IN THE SUPREME COURT OF THE STATE OF NEVADA

MEI-GSR HOLDINGS, LLC, A NEVADA CORPORATION; AM-GSR HOLDINGS, LLC, A NEVADA CORPORATION; AND GAGE VILLAGE COMMERCIAL DEVELOPMENT, LLC, A NEVADA CORPORATION;

Petitioners,

vs.

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

Real Parties,

and

ALBERT THOMAS, INDIVIDUALLY; JANE DUNLAP, INDIVIDUALLY; JOHN DUNLAP, INDIVIDUALLY; BARRY HAY, INDIVIDUALLY; MARIE-ANNE ALEXANDER, AS TRUSTEE OF THE MARIE-ANNE 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.

Supreme Court No. 88065
District Court Case No. CV22-02222

HENDERSON, INDIVIDUALLY; LOREN D. PARKER, INDIVIDUALLY; SUZANNE C. PARKER, INDIVIDUALLY; MICHAEL IZADY, INDIVIDUALLY; STEVEN TAKAKI, INDIVIDUALLY, FARAD TORABKHAN, INDIVIDUALLY; SAHAR TAVAKOLI, 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; FREDERICK FISH, INDIVIDUALLY; LISA FISH, INDIVIDUALLY; ROBERT A. WILLIAMS, INDIVIDUALLY; JACQUELIN PHAM, INDIVIDUALLY, MAY ANNE HOM, AS TRUSTEE OF THE MAY ANNE

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; DARLEEN LINDGREN, INDIVIDUALLY; LAVERNE ROBERTS, INDIVIDUALLY; DOUG MECHAM, INDIVIDUALLY; CHRISTINE MECHAM, INDIVIDUALLY; KWANG SOO SON, INDIVIDUALLY; SOO YEUN MOON, INDIVIDUALLY; JOHNSON AKINBODUNSE, 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 NAM CHOI, INDIVIDUALLY; YOUNG JA CHOI, INDIVIDUALLY; SANG DAE SOHN, INDIVIDUALLY; KUK HYUN (CONNIE) YOO, INDIVIDUALLY; SANG (MIKE) YOO, INDIVIDUALLY; BRETT MENMUIR, AS TRUSTEE OF THE CAYENNE TRUST; WILLIAM MINER, JR., INDIVIDUALLY; CHANH TRUONG, INDIVIDUALLY; ELIZABETH ANDRES 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.

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

RULE 26.1 DISCLOSURE

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

1. All parent corporations and publicly-held companies owning 10 percent or more of the party's stock: None.

2. Names of all law firms whose attorneys have appeared for the party or amicus on this case (including proceedings in the district court or before an administrative agency) or are expected to appear in this court:

Robertson, Johnson, Miller & Williamson

Lemons, Grundy & Eisenberg

3. If the litigant is using a pseudonym, the litigant's true name: N/A.

DATED this 5th day of April, 2024.

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I. INTRODUCTION

If ever a case required a receivership and a final accounting therefrom, this is it. Real Parties initiated this case upon discovering Petitioners' tortious scheme to devalue the condominium units within the Grand Sierra Resort ("GSR") by cutting off all rental revenue to non-Petitioner unit owners, so Petitioners or their affiliate could acquire those units for pennies on the dollar. Approximately 100 of the 670 total units are owned by Real Parties. Real Parties prevailed on their claims against Petitioners and the district court made specific findings that Petitioners had tortiously attempted to execute the devaluation scheme by committing fraud.

Now, 12 years after the case was filed, Petitioners' scheming continues as Petitioners seek this court assistance to terminate the receivership. The receivership is the only safeguard remaining to foil Petitioners' nefarious plans and ensure Real Parties receive fair market value for their units in the court-ordered sale to Petitioners' affiliate. Granting the petition would unwind hard-won district court orders and a heavily-negotiated and court-approved stipulation, and impliedly approve Petitioners' scheme, making years of litigation largely meaningless.

This matter has been, and continues to be, plagued by Petitioners' efforts to "turn[NRCP 1's] directive on its head and do[] everything possible to make the proceedings unjust, dilatory, and costly." (3PA678, district court finding.) On display in the petition is Petitioners' penchant for twisted and omissive storytelling.

Therein, Petitioners present half-truths to portray themselves as the victims—when in fact Petitioners have harmed Real Parties by committing rampant, indisputable fraud, stealing millions of dollars of Real Parties' rental proceeds, thwarting the receivership, contemptuously misappropriating over $16 million from reserve accounts, and repeatedly violating applicable contracts and court orders. Petitioners were justifiably subjected to sanctions striking their counterclaims after being caught red-handed trying to conceal smoking-gun evidence of fraud, subsequent sanctions striking their answer after continuing to refuse to participate in discovery, over $8 million in compensatory damages after a three-day evidentiary hearing, $9 million in punitive damages, and a finding of contempt.

Somehow, none of these repercussions have dissuaded Petitioners from their scorched earth tactics, as evidenced by the petition (which largely mirrors the numerous appeals currently being briefed). Importantly, the petition falls far short of the exacting standard for writ relief. First, Petitioners have failed to show the district court exceeded its jurisdiction with respect to the receivership, especially in light of this court's December 29, 2023 order finding the district court appropriately exercised its jurisdiction to continue the receivership through a final accounting, even after the monetary damage awards were issued. Second, Petitioners have a plain, speedy, and adequate remedy at law in the appeals currently being briefed which present practically identical issues to those presented herein.

Petitioners are not entitled to the extraordinary relief they seek. The court should deny the petition, allow the district court to bring the receivership to a close through the fair and orderly final accounting being prepared, and consider any appeal issues when they are properly brought before this court (including those being briefed in Nos. 85915, 86092, and 86985).

II. FACTUAL BACKGROUND

A. Complaint to Findings of Fact, Conclusions of Law and Judgment

Real Parties own hotel condominium units in the GSR and initiated this action on August 27, 2012. (1PA0001-22.) Real Parties and Petitioners are parties to three primary contracts which comprise the "Governing Documents." (3PA0530-676.) These Governing Documents call for Petitioners to rent Real Parties' units to the public, charge certain fees to Real Parties for doing so, and split the net proceeds with Real Parties. (3PA0642-76.) The impetus of this lawsuit was Petitioners' fraudulently underreporting rental income from and even usage of Real Parties' units and charging Real Parties falsely inflated fees that violated the Governing Documents—thereby further reducing the already underreported net rents. (1PA00001-48.)

Indeed, Petitioners' intention since purchasing the GSR in 2011, as explicitly recognized by the district court, has been "to purchase the devalued units at nominal, distressed prices when [Real Parties] decide to, or are effectively forced to, sell their

units because the units fail to generate sufficient revenue to cover expenses and have no prospect of selling their persistently loss-making units to any other buyer." (3PA0691.) To achieve that goal,

> MEI-GSR has systematically endeavored to increase the various fees that are charged in connection with the use of the GSR Condo Units ***in order to devalue the units*** owned by [Real Parties];
> . . .
> MEI-GSR has manipulated the rental of the: (1) hotel rooms owned by MEI-GSR; (2) GSR Condo Units owned by MEI-GSR and/or Gage Village; and (3) GSR Condo Units owned by [Real Parties] so as to maximize MEI-GSR's profits ***and devalue the GSR Condo Units owned by [Real Parties]***;
> . . .
> MEI-GSR has systematically thwarted the efforts of any third party to market and rent the GSR Units owned by [Real Parties].

(3PA0689-91; emphasis added.)

