000 and $10,000. (4 PA 817).

alleging several contract and tort claims. (1 PA 1, 11-21). Over the course of the next year, Real Parties twice amended their complaint. (*Id.* at 23).

The operative complaint—the Second Amended Complaint filed on March 26, 2013—brought 12 claims related to alleged violations of the Terminated Rental Agreement for actions taken prior to March 26, 2013. (*Id.* at 23-47). Specifically, Real Parties asserted that Petitioners made false representations regarding the rental program to induce Real Parties to enter the agreement. (*Id.* at 38-39). Moreover, they alleged that Petitioners breached the agreement by not instituting an equitable rental rotation for the units from when Petitioners purchased the GSR in 2011 to the date of the lawsuit in 2012. (*Id.* at 39). Effectively, Real Parties argued that Petitioners prioritized renting Petitioners' units before Real Parties' units. (*Id.* at 36). They further alleged that Petitioners charged minimal amounts to rent Real Parties' units so that Petitioners could purchase those units at a reduced price. (*Id.* at 36-37). Real Parties sought the following relief: (1) the appointment of a pre-judgment receiver over the GSRUOA; (2) compensatory damages; (3) punitive damages; (4) attorney fees and costs; (5) declaratory relief; (6) specific performance; (7) an accounting, and (8) "such other and further relief as the Court may deem just and proper." (*Id.* at 47). They did not seek any injunctive relief. (*Id.*).

Petitioners answered the Second Amended Complaint. (*Id.* at 49). However,

a short time later, Real Parties moved to strike the answer as a sanction for alleged discovery violations. (*Id.* at 68). The district court granted Real Parties' initial motion for sanctions, striking only Petitioners' counterclaims. (*Id.* at 105). Unhappy with the district court's order, Real Parties quickly filed two more motions for sanctions—based on the same or substantially similar behavior—again seeking to strike Petitioners' answer. (*Id.* at 107-08).

This time, the district court granted the renewed motion even though Petitioners' alleged discovery delays arose from Petitioners' then-counsel's personal issues.[6] (*Id.* at 118). The district court struck Petitioners' answer and entered default judgment in Real Parties' favor. (3 PA 502, 679, 697-99). Because of the district court's premature and extreme sanction, Petitioners have never had an opportunity to dispute the Real Parties' claims on the merits. The only procedure left was a prove-up hearing on damages. (*Id.* at 699).

C. Receiver is Appointed and Damage Awards are Entered.

After the default, Real Parties sought an appointment of a receiver to ensure compliance with the Governing Documents. (1 PA 127-28). They alleged a receiver was proper because, after the default, Real Parties "prevailed on [the] cause of

[6] The Nevada Supreme Court ultimately suspended Petitioners' counsel for similar conduct in other cases. (4 PA 914-17).

action" for a receiver. (*Id.* at 126). However, Real Parties' delineation of the Governing Documents was flawed. As that motion explains, Petitioners—consistent with the Terminated Rental Agreement—properly terminated the original rental agreement by notice on April 20, 2011, effective June 19, 2021. (*Id.* at 122-23; 2 PA 307). Petitioners proposed a new rental agreement that did away with the rotational system, expressly stating Real Parties' units would only be rented after GSR's units are filled. (1 PA 122-23; 2 PA 312). Some Real Parties accepted the new rental agreement. (1 PA 123). Amazingly, Real Parties sought the enforcement of the terminated rental agreement as a governing document, (*id.* at 128), even though the Second Amended Complaint did not seek to revoke the then-operative revised Rental Agreement or otherwise seek to reimpose the original agreement, (*see id.* at 37-47).

Constrained by the default, Petitioners opposed the motion, arguing that the proposed scope of the receiver exceeded the operative complaint. (2 PA 452). Real Parties, in a moment of honesty, exposed the receiver's fundamental flaw—they expressly declared "their request for a receiver is in no way limited to, or by, their claims for relief." (*Id.* at 458). The district court appointed a receiver over GSRUOA pursuant to its order striking Petitioners' answer. (3 PA 519). However, foreshadowing its extra-jurisdictional actions, the district court directed the receiver

to ensure compliance with the *terminated* "original Unit Rental Agreements," not the operative Rental Agreement. (*Id.* at 519-20). Regardless, under the terms of the Second Amended Complaint, the receiver existed purely to preserve the Real Parties' condominium units pending the conclusion of the litigation—i.e., through the damages phases. (1 PA 37-38, 127-28).

