IN THE SUPREME COURT OF THE STATE OF NEVADA

Supreme Court Case No. 88065

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.

RESPONSE TO MOTION FOR PERMISSION TO FILE ANSWER IN EXCESS OF TYPE-VOLUME LIMITATION AND COUNTERMOTION TO STRIKE PORTIONS OF REAL PARTIES' PROPOSED ANSWER

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I. INTRODUCTION

As this Court's rules make clear, parties face strict word-and-page limits for their briefs. Such limits are no surprise, and they exist both to preserve judicial resources and force parties to present only their strongest arguments. In rare cases, this Court has allowed parties to file over-large briefs when the facts and circumstances of a particular case revealed an abundance of legitimate constitutional or legal issues or otherwise show an extraordinarily complex case. But none of those exceptions apply here. The Petition raises three discrete jurisdictional issues that arise from a common premise: that the district court acted without jurisdiction when it granted extra-statutory relief that the operative complaint did not seek in a default action. Thus, while Real Parties seek to regale this Court with a histrionic tale spun from irrelevant facts, this Court need not burden its docket by granting Real Parties' Motion. Instead, this Court should deny the Motion and direct Real Parties to file an answer limited to the issues raised in, and facts necessary to address, the limited jurisdictional questions presented.

However, should this Court grant the Motion and allow Real Parties to file the Answer, this Court must strike the burdensome, irrelevant, immaterial, or scandalous allegations contained within. Continuing their pattern from below—a pattern of behavior that led the district court to caution Real Parties' counsel—Real Parties interject irrelevant and scandalous smears against non-party Alex Meruelo based on

purported, protected First Amendment political activities by business entities related to a judicial campaign. Such smears are utterly irrelevant to the issues raised in the Petition and exist solely as an attempt to tarnish a non-party. As this Court has long made clear, such attacks have no place in briefs. Accordingly, should the Court grant the Motion, it must strike the gratuitous—and wrong—attempted character attack against Mr. Meruelo.

II. ARGUMENT

A. Legal Standard.

Motions to file briefs in excess of the type-volume limitation are "disfavor[ed]" and "will not be routinely granted." NRAP 32(a)(7)(D)(i). Such motions are granted upon a showing of "diligence and good cause." *Id.* Moreover, all briefs must be "free from burdensome, irrelevant, immaterial or scandalous matters." NRAP 28(j). This Court may strike either the entire brief or the portions that are "burdensome, irrelevant, immaterial or scandalous." *Id.*

B. There is No Good Cause Because the Answer Overflows with Irrelevant, Immaterial Details unrelated to the Merits of the Writ.

Good cause does not exist to file an over-large answer. The Petition advances three discrete issues with a common factual core—the district court has granted relief that exceeds the relief sought in the operative complaint in a default action and conflicts with governing statutes. Pet. at 2, 21-31. The only facts necessary are those related to the operative complaint and the specific actions taken by the district court

despite its lack of jurisdiction. Yet Real Parties instead try to cram the entirety of the case—including portions wholly irrelevant to this writ—into their Answer.

For example, Real Parties include an explanation of a prior appeal unrelated to this Petition, which totaled approximately 270 words, Ans. at 7; an entire section regarding a punitive damages award not at issue in this Petition that totaled approximately 284 words, *id.* at 14-16; a contempt section unrelated to this Petition that totaled approximately 397 words, *id.* at 17-18; and a section regarding the appellate briefing on orders in different dockets that totaled approximately 305 words, *id.* at 20-21. As these non-exhaustive examples show, Real Parties devote significant space to irrelevant issues that do not touch on any issue actually litigated in this Petition. *Compare id.*, *with* Pet. at 2, 21-31. Accordingly, good cause does not exist to grant a motion to file an over-sized Answer.

Real Parties' arguments do not compel a contrary conclusion. While they contend this is a "[e]xtraordinary," "unique" and "complex" case meriting a "long" brief, Mot. at 4, 6, Real Parties miss the mark as to this specific Petition. As discussed above, the discrete jurisdictional issues raised in this Petition do not require a recitation of every issue, fact, or brief that occurred in this decades long case. Rather, this Court need only review the operative complaint and governing statutes to determine whether the challenged actions and relief awarded exceed the district court's jurisdiction in a default action. *See* NRCP 54(c) ("A default judgment must

not differ in kind from, or exceed in amount, what is demanded in the pleadings."); *Blige v. Terry*, 139 Nev., Adv. Op. 60, 540 P.3d 421, 428 (2023) ("[T]he default judgment entered against a defaulting party . . . must similarly be limited to damages for the claims pleaded against them."); NRS 116.21185. Thus, contrary to Real Parties' spin, the relatively straightforward issues raised by this Petition do not warrant or require the extraneous information Real Parties stuff into their Answer.