Real Parties filed the operative Second Amended Complaint on March 26, 2013, setting forth 12 causes of action. (1PA0023-48.) Just as any other litigant, Petitioners had every opportunity to defend themselves against Real Parties' allegations. However, Petitioners believe rules do not apply to them and correspondingly chose to disregard and violate discovery rules and court orders to hide critical evidence. (1PA0101-06.) The district court accordingly issued appropriate sanctions. (Id.; 3PA0678, "The record speaks for itself regarding the protracted nature of these proceedings and the systematic attempts at obfuscation

and intentional deception on the part of [Petitioners]," and "[Petitioners] have consistently, and repeatedly, chosen to follow their own course rather than respect the need for orderly process in this case . . . . [Petitioners have] done everything possible to make the proceedings unjust, dilatory, and costly.") The district court initially gave Petitioners a break, striking Petitioners' counterclaims as a sanction, but not imposing the more severe sanctions Real Parties requested. (1PA101-06.) But Petitioners' flagrant misconduct continued undeterred. (1PA107-18.) After Petitioners' "systematic attempts at obfuscation and intentional deception" through their continued refusal to participate in discovery and follow orders, including intentionally misrepresenting their compliance with discovery orders to the district court, the district court struck their answer and entered a default.[1] (3PA0678:17-18; 1PA107-19.)

[1] Petitioners attempt to shift blame to their former attorney for the flagrant misrepresentations and discovery abuses resulting in the sanctions. (See e.g., Petition at 9, blaming original attorney's "personal issues.") These discovery abuses went far beyond anything that could be blamed on this one attorney. At all times Petitioners had multiple attorneys, and the abuses were committed by Petitioners' own officers and employees, including brazen falsification of discovery responses, hiding and lying about thousands of emails, lying to the court, and other sanctionable misconduct committed by Petitioners themselves, not just one of their attorneys. (1PA0110:21-5:1; 1PA0111:16-23, juxtaposing Petitioners' disclosure of 200-300 emails and subsequent third-party searches uncovering 224,226 relevant, undisclosed emails; 1PA0111:23-36:7, designated Petitioner employee to search emails was not provided sufficient access to discover responsive emails; 1PA0112:8-18, misrepresentations that previously undisclosed emails would be inconsequential; 1PA0112:22-24, "Both [Petitioners] and [Petitioners]' counsel failed to meet their discovery obligations.")

The district court appointed the Receiver on January 7, 2015, after the default had been entered. (3PA0519-676 ("Appointment Order").) Petitioners did not move for reconsideration nor appeal the Appointment Order. Petitioners instead acquiesced to the Appointment Order's contents, terms, and obligations.

The district court then held a three-day prove-up hearing to determine Real Parties' compensatory damages. (1R.App.0001-03.) The district court subsequently issued its Findings of Fact, Conclusions of Law and Judgment ("FFCLJ"), awarding Real Parties $8,318,215.55 in compensatory damages, which was equal to the proper rental proceeds and the wrongly-charged fees. (3PA0697-98.) This award would have made Real Parties whole through the FFCLJ (but to date, Petitioners have not paid the award). (Id.; see also 5R.App.0994-1006.) The FFCLJ also ordered that "[t]he receiver will remain in place with his current authority until this Court rules otherwise." (3PA0698.) The Receiver is therefore responsible for enforcing the Governing Documents until further notice.

B. Remand Following Successful Appeal of Erroneous Dismissal

In the FFCLJ, District Judge Sattler set forth his inclination to consider punitive damages. (3PA0699.) But, realizing their scheme had been thwarted by the district court and Petitioners could be liable for additional millions in punitive damages, Petitioners filed a motion to dismiss for lack of subject matter jurisdiction approximately one week before the scheduled punitive damages hearing.

(1R.App.0009-11; 1R.App.0012-180; 1R.App.0181-183.) Therein, Petitioners argued Real Parties failed to exhaust their administrative remedies before filing their complaint. (1R.App.13-31.) Petitioners, at that point, had actively participated in this case for over three years. (See, e.g., 3PA0677-700.) The district court unfortunately adopted Petitioners' flawed jurisdictional arguments and dismissed the case. (1R.App.196.) Based on this erroneous dismissal, the receivership terminated and Petitioners returned to their fraudulent practices. (2R.App.267-69.) Real Parties successfully appealed and this court issued a remittitur on December 31, 2018. (Docket No. 70498.)

The remand reinstated the receivership. (2R.App.267-69.) The Receiver was then required to recalculate all rents owed to Real Parties while the case was on appeal, as Petitioners, again, had "systematically endeavored to increase the various fees . . . in order to [cut off rents and] devalue the units owned by [Real Parties]." (2R.App.268-69; 3PA0689.) The district court required Petitioners to disgorge funds to Real Parties for those rents and reserves Petitioners had misappropriated during the appeal. (2R.App.268.) Notably, these amounts were ***not*** compensatory damages, but a true-up of the rental proceeds Real Parties should have earned pursuant to the still-in-place Governing Documents during the appeal. (3PA642-76.) The Receiver ensured Real Parties were paid what they were owed through the late-2018 remand.

All rental proceeds owed to Real Parties after the district court's FFCLJ are contractually-owed funds derived from the rental/use of Real Parties units—not damages. (Id.) The Receiver is critical to calculating these rental proceeds because, as Petitioners have proven time and again, without the Receiver, they will steal Real Parties' units' rental proceeds. (3PA0677-700; 2R.App.268; 5R.App.0942-60.)

The distinction between these categories of funds (rental proceeds versus damages) is critical. Indeed, Real Parties abandoned efforts to recover post-remand back rents accruing after Petitioners stole all rental proceedings during the appeal. (See 1R.App.0198-266; 2R.App.0267-69.) This abandonment was based upon their understanding and court order that the receivership would operate in real time to enforce the Governing Documents such that Real Parties would be charged appropriate fees and receive their contractually-owed proceeds. (2R.App.0267-69; 3PA509-676.) Stated another way, Real Parties chose to rely upon the receivership to enforce the Governing Documents' ongoing obligations until further court order (including a final accounting). No such order or final accounting has been entered.[2]

The matter then underwent a flurry of judicial turnover. Judge Sattler, the original judge with the highest rating in the Second Judicial District, was ousted at

[2] This has not stopped Petitioners from ***twice*** seeking a district court order terminating the receivership, once in 2023 and once three weeks prior to filing this petition. (5R.App.1010-12; 7R.App.1394-1691.) Both failed. (5R.App.1010-12; 9R.App.1798-1800.) At some point, Petitioners' doomed, duplicative efforts must be curtailed.

the next election by a candidate whose campaign was funded almost entirely by Petitioners and their related entities. (2R.App.0313-396.) This succeeding judge's recusal was followed by the disqualification of all other district judges in the Second Judicial District. (2R.App.0397-473.) The events resulted in an article titled "Is Justice for Sale in Nevada?"[3] (2R.App.0329-32.) The case was then assigned to Senior Justice Saitta. (2R.App.0474-75.) Unfortunately, the case languished under this assignment. (9R.App.1748, despite 42 requests for submissions in 19 months, Justice Saitta "did not timely resolve and issue orders on those outstanding matters.")

Despite Real Parties' multitude of motions to keep the receivership on track, Justice Saitta only entered eight substantive orders. (Id.; 4R.App.0799-804; 4R.App.0805-38.) This effectively halted the receivership, allowing Petitioners to continue misappropriating nearly all of Real Parties' rents to make the units appear economically unviable so Real Parties would consider selling their units to Petitioners for "nominal, distressed prices." (3PA0689.)