Eventually, the district court held a prove-up hearing where only one "expert" witness testified. (3 PA 679). None of the Real Parties testified about their alleged damages. (*Id.*). Based on the thinnest of evidentiary records, on October 9, 2015, the district court awarded a $8,318,215.54 lump sum amount in compensatory damages. (*Id.* at 697-98). The order did not specify each Real Parties' damages on an individual basis. (*Id.*). Nor did the order identify the timeframe or basis of the damages. (*See id.*). Rather, the order simply awarded compensatory damages, without explanation, for (1) underpaid rental revenues, (2) renting of units of owners with no rental agreement; (3) improperly discounting units; (4) improperly "comp[ing]" rooms; (5) bad faith rotation system for the units; (6) improperly calculated and assessed fees; and (7) improperly collected assessments. (*Id.*).

Because the prove-up hearing order did not address punitive damages, the parties stipulated that the 2015 order did not constitute a final judgment. (4 PA 729). On February 2, 2023, the district court awarded $9,190,521.92 in punitive damages

after retroactively splicing which claims may allow for them. (7 PA 1487-88).

Multiple "final" judgments and a NRCP 54(b) certification have been entered since. (7 PA1485; 9 PA 1786, 1790, 1795). Petitioners have appealed and posted a supersedeas bond for $29,444,338.79. (9 PA 1704-06; 9 PA 1800-10 PA 1804). Thus, the district court resolved the merits of this case when it concluded the damages hearing.

D. The District Court's Extra-Jurisdictional Actions.

1. The district court is acting without jurisdiction by directing the receiver to control the termination of the GSRUOA even though the termination of the GSRUOA exceeded the scope of the operative complaint and conflicts with NRS Chapter 116.

Despite being jurisdictionally limited to the claims asserted in, and remedies sought by, Real Parties in their Second Amended Complaint, the district court continues to direct the receiver to engage in actions that exceed the scope of the Second Amended Complaint. First, several years after the default judgment was entered, the GSRUOA noticed a meeting—consistent with the Governing Documents—to discuss the termination of the GSRUOA and sale of the units. (5 PA 1026-27). Real Parties sought a temporary restraining order to prohibit the unit owners from voting to terminate the GSRUOA. (*Id.* at 997). For obvious reasons, the Second Amended Complaint did not contain any claim related to the dissolution of the GSRUOA or any allegation related to the idea that unit owners may seek to

terminate the GSRUOA. The process to dissolve the GSRUOA did not arise for several years into the litigation and after the default judgment was entered. (*See* 1 PA 23-48; *see also* 7 PA 1495-96).

The district court recognized that both the Governing Documents and Nevada law required it to allow the unit owners to vote to terminate the GSRUOA, (7 PA 1472), so it allowed Petitioners and Real Parties to stipulate to formally dissolve the GSRUOA, (*id.* at 1489-90). But, despite the stipulation terminating the organization, the district court refused to allow the termination to take effect. Instead, the district court manufactured a termination and sale process—under the receiver's supervision—that is not mentioned in the Second Amended Complaint *or* consistent with either the Governing Documents *or* NRS Chapter 116. (*See id.* at 1472-73).[7] The district court delegated to the receiver primary control over the termination and sale process even though the operative complaint contains no such claim and no such requested remedy. (*See generally* 1 PA 23-48).[8]

For example, under NRS 116.21185(1), the fair market value of the units prior

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[7] While other aspects of the preliminary injunction itself are on appeal, *MEI-GSR Holdings, Inc. v. Thomas, et al.*, No. 85915, the issue here is the jurisdiction of the district court and its appointed receiver, which reaches multitudes of actions beyond the preliminary injunction itself.

[8] While the receiver was appointed only over the GSRUOA, the receiver has, at the district court's direction, taken control of rental income from units owned by MEI-GSR. (3 PA 519-20).

to termination is "determined by one or more independent appraisers selected *by the association*." (emphasis added). Moreover, the association's valuation is "final unless disapproved within 30 days after distribution by units' owners to whom *25 percent of the votes in the association are allocated*." (*Id.* (emphasis added)). However, the district court strayed from that statutory mandate in two ways. First, even though the appraisal must be performed by the common-interest association, the order expressly allows Real Parties "to contest the appraisals and present their own appraisals setting forth their claimed fair market value." (7 PA 1471). But the statutory scheme does not allow for the unit owners to present their own appraisals. NRS 116.21185(1). Second, the unit owners' objection is valid only if 25 percent or more of unit owners object. *Id.* As the district court here recognized, Petitioners (through its affiliates) own over 80 percent of the votes of the GSRUOA. (7 PA 1468). Therefore, Real Parties do not possess the 25 percent minimum vote share to object to the appraisal. NRS 116.21185(1).