Further, Real Parties' argument that "[f]undamental fairness" "favor[s] . . . enlarging the word count" because otherwise "the answer will still contain far fewer words than" Petitioners' Petition and Reply, Mot. at 8 n.1, displays a fundamental misunderstanding of the Rules of Appellate Procedure. In almost all briefing before this Court, the petitioning or moving party may file a reply, which gives them several thousand words or several additional pages of space more than the non-moving party gets to oppose the motion, brief, or petition. *See* NRAP 21(d) (providing in writ petitions where an answer is directed, the petition, answer, and reply must be no more than 7,000 words each); NRAP 27(d)(2) (providing in motion practice before this Court, the motion and opposition must be no more than 10 pages while the reply cannot exceed 5 pages); NRAP 32(a)(7)(A)(ii) (providing in non-capital direct appeals, the opening brief and answering brief must be no more than 14,000 words while a reply cannot exceed 7,000 words).

It is not fundamentally unfair that the moving or petitioning parties—the parties with the burden—have additional words or pages under this Court's rules. Indeed, Real Parties' argument requiring equal words for everyone would apply to all answers, answering briefs, or responses in every case before this Court and would render the NRAP's page or word limits nugatory—not to mention, expand the Court's reading material.

Finally, the cases Real Parties rely on, *see* Mot. at 4-5, are inapposite as they involve fundamentally more complex appeals and litigation than the discrete issues raised in this Petition. Real Parties rely on a sole Nevada case—*Evans v. State*, 117 Nev. 609, 28 P.3d 498 (2001), *overruled on other grounds by Lisle v. State*, 131 Nev. 356, 351 P.3d 725 (2015). But *Evans* involved a capital habeas appeal, and the citation Real Parties provided notes that in the direct appeal of the multiple death sentences, this Court allowed an over-large brief to address the myriad of constitutional and legal issues raised. *Id.* at 642, 28 P.3d at 520. Putting aside the fact that capital cases are given unique treatment under this Court's rules, *see* NRAP 32(a)(7)(B), this Petition does not raise near the amount of constitutional or legal issues that Evans raised in his death penalty appeal,[1] *compare Evans v. State*, 112

[1] Real Parties appear to cite *McConnell v. Federal Election Commission*, 539 U.S. 938 (2003), *Penry v. Texas*, 515 U.S. 1304 (1995), and *Fusari v. Steinberg*, 419 U.S. 379 (1974), for the proposition that in complex cases courts may allow the filing of over-large briefs. Mot. at 5. While that general proposition is undoubtedly true, those cases are far more complex than the discrete issues raised in this Petition.

Nev. 1172, 926 P.2d 265 (1996) (Evans' direct appeal showing over 12 constitutional and evidentiary challenges), *with* Pet. at 2, 21-31 (raising three discrete issues based on the core allegation that the district court's actions exceeded its jurisdiction in the default proceeding). Accordingly, good cause does not exist to grant this Motion.

C. This Court Should Strike Portions of Real Parties' Answer that are Irrelevant, Immaterial, or Scandalous.

Real Parties' Answer contains several gratuitous attacks on non-party Alex Meruelo and his associates. For example, Real Parties refer to Mr. Meruelo as "a greedy and unethical billionaire" while derogatorily referring to his associates as "his minions" in regards to irrelevant campaign activity. Ans. at 9 n.3. Such personal attacks on a non-party are not only irrelevant and immaterial, but unsavory and scandalous. As such, this Court should strike those portions of Real Parties' Answer. *See Brown v. Williams*, No. 83314, 2022 WL 17367588, at *1 (Nev. Nov. 30, 2022) (striking portions of appellant's brief because it "included unsavory allegations against Judge Leavitt's family").