[3] Petitioners are owned and controlled by Alex Meruelo. (Petition at 7, n.4.) The petition attempts to portray him as a philanthropist who has invested millions of dollars in Reno. (Id.) In reality, the record reveals he is a greedy and unethical billionaire who manipulated the legal system after Petitioners lost their original appeal, and after he was faced with the very real likelihood that Judge Sattler would award punitive damages. Meruelo and his minions recruited a lawyer to run against Judge Sattler; they funded the campaign; and they defeated Judge Sattler. (2R.App.0313-96.) He is hardly the white knight the petition portrays.

In true fashion, without oversight from Justice Saitta, Petitioners returned to their pattern of artificially inflating the fees charged to Real Parties', and misappropriating the rental proceeds—just as they did during the 2016 appeal when the receivership temporarily terminated. (4R.App.0839-68.) This overcharging and misappropriation from approximately 2020 to mid-2023 is what the Receiver's final accounting true-up will address, among other things. (6R.App.1243-45; 7PA1466-73.) This final accounting true-up, which will no doubt result in Petitioners owing Real Parties substantial back rents, is what Petitioners are so desperate to avoid, and now mischaracterize as further "damages." (5R.App.1010-12; 9R.App.1798-1800; No. 86092, Emergency Motion Under NRAP 27(e) to Stay Orders and Enforce NRCP 62(d)'s Automatic Supersedeas Bond Stay; No. 86092, Appellants' Reply in Support of Motion to Maintain or Reinstate Stays Pending Panel Rehearing and En Banc Reconsideration of December 29, 2023 Order; Petition at 15-18.)

But, if Petitioners had not shut down the receivership, this final accounting being prepared would have been far simpler (*i.e.*, the Receiver would not need to retroactively calculate the proper fees, reverse Petitioners' improper, unilaterally imposed fees, apply the proper, court-approved fees, distribute the rental proceeds according to the Governing Documents, and approve or deny the reserve reimbursement requests). (9R.App.1799; 7PA1466-73.)

Justice Saitta was removed from this case in the Summer of 2023.[4] (5R.App.0873-76.) The current Senior Judge Gonzalez was eventually assigned and undertook the unenviable task of unwinding Petitioners' bad acts taken while the receivership was non-operational due to lack of court direction. (5R.App.0877-78.) Judge Gonzalez also needed to address other long overdue issues outside of the receivership such as the request to dissolve the GSR Unit Owners' Association ("GSRUOA"), punitive damages, attorneys' fees and costs, and multiple pending motions for orders to show cause. (5R.App.0879-941.)

The parties' contractual relationship under the Governing Documents has remained intact throughout the proceedings, thus requiring the rental proceeds to be accounted for and paid under the Governing Documents. (3PA642-76.) This requirement will only end when the units are sold pursuant to existing court orders, the parties' stipulation, and NRS 116.

C. District Court-Ordered and Stipulated Termination of GSRUOA

In early 2022, after finally acquiring a sufficient number of units to control the results of a vote to terminate the GSRUOA (80%)[5], Petitioners noticed a meeting

[4] This court has since issued an order disallowing Justice Saitta from seeking or accepting any further senior judge appointments based on her failure to meaningfully move this proceeding toward a conclusion. (9R.App.1746-52.)

[5] The receivership does not apply to nonparty unit owners, so Petitioners have been free to violate the Governing Documents as to those individuals. Petitioners' scheme to make the units appear economically unviable appears to have succeeded for some

to vote on the issue. (5PA1026.) Real Parties filed a motion challenging this action, as Petitioners had shown that, without appropriate oversight, they would manipulate the process so they could purchase Real Parties' units at "nominal, distressed prices." (5PA0995-1042; 3PA0689.) This move was merely a new method to circumvent these proceedings to achieve their long-sought, nefarious goal. (Id.)

On December 5, 2022, the district court issued an order resolving the motion.[6] (7PA1466-73 ("December 5, 2022 Order").) The order allowed Petitioners to terminate the GSRUOA and directed the parties' units to be sold (to an affiliate of Petitioners) through the Receiver pursuant to NRS 116.2115. (Id.) The order contemplated giving Petitioners exactly what they requested, *i.e.*, the ability to terminate the GSRUOA and purchase Real Parties' units; and, at the same time contemplated preventing chaos and protecting Real Parties, *i.e.*, established an orderly procedure for valuing and selling the units, with oversight by the district court and the Receiver. (Id.) This latter component was especially critical to thwart Petitioners' long-standing goal and proven tendency to fraudulently manipulate proceedings in their favor. (2R.App.0267-69; 6R.App. 1240-45; 3PA0677-700.)

In the December 5, 2022 Order, the district court expressly required an

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of the individual unit owners, as some have sold their units back to Petitioners for as little as $20,000. (9R.App.1784.)

[6] Although Justice Saitta held an emergency hearing on Real Parties' motion, she did not issue a ruling. (4R.App.0869-70.) Judge Gonzalez thus issued this ruling.

> Order on motion to terminate or modify the Receivership that addresses the issues of payment to the Receiver and his counsel, the scope of the wind-up process of the GSRUOA to be overseen by the Receiver, as well as the responsibility for any amounts which are awarded as a result of the [now resolved] Applications for OSC.

(7PA1472.) No such order has been entered. Instead, in ruling on Petitioners' first such motion, the district court found it "premature given the status of [Petitioners'] compliance with the Court's prior order." (5R.App.1010-12.) Petitioners have now made a second such motion wherein they sought an overhaul of the December 5, 2022 Order's carefully crafted valuation process for the units. (7R.App.1394-1691.) The district court recently denied this second motion and confirmed the process to finalize the termination. (9R.App.1798-1800.) Thus, the receivership, which was to remain in place until further order, has never been terminated, despite Petitioners' two separate requests. (3PA0677-700; 6R.App.1010-12; 9R.App.1798-1800.) This makes sense given the Receiver's continuing work on a final accounting true-up from 2020 to mid-2023, when Petitioners improperly kept nearly all of the rents and drained the reserves of over $16,000,000.[7] (6R.App.1240-45.)

[7] The Receiver's final accounting will range from 2020 through the present. The amounts from 2020 to mid-2023 will be fully disgorged, as Petitioners never paid any of those amounts to Real Parties. (6R.App.1230.) However, the accounting from mid-2023 to present will be a more traditional true-up as the Receiver has been applying district court-approved fees from 2021 and distributing the proceeds accordingly. (6R.App.1243-45.)

Petitioners appealed the December 5, 2022 Order. (5R.App.0961-75; No. 85915.) Therein, Petitioners set forth almost identical issues as are presented by the petition. (Compare No. 85915, Docketing Statement at 4 with Petition at 2.) Notably, Petitioners did not seek to stay the December 5, 2022 Order at the time they appealed it—likely because Petitioners believed they could somehow manipulate the dissolution process to their own benefit. In fact, rather than seek a stay, Petitioners entered into a stipulation with Real Parties that ratifies almost all the December 5, 2022 Order's terms. (7PA1489-1505.) In retrospect, this seems to be a clear attempt by Petitioners to lull Real Parties into a sense of confidence that the December 5, 2022 Order would be followed. (Compare id., recognizing the receivership's critical involvement in the sale of the units with No. 86092, Emergency Motion Under NRAP 27(e) to Stay Orders and Enforce NRCP 62(d)'s Automatic Supersedeas Bond Stay, arguing the receivership has terminated and should no longer operate nor oversee this transaction; No. 86092, Appellants' Reply in Support of Motion to Maintain or Reinstate Stays Pending Panel Rehearing and En Banc Reconsideration of December 29, 2023 Order, same; Petition at 15-18, same.)