Not only have the district court and the receiver extended beyond the claims in the case, they have also extended beyond the parties. The district court expressly prohibited Petitioners from purchasing units *from non-parties* while the receivership

continues. (7 PA 1472).[9]

2. *The district court is acting without jurisdiction by ordering Petitioners, through the receiver, to provide Real Parties with additional compensatory damages for unpled claims.*

In the meantime, while effectively preventing the GSRUOA's termination under NRS Chapter 116, the district court mandated that Petitioners continue renting Real Parties' former units and turn over rental amounts to the receiver for disbursement even though the stipulation dissolved the Condominium Hotel and the units themselves. (9 PA 1717-18). Equally as bad, the district court interfered with Petitioners' ability to maintain and operate the hotel. The district court has barred Petitioners from conducting regularly scheduled refurbishment of the Real Parties' units so those units stay in the rental pool and keep spinning off more amounts to Real Parties. (12 PA 2220-21).

Each month Petitioners must turn over hundreds of thousands of dollars in gross rental income to the receiver for his review, calculation, and determination of the Real Parties' shares. (9 PA 1720; 11 PA 2100-01; 12 PA 2172-73, 2218). But astonishingly, the receiver is admittedly completing calculations based on stale *projections* from 2019—rather than actual expense numbers. (12 PA 2187-88). Not

[9] This directive likely constitutes an unconstitutional judicial interference with Petitioners' property, contract, and due process rights.

only does the receiver concede that his calculations are not accurate and constitute an extremely expensive guestimate, but Real Parties acknowledge that "damages" are "temporary" "estimat[es]" with a "chance[ ]" of an overpayment. (9 PA 1729, 1732, 1735). Real Parties insist that the payments continue so they can bilk the GSR for as long as possible after default even though they know that the receiver's calculations are not accurate. Real Parties claim that ongoing rents are needed to "partially compensate" them notwithstanding that there has already been a "compensatory damage" award entered. (*Id.* at 1725 (arguing that the rental proceeds are needed to "partially compensate" Real Parties)).

So far, the district court has rubberstamped the receiver's calculations in orders dated March 27, 2023 for post-judgment rents due in the amount of, $1,103,950.99; on August 14, 2023 for the distribution of post-judgment net rents totaling $270,567.02; on October 3, 2023 for $402,751.21; on October 23, 2023 for $434,227.14; and December 29, 2023 for $263,243.71. (7 PA 1482; 9 PA 1720; 11 PA 2100-01, 2113; 12 PA 2172-73, 2218).

Real Parties admit that these ongoing rent amounts function as continuing compensatory damages after default and entry of the monetary awards. (9 PA 1694 n.3). For instance, after the 2019 Supreme Court remand, Real Parties alleged that Petitioners stole additional rents after the default and they "initially sought additional

compensatory damages after the matter was remanded." (*Id.*).

At first, Real Parties recognized that "additional litigation would need to be pursued" on these new claims to obtain any damages. (*Id.*; *see also id.* at 1734-35). But, later, "Plaintiffs forwent that avenue of recovery in favor of having the Receiver take control of the rents . . . and distribute the proceeds to Plaintiffs under the Governing Documents." (*Id.* at 1735). In other words, Real Parties abandoned the proper process to seek additional damages after the compensatory award for any claims that postdate the operative complaint—and were not subject to the default judgment—in exchange for smuggling in additional unlimited damages through the receiver and district court's extra-jurisdictional actions. (*See id.*).

But lost rents were the subject of the Second Amended Complaint and the prove up hearing that resulted in $8,318,215.54 in damages. Thus, to the extent Real Parties wanted to pursue claims or damages beyond the scope of the operative complaint, they are required to file a new action. The district court does not have jurisdiction to treat an action—especially after a default judgment—as a perpetual airing of all grievances.

In a related appeal, Petitioners contended that all preliminary relief—including the receiver—terminated as a matter of law upon entry of the final judgment. *MEI-GSR Holdings, LLC v. Thomas, et al.*, No. 86092, at **9-15

(Appellants' Response to May 8, 2023 Order to Show Cause June 13, 2023). This Court disagreed, concluding that no final judgment existed because there had been no final accounting as to the receiver. *MEI-GSR Holdings, LLC*, Nos. 85915, 86092, 86985, 87243, 87303, 87566, 87567, 87685, at **25-26 (Order Resolving Motions, Dismissing and Consolidating Appeals, and Reinstating Briefing Dec. 29, 2023).

Despite concluding that there was no final judgment, this Court recognized explicitly it could not bless "the propriety of the district court's actions." *Id.* at *24 n.2.

III. REASONS WHY THE REQUESTED WRIT SHOULD ISSUE

A. The Court Should Entertain this Petition.

This Court has original jurisdiction to issue a writ of prohibition or mandamus. Nev. Const. art. 6, § 4. A writ of prohibition is the "proper remedy to restrain a district [court] from exercising a judicial function without or in excess of its jurisdiction." *Smith v. Dist. Ct.*, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991). Prohibition issues "to curb the [district court's] extrajurisdictional act." *Canarelli v. Eighth Jud. Dist. Ct.*, 136 Nev. 247, 250, 464 P.3d 114, 119 (2020) (quoting *Toll v. Wilson*, 135 Nev. 430, 432, 453 P.3d 1215, 1217 (2019)). Mandamus is "available to compel the performance of an act which the law . . . [requires] as a duty resulting from an office, trust or station, or to control an arbitrary or capricious exercise of

discretion." *PetSmart, Inc. v. Eighth Jud. Dist. Ct.*, 137 Nev. 726, 729, 499 P.3d 1182, 1186 (2021) (alterations in original) (quoting *Cote H. v. Eighth Jud. Dist. Ct.*, 124 Nev. 36, 39, 75 P.3d 906, 807-08 (2008)).

"Writ relief is also appropriate when an important issue of law needs clarification and this court's invocation of its original jurisdiction serves public policy." *Id.* at 250-51, 464 P.3d at 119 (internal quotation marks omitted) (entertaining a writ of prohibition to define the contours of a privilege). Generally, writs are inappropriate if the petitioner has an adequate and speedy remedy at law. *D.R. Horton, Inc. v. Eighth Jud. Dist. Ct.*, 123 Nev. 468, 474, 168 P.3d 731, 736 (2007). However, even if there is "an available legal remedy," this Court "may still entertain a petition for writ 'relief where the circumstances reveal urgency and strong necessity.'" *Segovia v. Eighth Jud. Dist. Ct.*, 133 Nev. 910, 912, 407 P.3d 783, 785 (2017) (quoting *Barngrover v. Fourth Jud. Dist. Ct.*, 115 Nev. 104, 111, 979 P.2d 216, 220 (1999)).

Here, Petitioners have no adequate or speedy legal remedy, and there is a strong necessity. As explained below, the district court lacks jurisdiction to issue the challenged orders because the ongoing actions far exceed the claims and relief pursued in the operative complaint upon which a default has been entered. In default proceedings, the district court only has jurisdiction to issue the relief explicitly

sought in the operative complaint. *See infra* III.B. Since the district court and the receiver have wandered beyond the normal breadth (set by the operative complaint) and length (set by a default judgment and damage awards) of litigation in an unprecedented fashion, it is unclear when—if ever—Petitioners will have a chance to appeal and recoup the disbursed amounts. *D.R. Horton, Inc.*, 123 Nev. at 474-75, 168 P.3d at 736 ("Whether a future appeal is sufficiently adequate and speedy necessarily turns on the underlying proceedings' status, the types of issues raised in the writ petition, and whether a future appeal will permit this court to meaningfully review the issues presented.").

Even the theoretical ability to eventually appeal from a receiver's final accounting is not an adequate, speedy remedy. *See id.*; *Bd. of Review, Nev. Dep't of Emp., Training & Rehab., Emp. Sec. Div. v. Second Jud. Dist. Ct.*, 133 Nev. 253, 255, 369 P.3d 795, 797 (2017) ("This case presents an issue of subject matter jurisdiction, necessitating our immediate consideration."). In the current state of affairs, there is doubt about how and when any such final accounting will occur in compliance with Nevada law. "[J]udicial economy is benefitted by answering the question of whether the district court has jurisdiction over [petitioner] at the outset of the matter." *McGowen, Tr. of McGowen & Fowler, PLLC v. Second Jud. Dist. Ct.*, 134 Nev. 733, 736, 432 P.3d 220, 223 (2018).