This stipulation, together with the district court order, provides a comprehensive, efficient, and fair procedure for the appraisal and sale of all Real Parties' units through the receivership. (7PA1489-1505; 7PA1466-73.) The parties' court-approved stipulation laid out the parties' express agreements:

> Following termination of the Condominium Hotel, all of the common elements, shared components, and units of the Condominium Hotel shall be sold pursuant to the terms of a subsequently drafted Agreement . . . ***and further Court Order from the [district court]*** ("Receivership Action"). Pursuant to NRS 116.2118(5), approval of the yet to be drafted [Agreement] must take place at a meeting and receive approval from the Hotel Unit Owner and 80% of the Units' Owners ***and be approved by the Court in the Receivership Action***.
>
> . . .
>
> For all real estate to be sold following termination, ***title to that real estate, upon execution of this termination agreement, vests in the Association with the Receiver as trustee[] for the holders of all interests in the units.***
>
> . . .
>
> Until the sale has been concluded and the proceeds thereof distributed ***upon Court approval in the Receivership Action***, the Association continues in existence with all powers it had before the termination ***under the receivership***. Upon execution of the sale document and distribution of the proceeds and ***an order issued in the Receivership Action*** the Association will be terminated.

(7PA1495; emphases added.) Petitioners thus ratified, and explicitly agreed to, most of the December 5, 2022 Order's procedure and that the receivership would continue to accomplish these tasks—not a single one of which has been completed as of this answer. (See 9R.App.1799, listing remaining steps for termination.)

D. Punitive Damages Are Issued, Final Monetary Judgments Are Entered, and Premature Appeals Are Filed

Although Justice Saitta held a punitive damages hearing, Real Parties were not awarded punitive damages until January 2023, after Judge Gonzalez was

appointed. (4R.App.0871-72; 5R.App.0976-81, awarding $9,190,521.92 in punitive damages.) The award of punitive damages was based upon irrefutable evidence, including Petitioners' Senior Vice President of Operations' admissions of wrongdoing. (5R.App.0978 at n.6.) For example, one of Petitioners' pre-FFCLJ tactics was to rent units they were not contractually permitted to rent, and, instead of at least reporting and sharing the profit with the Real Party owner, Petitioners would act as though there had been no rental and keep all the proceeds. (Id.) This allowed Petitioners to financially gain from another's unit while the owner was led to believe the unit was economically unviable. The punitive damages were meant to punish and deter this sort of fraudulent behavior. (5R.App.0976-81.)

Following the punitive damages award, the district court entered the February 6, 2023 Final Judgment to memorialize Real Parties' monetary awards, and subsequently amended it to include an omitted Petitioner. (7PA1485; 9PA1786-89.) Neither of these judgments addressed the receivership, and only set forth the compensatory and punitive damages. (Id.) Petitioners have filed No. 86092, which sets forth 11 purported issues in the Final Judgment. (No. 86092, Docketing Statement.) Petitioners have also filed an appeal from the Amended Final Judgment. (No. 86985.) These appeals have since been consolidated and are being briefed.[8]

[8] Petitioners opening briefs in Nos. 85915, 86092, and 86985 are due May 27, 2024. (No. 86092, Unopposed Motion to Extend Deadline to File Opening Brief.)

(No. 86902, Order Resolving Motions, Dismissing and Consolidating Appeals, and Reinstating Briefing ("December 29, 2023 Order").)

E. District Court Finds Petitioners in Contempt

The district court held a four-day evidentiary hearing on seven of Real Parties' motions for orders to show cause ("MOSCs") in June 2023. (5R.App.0982-93; 5R.App.1013-15; 7R.App.1317-38.) Some of these MOSCs had been pending since late 2021, and almost all were among those which languished under Justice Saitta. (See, e.g., 4R.App.0839-68; 5R.App.942-60.) Each of the MOSCs related to Petitioners' intentional, repeated violations of various orders: refusing to implement the Receiver-calculated and court-approved fees, refusing to turn over rental proceeds to the Receiver for distribution to Real Parties, misappropriating over $16 million from the reserve accounts, and refusing to pay the Receiver's invoices. (See, e.g., id.) These violations shut down the receivership for over 18 months and facilitated Petitioners' misappropriation of all rental proceeds for many months, and have now prompted the Receiver's comprehensive final accounting that is being prepared to true-up this time period. (6R.App.1232-39; 7R.App.1345-50.)

The district court found Petitioners in contempt for these violations. (6R.App.1240-42.) Petitioners were ordered to return the misappropriated millions to the reserve accounts which would then be transferred to the Receiver. (Id.) This order was subject to reconsideration and, after that failed, Petitioners attempted to

appeal the order. (7R.App.1314-16; No. 87243.) To date, these funds remain in Petitioners' possession as they endlessly seek various forms of reconsideration by this court, including through this petition. (E.g., No. 87243, Appellants' Petition for Rehearing of December 29, 2023 Order.) These misappropriated funds will also be addressed in the final accounting the Receiver is preparing, thus underlining the continuing need for the receivership. (9R.App.1799.)

The district court also awarded Real Parties their attorneys' fees incurred in relation to the contempt. (6R.App.1242.) While the order was issued in July 2023, and the exact amount of fees was ordered in January 2024, Petitioners have failed and refused to pay any such amounts to Real Parties. (7R.App.1392-93.) Instead, Petitioners have filed two separate appeals, one of which this court dismissed for lack of jurisdiction. (No. 87566; No. 88043; December 29, 2023 Order.) Thus, this finding of contempt has not lessened Petitioners' belief that rules and court orders simply do not apply to them. Instead, Petitioners have continued their campaign to do anything possible to withhold all rents and artificially devalue Real Parties' units so Real Parties will lose faith in this proceeding and sell their units to Petitioners at "nominal, distressed prices." (3PA0689.)

F. District Court Expressly Retains Jurisdiction Over Receivership

The district court's recent orders confirm the receivership remains intact. First, the district court explicitly ordered that despite entry of the Amended Final

Judgment, it retains jurisdiction to supervise the Receivership, oversee the dissolution of the owners' association and truing up of funds due among the parties, and enforce its own orders. (6R.App.1228-29; 9R.App.1798-1800.) Second, the district court ordered shortly after the MOSC hearing that the Receiver is to complete those tasks necessary to move the matter toward a final resolution, such as the final accounting true-up. (6R.App.1228-31.) Third, in certifying the Amended Final Judgment as, done in order to confirm this court's jurisdiction over Nos. 86092 and 86958, the district court stated, "the oversight of the Receivership and the Receivership Estate is a continuing judicial responsibility" and that "[t]he Court has repeatedly stated that it retains jurisdiction over the dissolution plan detailed in the December 5, 2022 order, and the winding up of the Receivership." (Id.) Finally, the district court recently confirmed the Receiver is still to perform certain tasks in order to perfect the dissolution of the GSRUOA. (9R.App.1799.)

According to all of these orders, it is unequivocal that Real Parties' claim for the appointment of a receiver is still necessary and outstanding, and will continue to remain pending so long as the receivership remains intact (*i.e.*, until all the units are sold, the Receiver's tasks are finished, all financial issues relating to the receivership are resolved, the Receiver issues a final accounting for the district court's approval, and such approval is granted—all as effectively stipulated by Petitioners). (Id.; 7PA1489-1505; see also December 29, 2023 Order.)

G. This Court's Orders to Show Cause and Subsequent Order

After Petitioners filed numerous appeals from various district court orders, this court issued an order to show cause regarding its jurisdiction. (No. 86092, Order to Show Cause and Granting Temporary Stay, filed May 12, 2023.) In response, Real Parties argued the district court had expressly retained jurisdiction over the receivership and therefore this court could either consider the final monetary judgments pursuant to the NRCP 54(b) certification, or it could reject jurisdiction altogether. (No. 86092, Respondents' Reply to Appellants' Response to May 8, 2023 Order to Show Cause.) Petitioners conversely argued the final judgments had divested the district court of jurisdiction, and, accordingly, had dissolved the December 5, 2022 Order and the receivership—again revealing Petitioners' belated desperation to avoid the impact of these orders. (No. 86092, Appellants' Response to May 8, 2023 Order to Show Cause.)