B. The Court Should Issue a Writ of Prohibition.

1. The district court is operating in excess of its jurisdiction as set by the operative Second Amended Complaint and default judgment.

This Court reviews de novo whether a district court has subject matter jurisdiction. *Ogawa v. Ogawa*, 125 Nev. 660, 667, 221 P.3d 699, 704 (2009). The scope of the district court's subject matter jurisdiction is set by the complaint. *See Edwards v. Emperor's Garden Restaurants*, 122 Nev. 317, 321, 130 P.3d 1280, 1282 (2006) ("Since the court has original jurisdiction over injunction requests, a complaint properly alleging the TCPA was violated and requesting injunctive relief necessarily invokes the court's jurisdiction."); *Craig v. Donnelly*, 135 Nev. 37, 39, 439 P.3d 413, 415 (Ct. App. 2019) ("The district court may properly dismiss a complaint when a lack of subject matter jurisdiction is apparent on the face of the complaint."); *see also Caterpillar Inc. v. Williams*, 482 U.S. 386, 392 (1987) (concluding that jurisdiction is determined "on the face of the plaintiff's properly pleaded complaint"): *LASR Clinics of Henderson, LLC v. United States Dep't of Justice*, 2017 WL 4707449, at *3 n.5 (D. Nev. Oct. 19, 2017) ("Pursuant to a factual attack on subject matter jurisdiction under Rule 12(b)(1), consideration of matters beyond the four corners of the complaint . . . are not considered.").

After all, the filing of the initial pleading invokes the district court's jurisdiction in the first place and sets the scope of the proceedings. *Edwards*, 122 Nev. At 321, 130 P.3d at 1282; *Globig v. Greene & Gust Co.*, 193 F. Supp. 544, 549 (E.D. Wis. 1961) (holding that filing a complaint invokes the court's jurisdiction): *see also Caterpillar*, 482 U.S. at 392. "[T]he purpose of a complaint is to 'give fair notice of the nature and basis of a legally sufficient claim and the relief requested.'" *Zohar v. Zbiegien*, 130 Nev. 733, 739, 334 P.3d 402, 406 (2014) (quoting *Breliant v. Preferred Equities Corp.*, 109 Nev. 842, 846 P.2d 1258, 1260 (1993)). And while it is not unusual for theories and claims to evolve over the course of active litigation—and parties may impliedly consent to litigate issues not expressly identified in the complaint, NRCP 15(b)(2)—this does not apply in default proceedings.

Rather, in a default proceeding, "[a] default judgment *must not differ in kind from, or exceed in amount, what is demanded in the pleadings*." NRCP 54(c) (emphasis added). In other words, "the relief granted to the plaintiff . . . shall not exceed that which . . . [was] demanded in [the] complaint." *Mitchell v. Mitchell*, 28 Nev. 110, 79 P. 50, 50 (1904). This Court strictly enforces that rule. "[I]n default proceedings, a defaulting party cannot be found to have impliedly consented to try and be held liable for claims that were not pleaded in the complaint." *Blige v. Terry*,

139 Nev., Adv. Op. 60, 540 P.3d 421, 425 (2023). Thus, as this Court explained, "the default judgment entered against a defaulting party . . . must similarly be limited to damages for the claims pleaded against them." *Id.* at 428.

"The purpose of [Rule 54(c)] is to provide a defending party with adequate notice upon which to make an informed judgment on whether to default or actively defend the action." *Matsushima v. Rego*, 696 P.2d 843, 846 (Haw. 1985); Wright & Miller, *10 Federal Practice and Procedure* § 2663 (4th ed. April 2023 Update) ("The theory of [Rule 54(c)] is that the defending party should be able to decide on the basis of the relief requested in the original pleading whether to expend the time, effort, and money necessary to defend the action.").