This court issued a second order to show cause allowing the parties to seek an amended NRCP 54(b) certification of the Amended Final Judgment. (No. 86092, Order to Show Cause, filed November 16, 2023.) Real Parties promptly obtained such an amended order and submitted it to this court. (7R.App.1339-44; No. 86092, Response to Order to Show Cause.)

This court then issued a comprehensive order, addressing the jurisdictional issues with the numerous appeals Petitioners had filed. (December 29, 2023 Order.)

The court ultimately held it only had proper jurisdiction over Nos. 85915, 86902, and 86985. (Id.) The court also concluded the district court retained jurisdiction over the receivership and the receivership could continue to operate until a final accounting had been prepared and approved. (December 29, 2023 Order at 23, citing cases and concluding the district court properly, "intentionally[,] and expressly maintained the receivership post-judgment to dissolve the association, sell the units, conduct accountings, and wind up the receivership estate.")

H. The Parties Progress Toward the Sale of the Units

Pursuant to the district court's December 5, 2022 Order and the parties' stipulation, and since the MOSC hearing, the Receiver has been working on the final accounting true-up. (6R.App.1232-39; 7R.App.1345-50.) These calculations are critical for Real Parties to prepare an appraisal for their units, as the units' value is a function of the revenue they earn. (7PA1466-73; 9R.App.1695-1714.) The district court has recognized this and allowed Real Parties to seek further discovery to ensure Petitioners did not make good on their stated intent to manipulate the rotation program in their favor—especially in light of the court's previous finding that Petitioners' manipulation extended to the entire hotel. (7R.App.1377-91; 9R.App.1692-94; 3PA690.)

This information, along with the Receiver's calculations, will provide the necessary information to accurately appraise the units. However, faced with the

reality that they can no longer unduly influence the receivership and dissolution plan, Petitioners now challenge the district court's jurisdiction. (See generally No. 86092, Emergency Motion Under NRAP 27(e) to Stay Orders and Enforce NRCP 62(d)'s Automatic Supersedeas Bond Stay; No. 86092, Appellants' Reply in Support of Motion to Maintain or Reinstate Stays Pending Panel Rehearing and En Banc Reconsideration of December 29, 2023 Order; Petition at 15-18; see also 7R.App.1394-1691.) Petitioners' goal is on display in their recently rejected motion to accelerate the termination by disregarding the need for an informed appraisal and instead basing the sale price on Petitioners' misinformed appraisal, which uses "comparable" sales wherein Petitioners fraudulently devalued third-party owners' units. (7R.App.1394-1691; 9R.App.1710-13.)

Petitioners' motivation to derail the December 5, 2022 Order and the parties' stipulation however possible is intended to ensure Petitioners' affiliate can purchase the units far below fair market value. (See, e.g., 7R.App.1394-1691.) To allow Petitioners to achieve this goal would unwind years of exhausting litigation.

III. ARGUMENT

A. The Relief Sought is Inappropriate

i. Applicable Law

"Extraordinary relief should be extraordinary." Walker v. Second Jud. Dist. Ct., 136 Nev. 678, 678, 476 P.3d 1194, 1995 (2020). The decision to issue

extraordinary relief is within this court's discretion. Daane v. Eighth Jud. Dist. Ct., 127 Nev. 654, 655, 261 P.3d 1086, 1087 (2011). This court limits this discretion to cases presenting serious issues of substantial public policy, or involving important precedential questions of statewide interest. Poulos v. Eighth Jud. Dist. Ct., 98 Nev. 453, 455, 652 P.2d 1177, 1178 (1982). A writ petitioner bears the burden of demonstrating extraordinary relief is warranted. See Pan v. Eighth Jud. Dist. Ct., 120 Nev. 222, 228, 88 P.3d 840, 844 (2004).

A writ of prohibition is available to "arrest[] the proceedings of any tribunal . . . , when such proceedings are without or in excess of the jurisdiction of such tribunal. . . ." NRS 34.320. Such a writ may only issue when there is not a plain, speedy, and adequate remedy in the ordinary course of law. NRS 34.330. The right to appeal is generally an adequate legal remedy precluding writ relief. Daane, 127 Nev. at 656, 261 P.3d at 1087.

The rule of precluding extraordinary relief for review of interlocutory orders is necessary to avoid the opening of a floodgate of writ proceedings. Nevertheless, this court has recognized a narrow exception where compliance with the order "could cause irreparable harm" to the petitioner. Hickey v. Eighth Jud. Dist. Ct., 105 Nev. 729, 731, 782 P.2d 1336, 1338 (1989). Extraordinary relief is only warranted in such cases upon a showing of "irreparable harm or extreme prejudice." NAD, Inc. v. Eighth Jud. Dist. Ct., 115 Nev. 71, 78, 976 P.2d 994, 998 (1999).

ii. *The Petition Seeks Relief Simultaneously Being Sought in Appeal Nos. 85915, 86902, and 86985*

Petitioners repeatedly seek multiple rounds of reconsideration of hard-fought issues as a primary component to their scheme to exhaust Real Parties in this litigation and convince them to sell their units to Petitioners for distressed prices. (See, e.g., No. 86092, Emergency Motion Under NRAP 27(e) to Stay Orders and Enforce NRCP 62(d)'s Automatic Supersedeas Bond Stay; No. 86092, Appellants' Reply in Support of Motion to Maintain or Reinstate Stays Pending Panel Rehearing and En Banc Reconsideration of December 29, 2023 Order.) This petition is no exception to Petitioners' tired strategy. (See Petition at 15-18.)

The petition sets forth three issues. First, the petition asks whether the district court has exceeded its jurisdiction by "dictating the terms, through a receiver, for the dissolution of a common-interest community and sale of condo units. . . ." (Petition at 2.) Second, the petition asks whether the district court has exceeded its jurisdiction "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 . . . ." (Id.) Third and finally, the petition asks whether the district court is exceeding its jurisdiction when it allows the Receiver "to continue to act after a default judgment and the entry of damage awards . . . ." (Id.) These issues are being concurrently briefed in other appeals or have already been addressed by this court.

Petitioners filed No. 85915 after the December 5, 2022 Order was entered, which allows Petitioners to terminate the GSRUOA, but also provides safeguards against Petitioners' track record of fraudulent actions. (5R.App.0961-75.) Appeal No. 85915 questions "[w]hether the district court erred when it granted a preliminary injunction that ordered a dissolution procedure that deviates from, and conflicts with, the statutory requirements for dissolving a common-interest community." (No. 85915, Docketing Statement at 4.) This issue, questioning the validity of the December 5, 2022 Order and whether its terms conflict with other laws, mirrors and encompasses the petition's first issue. Thus, not only do Petitioners indisputably have a plain, speedy, and adequate legal remedy to address this perceived issue, ***Petitioners are actively pursuing it***.

Indeed, the December 5, 2022 Order is an immediately appealable interlocutory order. NRAP 3A(b)(3). Petitioners immediately filed a notice of appeal to seek redress from the order. (5R.App.0961-75.) Petitioners notably did not seek to stay the December 5, 2022 Order while No. 85915 was briefed and considered. To the contrary, Petitioners entered into a stipulation which ratified most of the contents of the December 5, 2022 Order. (7PA1489-1505.) It is absurd for Petitioners to now argue they have no plain, speedy, and adequate legal remedy when No. 85915 ***is*** a plain, speedy, and adequate remedy. Daane, 127 Nev. at 656, 261 P.3d at 1087.