Other jurisdictions are similarly strict, recognizing that a court lacks jurisdiction in default proceedings to issue relief outside the scope of the relief sought by the operative complaint. *See, e.g.*, *In re Marriage of Hughes*, 116 P.3d 1042, 1043, 1046 (Wash. 2005) (holding that under Washington's Rule 54(c) that "a court has no jurisdiction to grant relief beyond that sought in the complaint" and must "vacate the default to the extent it differed from the original [complaint]"); *In re Ferrell*, 539 F.3d 1186, 1192-93 (9th Cir. 2008) (concluding the award of attorney fees and costs violated FRCP 54(c) "by imposing a default judgment on grounds that differ from what was 'demanded in the pleadings'" because the complaint sought

attorney fees and costs under NRS 64.164, not NRS 41.600, which it relied on to support the fee award on appeal); *Hicks v. Pleasants*, 158 P.3d 817, 821 (Alaska 2007) (similar); *Matsushima*, 696 P.2d at 845 (recognizing that "HRCP Rule 54(c) restricts the scope of relief that may be granted by default judgment to that specifically prayed for" and holding the judgment quieting title was void because it was not sought in the pleadings); *Pinkham v. Plate*, ___ P.3d ___, 2023 WL 8205682, at *10 (Idaho 2023) (similar).

Not only is the relief limited to the request in the complaint at the time of the default, but the relief sought must be stated explicitly in the complaint. *See Matsushima*, 696 P.2d at 845. Generic requests for "such other and further relief which this Court deems just and proper" are "'mere boilerplate [language], meant to cover all bases as to the claims asserted in the complaint.'" *Silge v. Merz*, 510 F.3d 157, 160 (2d Cir. 2007) (quoting *Nagrampa v. MailCoups, Inc.*, 469 F.3d 1257, 1277 n.6 (9th Cir. 2006)).

Nonspecific prayers do not sneak in unsought remedies or unpled claims into the complaint for Rule 54(c) purposes. *Compare* (1 PA 47), *with Silge*, 510 F.3d at 160 (concluding that a plaintiff is not entitled to prejudgment interest against the defaulting party because the complaint did not include a request for interest and that "the conventional additional demand for 'such other and further relief as the Court

deems just and proper' does not constitute a demand for prejudgment interest"); *see also Pioche Mines Consol., Inc. v. Dolman*, 333 F.2d 257, 272 (9th Cir. 1964) (holding that a request to enjoin a particular corporate officer from exercising control over a corporation does not permit, upon default, appointment of a receiver to manage the corporation).

Here, the Second Amended Complaint alleged Petitioners violated the terminated rental agreement between the parties by not following an equitable rental agreement and improperly comping or discounting Real Parties' rental units. (1 PA 35-37). As a result Real Parties sought (1) "a pre-judgment receiver to oversee" the GSRUOA during litigation; (2) compensatory damages; (3) punitive damages; (4) attorney fees and costs; (5) declaratory relief; (6) specific performance; and (7) an accounting. (*Id.* at 47). Contrary to seeking a receiver to implement the Governing Documents unchanged and promptly calculate and collect fees, Real Parties sought to have the GSR Rental Agreement and Unit Maintenance Agreement declared unconscionable. (*Id.* at 45-46). The Second Amended Complaint contains no allegations about the dissolution of the GSRUOA, the sale of units, or seeking injunctive relief. (*Id.* at 23-48).

However, the district court continues to grant relief far exceeding the relief sought by Real Parties and after a default judgment with compensatory and punitive

damages has been entered. The district court has charged the receiver with multiple tasks and grants of authority that were not contemplated by, or requested in, the Second Amended Complaint. Thus, the district court is acting in excess of its subject matter jurisdiction.

a. The district court exceeded the scope of the relief sought in the complaint, and thus its jurisdiction, when it directed the receiver to oversee the dissolution and sale of the GSRUOA.

The district court's order directing the receiver to oversee and control the termination of the GSRUOA and sale of the condominium units not only violates the express terms of NRS Chapter 116 but additionally far exceeds the scope of the relief sought by Real Parties in the Second Amended Complaint. (7 PA 1472-73). The Second Amended Complaint included no allegations, claim, or request for relief related to the dissolution of the GSRUOA or any related sale of the units. (1 PA 47). Indeed, it could not. The notice that the unit owners would vote to terminate the GSRUOA—consistent with the CC&Rs—was not circulated until November 2022, (5 PA 998, 1026), over 10 years after the initial complaint was filed, and 9 years after the Second Amended Complaint was filed, (1 PA 22, 47).

Even so, the district court granted the receiver power that conflicts with NRS Chapter 116. NRS Chapter 116 allows only the common-interest community to prepare an appraisal of the units, NRS 116.21185(1), yet the district court and the

receiver are allowing Real Parties to submit their own counter-appraisal, (7 PA 1471). Similarly, NRS 116.21185(1) forecloses any objection to the community's appraisal unless supported by 25 percent of the units, but the district court and receiver are allowing Real Parties to object even though they own less than 15 percent of the units. (7 PA 1471-72).

Further, the district court has forbidden Petitioners from purchasing units owned by non-parties. (*Id.* at 1472). The Second Amended Complaint did not—nor could it—speak to the rights of non-party unit owners. (*See* 1 PA 23-48). Thus, this prohibition on purchasing units that are not owned by the Real Parties is outside the bounds of the Second Amended Complaint, especially after default.

Finally, even though the Second Amended Complaint asked for a pre-judgment receiver, it did not request that the receiver do anything to control a yet-to-be-contemplated dissolution. *See, e.g.*, *Pioche Mines Consol., Inc.*, 333 F.2d at 272; *Emeric v. Alvarado*, 2 P. 418, 484 (Cal. 1884) ("[A]n order appointing a receiver is not an injunction."). The Second Amended Complaint provided no notice that a receiver might superintend the GSRUOA's wind up almost a decade after litigation began. *See Pioche Mines Consol., Inc.*, 333 F.2d at 272 ("We think that a receivership is so different from an injunction that this can hardly be held to give notice to appellees that a receivership would be sought."). The absence of any notice

to Petitioners violates their state and federal due process rights. *See Callie v. Bowling*, 123 Nev. 181, 183, 160 P.3d 878, 879 (2007). Accordingly, the district court does not possess jurisdiction to order the receiver to oversee the termination of the GSRUOA. As a result, this Court must issue a writ of prohibition, directing the district court to vacate its order directing the receiver to oversee the termination of the GSRUOA. The termination must follow NRS Chapter 116.

b. The district court exceeded its jurisdiction when it directed the receiver to continue the rental program and turn over rents to Real Parties as additional compensatory damages for unpled claims after default.

Similarly, the district court is without jurisdiction to order the receiver to continue the rental program and to turn over the proceeds instead of requiring the Real Parties to file another lawsuit for any supposed damages arising after the default. (9 PA 1717-18). Real Parties initially sought additional compensatory damages for alleged rental violations that occurred in 2020. (*Id.* at 1694 n.3). Such violations, obviously, were not pled in the operative complaint filed in 2013. (*See* 1 PA 23-48). Still, at Real Parties urging, the district court directed the receiver to continue renting units and transmitting Petitioners' rental proceeds to Real Parties to compensate them for alleged violations of the Governing Documents that supposedly occurred after the default judgment. (7 PA 1481-82). This rogue remedy

for unpled claims exceeds the district court's jurisdiction in the default context, NRAP 54(c); *see also Mitchell*, 28 Nev. at 110, 79 P at 50.

Likewise, the district court's order requiring the receiver to continue renting the units and turning over the rental proceeds exceeds the scope of the Second Amended Complaint. The rental program instituted by the receiver derives from the *terminated* original unit rental agreement. (3 PA 519-20). But the operative complaint did not seek the termination of the amended rental agreement or the reinstatement of the terminated original rental agreement. (*See* 1 PA 23-48). Thus, the district court acted without jurisdiction by ordering the receiver to implement compliance, among all condominium units, with the "original Unit Rental Agreement." NRAP 54(c).

To the extent Real Parties believe conduct warranting new claims and additional compensatory damages occurred, they must file a new complaint seeking relief as opposed to seeking additional compensatory damages—years after the compensatory damages phase was complete—for unpled claims. "While there is authority that a party can amend pleadings to correct defective jurisdictional allegations after a default or default judgment is entered, *these cases do not support the idea that a party can assert new claims after default is entered and seek default judgment on those claims*." *Jackson v. AML Constr. & Design Grp.*, No. 16-CV-

01847-PAB-MEH, 2017 WL 2812823, at * 2 n.2 (D. Colo. June 29, 2017) (emphasis added; internal citations omitted).