Petitioners next filed their appeal from the Final Judgment. (No. 86902.) This appeal sets forth 11 separate issues, including "[w]hether the district court can amend or modify, by court order, the statutory terms controlling the termination of a UOA and subsequent sale of Units under NRS Chapter 116." (No. 86092, Docketing Statement at 14.) This issue again addresses the propriety of the December 5, 2022 Order. Petitioners thus have twice sought the very same relief they are seeking in their petition now.

The district court then entered its Amended Final Judgment from which Petitioners filed a notice of appeal. (No. 86985.) This appeal presents 16 issues. (No. 86985, Docketing Statement.) One such issue is "[w]hether the district court erred when it refused to terminate the receivership and continued ordering disbursements as a substitute for compensatory damages beyond those prayed for in the complaint and in violation of NRCP 54(c)." (No. 86985, Docketing Statement at 14.) This issue is identical to the petition's second issue: whether the district court is exceeding its jurisdiction by ordering Real Parties' units to be rented and the receiver to distribute such rental proceeds. (Petition at 2.) Again, Petitioners cannot credibly argue they have no plain, speedy, and adequate remedy when they have filed an appeal on the very same issue, and the appeal briefing is well underway.[9]

[9] A flurry of motion practice has delayed the briefing in these appeals. Namely, Petitioners have filed two motions to stay in Nos. 86902 and 86598, have petitioned the court for rehearing of the December 29, 2023 Order, have filed a motion to

The same holds true for the petition's final issue: whether the district court is exceeding its jurisdiction by allowing the receivership to continue to function after the monetary damage awards have been entered. (Petition at 2.) In No. 86985, Petitioners question "[w]hether the district court erred by appointing a receiver, conferring certain powers, and expanding its authority through procedurally and substantively improper means." (No. 86985, Docketing Statement at 14.) Thus, No. 86985 and the petition question the propriety of the ongoing receivership—again, showing that Petitioners have an adequate appeal remedy. As to this final issue, this court recently determined the receivership is appropriately still active as the Receiver has not completed a final accounting yet. (December 29, 2023 Order.)

The petition seeks yet another opportunity to rehash tired arguments this court has already rejected with respect to the receivership continuing to operate. Thus, not only do Petitioners have a plain, speedy, and adequate remedy through which they can seek redress of the district court's perceived wrongful act, *i.e.*, filing appeal Nos. 86902 and 86985, Petitioners have already had this question answered by this court, after full briefing on the issue. In fact, the petition appears to simply invite conflicting rulings by this court given this court will consider duplicative issues in separate proceedings.

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dismiss No. 85915, and the parties have responded to two orders to show cause from this court.

Petitioners' scorched earth litigation strategy is on full display: while Petitioners' multiple appeals seeking this court's determination of a variety of issues are being briefed, Petitioners now seek the very same relief through the petition. This strategy not only exhausts Real Parties' resources, the strategy wastes judicial resources as well, as this court will be deciding the same issues numerous times. Writ relief is not appropriate here because Petitioners have a plain, speedy, and adequate remedy. Indeed, they can, ***and have***, filed direct appeals of the very same issues they now seek to be addressed in their petition. The court should therefore deny the petition on this basis alone.

B. Petitioners Should be Estopped from Arguing the District Court Lacks Jurisdiction to Continue the Receivership

Petitioners' past conduct and judicial statements should operate to estop their present arguments that the continuing receivership exceeds the district court's jurisdiction. A party's litigation conduct can result in the party being estopped from taking certain positions. See Marcuse v. Del Webb Comtys., Inc., 123 Nev. 278, 287, 163 P.3d 462, 468-69 (2007). Petitioners have acquiesced to the receivership since the Appointment Order, although on many occasions they attempted to interfere with its operations. (See, e.g., 4R.App.0839-68; 5R.App.0942-60.) Since the final monetary judgments were entered, Petitioners have—now twice—requested this court find the receivership terminated as a matter of law, and order

that its continued operation exceeds the district court's jurisdictional reach. (See No. 86092, Emergency Motion Under NRAP 27(e) to Stay Orders and Enforce NRCP 62(d)'s Automatic Supersedeas Bond Stay; No. 86092, Appellants' Reply in Support of Motion to Maintain or Reinstate Stays Pending Panel Rehearing and En Banc Reconsideration of December 29, 2023 Order; see also Petition at 15-18.)

These arguments, seeking to undermine the district court's authority to continue the receivership through a final accounting, are belied by Petitioners' express agreement that the Receiver would perform certain tasks and their own requests therefor. (See 7PA1489-1505; 2R.App.0270-312; 2R.App.0476-98; 7R.App.1278-1313.) Indeed, Petitioners agreed in a court-approved stipulation that the Receiver would continue to operate through the sale of the parties' units, pursuant to the December 5, 2022 Order. (7PA1489-1505; 6R.App.1229, "Defendants have voluntarily elected to proceed with the process outlined in the December 5, 2022 Order.") In no uncertain terms, the stipulated agreement to terminate the GSRUOA required the Receiver's involvement. (7PA1495.) Petitioners should be estopped from now arguing the continuing receivership is beyond the jurisdiction of the district court when they have previously agreed to the continuing receivership. Boisen v. Boisen, 85 Nev. 122, 124, 451 P.2d 363, 364 (1969) (where party objecting to jurisdiction expressly agreed to the action now alleged to be extrajudicial, the court applied estoppel to reject the argument).

This court has recognized that a party may be estopped from raising a jurisdictional question after submitting to the now objected-to jurisdiction. Gamble v. Silver Peak Mines, 35 Nev. 319, 133 P. 936, 937 (1913). This court has applied this maxim to Petitioners' conduct in this very litigation. (No. 70498, Order Reversing and Remanding at 9-10, discussing Petitioners' involvement in the proceedings and years-later assertion of lacking jurisdiction as proper grounds to apply estoppel.) "Judicial estoppel applies to protect the judiciary's integrity and prevents a party from taking inconsistent positions by intentional wrongdoing or an attempt to obtain an unfair advantage." So. Cal. Edison v. First Jud. Dist. Ct., 127 Nev. 276, 285, 255 P.3d 231, 237 (2011) (internal quotations omitted). Petitioners have "tak[en] inconsistent positions [in] an attempt to obtain an unfair advantage" by expressly stipulating to the continuing receivership's involvement and oversight of the sale process for the parties' units, but now arguing the receivership has terminated and the continued operation thereof exceeds the district court's jurisdiction. Id. (7PA1489-1505; Petition.) Allowing these diametrically opposed arguments to be made, particularly when the former has been relied upon to Real Parties' detriment, would allow Petitioners to "obtain an unfair advantage." So. Cal. Edison, 127 Nev. at 285, 255 P.3d at 237.

Accordingly, Petitioners should be judicially estopped from arguing the district court lacks jurisdiction to continue the receivership.

C. The Contemplated Dissolution Plan Aligns with NRS 116, the Parties' Stipulation, and Accounts for Petitioners' Past Fraudulent and Bad Acts

Petitioners decry the December 5, 2022 Order, arguing it exceeds the district court's jurisdiction by imposing safeguards to shield Real Parties from Petitioners' track record of misappropriating Real Parties' funds at every turn.[10] (Petition; 4R.App.0839-68; 5R.App.0942-60.) Petitioners' primary example of this alleged departure from NRS 116, however, is patently incorrect. Petitioners argue the district court has already failed to comply with the law by allowing Real Parties to submit an appraisal for the parties' units when Petitioners have already obtained an appraisal for these units. (Petition at 14.) They argue because Real Parties do not own the requisite percentage of units to object to an appraisal, Real Parties are being granted rights beyond those dictated by NRS 116.21185. (Id.) This is flat wrong.