Indeed, courts have rejected similar attempts by plaintiffs to include post-default damages in a default judgment award. *Marvin H. Schein Descendants' LLC v. Brown*, No. 15-CV-1738 (JMF), 2020 WL 3833463 (S.D.N.Y. July 8, 2020), is illustrative. There, after obtaining a default judgment, plaintiff filed a motion to amend the judgment from $79,008.30 to $751,137.83. *Brown*, 2020 WL 3833463, at *1. The plaintiff alleged the revised judgment was necessary to "encompass 'additional losses . . . incurred . . . as a result of Brown's continuing failure since" the date of the default judgment "to abide by the terms of the 2007 Settlement Agreement." *Id.* However, as the court recognized, plaintiff's motion was "a procedurally improper effort to bootstrap new claims onto the Default Judgment." *Id.* The court held "[t]he remedy for these alleged new breaches of the Agreement, however, *is a new lawsuit, not amendment of the existing judgment*." *Id.* (emphasis added).

Here, like *Brown*, Real Parties' remedy is a new lawsuit for any alleged failure to comply with the Governing Documents *after* the default judgment and the previous monetary awards. Real Parties cannot smuggle more compensatory damages through the receivership. Thus, the district court is acting without

jurisdiction by granting Real Parties additional compensatory damages for unpled claims arising from actions that postdate the default judgment.

C. This Court Should Issue a Writ of Mandamus.

As discussed above, NRCP 54(c) limits judgments in default proceedings to the relief explicitly sought in the operative pleading. *See supra* III.B. Rule 54(c) "establishes a ceiling rather than a floor on damages [in a default case]." *Smith v. Cummings*, 445 F.3d 1254, 1259 (10th Cir. 2006). Rule 54(c)'s mandate is unambiguous and "well-settled," and predates even "the adoption of the Rules of Civil Procedure" themselves. *Nat'l Discount Corp. v. O'Mell*, 194 F.2d 452, 455-56 (6th Cir. 1952). Because the district court ignored this clear dictate, mandamus is appropriate. *Mays v. Eighth Jud. Dist. Ct.*, 105 Nev. 60, 63, 768 P.2d 877, 879 (1989) (issuing a writ of mandamus directing the district court to vacate discovery orders that did not comply with the Rules of Civil Procedure).

IV. CONCLUSION

For these reasons, this Court should issue a writ of prohibition or mandamus directing the district court to vacate all orders directing the receiver to (1) oversee the termination of the GSRUOA; (2) continue renting condominium units; (3) to transmit rental proceedings to the Real Parties as a form of compensatory damages; and (4) prevent the sale or transfer of units with non-parties.

DATED this 7th day of February 2024.

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VERIFICATION/DECLARATION

I, Jordan T. Smith, Esq., declare as follows:

1. I am counsel for Petitioner.

2. Under NRAP 21(a)(5), I verify that I have read this Petition for Writ of Prohibition or, in the Alternative, Mandamus and that the same is true to my own knowledge, except for those matters stated on information and belief, and as to those matters, I believe them to be true.

3. I have also reviewed the contents of the Appendix filed with this Petition and verify that the documents included are true and correct copies. NRAP 21(a)(4).

4. I declare under the penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct.

This declaration is executed on the 7th day of February 2024, in Las Vegas, Nevada.

/s/ Jordan T. Smith
JORDAN T. SMITH, ESQ.

CERTIFICATE OF COMPLIANCE

I hereby certify that this Petition complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5), and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Office Word 2013 in size 14 font in double-spaced Times New Roman.

I certify that I have read this Petition and that it complies with the page or type-volume limitations of NRAP 21(d) because, excluding the parts of the brief exempted, it is proportionately spaced, has a typeface of 14 points or more, and 6,835 words.

I further certify that, to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this Petition complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires that every assertion in this Petition regarding matters in the record to be supported by appropriate references to Appendix filed with this Petition. I understand that I may be subject to sanctions in the event that the accompanying Petition is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Finally, I certify that the Appendix accompanying this Petition complies with NRAP 21(a)(4) and NRAP 30 by including necessary material and other original documents essential to understand the matter set forth in herein.

DATED this 7th day of February 2024.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Pisanelli Bice PLLC, and that on this 7th day of February 2024, I caused to be served via United States mail a true and correct copy of the above and foregoing **PETITION FOR WRIT OF PROHIBITION** properly addressed to the following:

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