When a common-interest community dissolves, ***the association*** is tasked with obtaining an independent appraisal of the property to determine fair market value.

[10] To the extent Petitioners argue the December 5, 2022's sale exceeds the district court's jurisdiction because it exceeds the operative complaint, this argument fails. The complaint is rife with allegations that Petitioners manipulated the rentals of Real Parties' units so Petitioners could artificially devalue the units and repurchase them from Real Parties for "nominal, distressed values." (1PA0001-48; 3PA0689.) Thus, the December 5, 2022 Order includes relief that was undoubtedly sought: protection against Petitioners' scheme to devalue the units and force a sale thereof. The December 5, 2022 Order allows Petitioners to purchase the units, but ensures Real Parties will receive fair market value. (7PA1466-73.)

NRS 116.21185(1). The December 5, 2022 Order recognizes this. (7PA1471, "[Real Parties] have alleged that the appraisal done at the request of [Petitioners] was not done by the GSRUOA. The Court agrees.") Contrarily, Petitioners claim the appraisal they obtained, based on false information and sales procured through fraud, thus severely undervaluing the units, should stand as the only appraisal to determine fair market value. (7R.App.1400-05; 9R.App.1710-12.) While there are a variety of fundamental fairness reasons why this cannot be allowed, NRS 116.21185 forbids it. The December 5, 2022 Order therefore does not depart from NRS 116 in this way, but rather confirms the statutory requirements of a dissolution, recognizes Petitioners' appraisal was not prepared by the GSRUOA, and provides Real Parties the opportunity to submit an appraisal so the district court can determine the units' fair market value.

Moreover, the district court is intimately familiar with Petitioners' rampant disregard for court orders, applicable laws, and general notions of fairness and equity. (See, e.g., 6R.App.1216-26.) Where Petitioners have been in control of their economic relationship with Real Parties, Petitioners have repeatedly shown they will flagrantly manipulate the confines of the relationship to their own benefit and to the extreme detriment of Real Parties. (See, e.g., id.; 2R.App.0267-69; 3PA0677-700.) The December 5, 2022 Order accounts for Petitioners' *modus operandi* and erects necessary safeguards to protect Real Parties from Petitioners' unrelenting schemes.

Petitioners have shown their bad actions cannot be deterred by the law's clear dictates, case-terminating sanctions, an award of compensatory damages exceeding $8 million, an award of punitive damages exceeding $9 million, numerous court orders confirming the law's clear dictates, and a finding of contempt. The December 5, 2022 Order not only complies with NRS 116, but its allegedly extra-jurisdictional terms are critical to ensure Real Parties are not defrauded yet again.

Shining a spotlight on Petitioners' duplicitous efforts to derail the dissolution process is the stipulated agreement to terminate the GSRUOA entered into shortly after the December 5, 2022 Order was issued. (7PA1489-1505.) Therein, the parties expressly agreed (1) the sale of the parties' units shall be pursuant to the terms of a subsequently drafted agreement "and further [district] Court Order," (2) only "the Receiver appointed in the [underlying matter], on behalf of the Units' Owners, [has authority] to contract for the sale" of the parties' units, (3) upon termination of the GSRUOA, title to the parties' units "vests in the Association with the Receiver as trustee[] for the holders of all interests in the units," and (4) the sale proceeds would be "distributed upon Court approval in the [underlying matter]." (Id.) Petitioners thus ratified and explicitly agreed to most of the December 5, 2022 Order's procedure ***and specifically that the receivership would continue to accomplish all of these tasks—not a single one of which has been completed as of the date of this answer, largely due to roadblocks erected by Petitioners***. (See 9R.App.1799,

explaining the steps necessary for Real Parties to prepare an appraisal for the units which is required before the fair market value thereof can be determined pursuant to NRS 116.21185(1); 5R.App.1010-12.)

The above terms of the parties' stipulation ratify the Receiver's and district court's necessary involvement in the termination and wind up of the GSRUOA. (7PA1489-1505.) Petitioners should not be allowed to renege on their stipulation at this late juncture. See So. Cal. Edison, 127 Nev. at 285, 255 P.3d at 237 (a party is estopped from taking "inconsistent positions" in "an attempt to obtain an unfair advantage"). Indeed, Real Parties would never have agreed to the above stipulation had Petitioners not agreed to these provisions. Allowing Petitioners to entice Real Parties' stipulation to terminate the GSRUOA, and then underhandedly attempt to unwind the hard-won December 5, 2022 Order and the stipulation, would perpetrate yet another injustice on Real Parties—the exact sort of thing that prompted the underlying lawsuit. Further, it cannot be overlooked that the purpose for this litigation was to prevent Petitioners from applying false fees and manipulating the fees and rotation program to devalue the units and force an undervalued sale thereof. (3PA0677-700.) Unwinding the December 5, 2022 Order, as the petition seeks, would allow this goal to come to fruition.

The December 5, 2022 Order therefore is appropriate and requires no intervention from this court. This is especially true in light of parallel complaints

lodged here and in No. 85915. Moreover, the December 5, 2022 Order does not "arrogate" any applicable laws (Petition at 3); rather, it simply accounts for Petitioners' fraudulent past actions and sets forth safeguards against further harm to Real Parties.

Relatedly, Petitioners argue that "[i]f 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 . . . ." (Petition at 4.) What is omitted from this bold claim is the background of this dispute:

- Petitioners perpetrated a fraudulent scheme, and Real Parties filed suit (1PA0023-48);
- Petitioners willfully failed to participate in discovery (e.g., producing roughly 200 documents; claiming no further documents existed; and Real Parties uncovering over 220,000 withheld documents) (1PA0101-06);
- the district court entered case-terminating sanctions and appointed the Receiver (1PA0107-19);
- the three-day prove-up hearing resulted in an award of over $8 million (3PA0677-700);
- the case was erroneously dismissed and remanded after an appeal—but Petitioners returned to their fraudulent ways during the pendency thereof; (1R.App.0184-97; No. 70498, Order Reversing & Remanding; 2R.App.0267-69)
- on remand, Petitioners singlehandedly unseated the then-presiding judge; (2R.App.0313-96)
- after a number of recusals, a senior justice was assigned who failed to move the case forward for over a year, allowing Petitioners to continue their fraudulent scheme (4R.App.0873-76; 9R.App.1746-52); and,
- finally, once the current senior judge was assigned, over $9 million in punitive damages was awarded (5R.App.0976-81); and

- Petitioners were found in contempt for violating court orders (6R.App.1240-42).

Against this complete backdrop, the only bad precedent is the sheer amount of time Petitioners were allowed to defraud Real Parties without repercussion, and the enormous amount of judicial resources Petitioners have now required be spent on this proceeding. (E.g., the district court's docket contains over 3,100 entries, and since initiating No. 85915, Petitioners have filed nine appeals.)

Petitioners' scheme from the start has been to artificially devalue Real Parties' units so Petitioners could purchase them at distressed prices. The district court found Petitioners liable for this conduct. (3PA0677-700.) Now, almost 10 years later, Petitioners are still pursuing this goal—now by arguing the Receiver has no role in the sale of the units. If the Receiver and district court are not involved in this process, Petitioners will undoubtedly manipulate it so they are finally able to acquire Real Parties' units at the long-sought distressed prices, creating even more litigation. (Id.)

D. The Receiver is Appropriately Continuing the Rental of the Units Until the Units Are Sold

Real Parties have sought a receivership from the start of this proceeding. (See 1PA0023-48.) The Appointment Order in this matter is clear: the Receiver was appointed pursuant to NRS 32.010(1), (3), and (6). (3PA0519.) Indeed, this is what Real Parties' operative complaint argued—that "the appointment of a receiver is appropriate in this case as a matter of statute and equity." (1PA0038.) Since the

Receiver was appointed, he has been tasked with numerous duties, all of which fall under the umbrella of "implementing compliance" with the Governing Documents. (2PA0509-10.) More recently, it has become abundantly clear that Petitioners cannot be trusted to equitably rent the parties' units, apply the court-approved fees to rental proceeds, distribute the proceeds to Real Parties, and/or properly assess whether Petitioners' various expenditures should be reimbursed by the GSRUOA's reserve accounts. (4R.App.0839-68; 5R.App.0942-60; 6R.App.1240-42.)

Accordingly, the district court has tasked the Receiver with these duties. (9R.App.1799.) Importantly, the Receiver always had the sole authority to conduct these tasks; however, he had opted to delegate the tasks to Petitioners. (6R.App.1224.) Petitioners, true to form, took advantage of this delegation and manipulated the operation of the GSRUOA. (See 4R.App.0839-68; 5R.App.0942-60.) The district court confirmed the Receiver could re-take control of these operations and he has done so. (6R.App.1224; 6R.App.1240-42.)

As one recent example, Petitioners undertook to remodel many of Real Parties' units; but these remodels not only removed Real Parties' units from the rental pool (thereby denying Real Parties any proceeds during that time), Petitioners also sought to recoup the costs of such remodel from the reserve accounts which Real Parties primarily funded. (12PA2220-22.) This was entirely inappropriate, given the appraisal's date of value under NRS 116.21185(1) precedes these

remodels—so, Real Parties would have been (1) denied any rental proceeds during the remodel time, and (2) denied the increased value of the units, but (3) charged the costs of the remodel. (7R.App.1377-91.) The result was both absurd and unjust.

The district court deemed this inequity unacceptable. (12PA2220-22.) Accordingly, the district court ordered Petitioners to "immediately return all [Real Parties'] units to the rental program, and that for those units that cannot be immediately returned to the rental program because of the remodel," the Receiver calculate the average room rent "to be charged to [Petitioners] and paid to the Receiver for the time period that the units cannot be rented (or were not rented) starting in October of 2023." (12PA2220-21.) Petitioners decry this equalization as exceeding the district court's jurisdiction. (Petition.) To the contrary, this act was necessitated solely by Petitioners' clear intention to ensure Real Parties' economic rights in the units were diminished as much as possible while Petitioners realized a substantial gain. The district court found that it would be economic waste for the units to be removed from the rental pool until they are sold. (12PA2220-23; 7PA1489-1505; 7PA1466-73.)

Petitioners' argument further illustrates Petitioners' strategy: refusing to acknowledge their prior bad acts and the court's remedial measures taken to protect Real Parties, engaging in almost identical bad acts, and when the district court

curtails such actions, arguing Real Parties' only avenue for relief is a new lawsuit. (See generally Petition.)

The Receiver was appointed to implement compliance with the Governing Documents. (3PA0509-10.) The district court ordering the Receiver to continue renting Real Parties' units in accordance with the Governing Documents is simply a confirmation of the Appointment Order. (Compare 6R.App.1243-45 with 3PA0509-17.) Petitioners cannot credibly argue that after being subject to case-terminating sanctions and having over $17 million ($8 million in compensatory and $9 million in punitive) in monetary damages awarded against them, that the continuing receivership should not be allowed to operate as contemplated in the Appointment Order. (See generally Petition.) Again, allowing this outcome would make years of intense litigation meaningless and would only deprive Real Parties of their hard-fought victories and justice. The units must be rented until they are sold, under the district court's orders. (5R.App.1007-09; 7PA1466-73.)

E. Real Parties Are Entitled to the Rental Proceeds Their Units Earn, and Such Amounts Are Not Damages

Petitioners again are advancing their meritless argument that the rental proceeds Real Parties' units earn each month, which are then turned over to the Receiver to be distributed to Real Parties, are compensatory damages. (No. 86092, Emergency Motion Under NRAP 27(e) to Stay Orders and Enforce NRCP 62(d)'s

Automatic Supersedeas Bond Stay; No. 86092, Appellants' Reply in Support of Motion to Maintain or Reinstate Stays Pending Panel Rehearing and En Banc Reconsideration of December 29, 2023 Order; Petition at 15-18.) This disingenuous misrepresentation cannot be entertained. Petitioners' rental of Real Parties' units generates a profit that, pursuant to the Governing Documents, must be partially paid to Real Parties (Petitioners keep half of the profits earned from Real Parties' units). (3PA0642-76.)

The parties will remain in contractual privity under the Governing Documents until the parties' units are sold. Petitioners have contemporaneously breached the Governing Documents ***and*** remain bound to the terms of the Governing Documents, which are now enforced by the Receiver. (3PA0530-676; 3PA0677-700.) The damages awards are for pre-FFCLJ back rents and overcharged fees, while the Receiver's continued renting and distribution of the rental proceeds is an enforcement of the continuing Governing Documents, and amounts paid to Real Parties are those rental proceeds earned after proper fees are applied.

Petitioners' repeated efforts to recharacterize these amounts as compensatory damages is simply belied by the truth. A review of the Governing Documents and underlying facts here reveals the disingenuity of Petitioners' arguments and Petitioners' true aim: to deprive Real Parties of any amounts they are contractually owed so Real Parties will end this litigation early and accept pennies on the dollar

in back rents and for their units so Petitioners will end up owning all the units, having spent only a nominal amount. Such a result conflicts with multiple district court orders. (3PA0677-700; 7PA1466-73.)

Against this backdrop, the district court has rendered numerous orders indicating that it sees through Petitioners' flimsy attempts at revising the history of this litigation. (See, e.g., 6R.App.1228-31.) This court should do the same. Petitioners' revisionist history paints a picture of Petitioners being victimized by the judiciary. The reality is Petitioners are suffering the long overdue consequences of their misguided belief that rules and orders do not apply to them, and their failed attempts at manipulating the district court and the Receiver.

IV. CONCLUSION

Petitioners' transparent attempts at obtaining writ relief from this court should fail. First, Petitioners have a plain, speedy, and adequate remedy at law in the form of an appeal. Second, the facts do not warrant extraordinary relief. Petitioners have perpetrated a years-long fraud to artificially deflate Real Parties' units' values so Petitioners could purchase them at nominal, distressed prices. In so doing, they have taken every opportunity to ensure Real Parties are deprived of funds they are rightfully owed. Petitioners should not be rewarded for such actions and allowed to effectively reverse the majority of the district court's recent orders and dissolve the receivership at this critical point. To do so would allow Petitioners to fulfill their

scheme, which was the impetus of this proceeding, and make years of litigation largely meaningless—including this court's recent round of briefing regarding the litany of appeals Petitioners prematurely filed which were the subject of two orders to show cause.

Real Parties therefore respectfully request the court deny the petition.

CERTIFICATE OF COMPLIANCE

1. I hereby certify that this brief 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 Microsoft Word in Times New Roman, size 14-point font.

2. **I have filed a motion for permission to exceed the word-count limit for this answer.** I certify that this answer contains 9,651 words. Therefore, if the motion is granted, the answer will comply with Rule 32.

3. Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

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Dated this 5th day of April, 2024.

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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Robertson, Johnson, Miller & Williamson, over the age of eighteen, and not a party to the within action. I further certify that on April 5, 2024, I electronically filed the foregoing with the Clerk of the Court by using the ECF system which served the following parties electronically:

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