Similarly, this Court should strike all allegations or refences in the Answer concerning Judge Sattler's unsuccessful re-election campaign and non-party Mr. Merulo's alleged involvement in the campaign. Specifically, on several occasions, Real Parties focus on the fact that the original trial judge—Judge Sattler—lost his re-election campaign and blame non-party Mr. Meruelo because of political

donations several entities associated with Mr. Meruelo may have made. Ans. at 8-9, 9 n.3. But the campaign donations of non-party corporations affiliated with a non-party individual in a judicial race are utterly irrelevant to whether the district court had jurisdiction in a default action to grant the challenged relief. Indeed, inserting these irrelevant, immaterial, or scandalous allegations into their brief is just another attempt by Real Parties to smear Mr. Meruelo and anyone affiliated with Petitioners—a pattern of conduct by Real Parties that has led the district court to caution Real Parties' counsel several times for his hyperbolic allegations. *See* Ex. A at 43 (district court cautioning Real Parties' counsel, Mr. Miller, for accusing Mr. Meruelo of perjury and stating that "[y]ou have defendants in this case which for some reason have no problem making false representations to the [c]ourt"), 106 (sustaining Petitioners' objection and cautioning Mr. Miller for his accusation that Petitioners "have demonstrated that they will do anything not to pay" the judgment on appeal).

Accordingly, should this Court grant the motion to file an over-large Answer, it must strike the portions of Real Parties' Answer that contain this irrelevant, immaterial, or scandalous material.

III. CONCLUSION

For these reasons, this Court should deny the motion to file an over-large Answer. This Court should also strike portions of Real Parties' Answer that are

burdensome, irrelevant, immaterial or scandalous.

DATED this 12th day of April 2024.

PISANELLI BICE PLLC

By: */s/ Jordan T. Smith*

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Pisanelli Bice PLLC and that, on this 12th day of April 2024, I caused to be served via the Court's e-filing/e-service system a true and correct copy of the above and foregoing **RESPONSE TO MOTION FOR PERMISSION TO FILE ANSWER IN EXCESS OF TYPE-VOLUME LIMITATION AND COUNTERMOTION TO STRIKE PORTIONS OF REAL PARTIES' PROPOSED ANSWER** properly addressed to the following:

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EXHIBIT A

CODE: 4185
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SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

THE HONORABLE NANCY SAITTA
--o0o--

ALBERT THOMAS ET AL, Case No. CV12-02222

Plaintiffs, Dept. No. OJ37

vs.

MEI-GSR HOLDINGS LLC ET Al,

Defendants.

TRANSCRIPT OF PROCEEDINGS
HEARING RE PRELIMINARY INJUNCTION
MARCH 25, 2022

APPEARANCES:

For the Plaintiff: JARRAD MILLER, ESQ.
JONATHAN TEW, ESQ.
TODD ALEXANDER, ESQ.
BOB EISENBERG, ESQ.
Reno, Nevada

For the Defendant: DAVID MCELHINNEY, ESQ.
ANN HALL, ESQ.
ABRAN VIGIL, ESQ.
DANIEL POLSENBERG, ESQ.

For the Receiver: STEFANIE SHARP, ESQ.

proceedings, and that brief was filed by the plaintiffs on 6-10-2021. And I'm going to page two of that brief, starting at lines 14. I won't read in the cites just for purposes of time because they're right here in the brief, but further, the entry of default cuts off a party's right to appear in the action and present evidence.

Once default has been entered against defendants, they have lost their standing in court, cannot appear, adduce any evidence. Entry of default cuts off a defendant's right to file any document other than a motion to set aside entry of the default. The reason for this is supported by the Court's granting of case-terminating sanctions.

These defendants attempted to lie about the existence of evidence. Mr. Murillo's own deposition testimony is perjury to the extent he says there weren't these email exchanges which were recovered, hundreds of thousands of email exchanges. And this is all documented in the Court's order granting case-terminating sanctions. It's granted in the Court's orders granting motions to compel. You have defendants in this case which for some reason have no problem making false representations to the Court.

THE COURT: Careful, Mr. Miller.

can't be disputed. So you have a receiver in place to not only implement the contracts during the pendency of this litigation, but to also bring the judgment into effect.

So let's say we go to a punitive damages hearing, and I think rightfully so, the Court triples the punitive or triples the compensability or the damages. If all of these units are transferred during the pendency of this litigation to a non-party, how is the receiver going to put that judgment into effect? Where is the receiver going to get that other $16 million dollars to satisfy the judgment? And let's face it. These defendants have demonstrated that they will do anything not to pay these --

THE COURT: Careful.

MR. MCELHINNEY: Objection, Your Honor.

THE COURT: Sustained.

MR. MILLER: Okay. Anything else on that point?

THE COURT: No.

MR. MILLER: Okay. So one point that just came up is that the defendants aren't in breach of the CC&R's. That's just not accurate. So the other argument that we heard repetitively was that the $8 million

STATE OF NEVADA)
COUNTY OF WASHOE) ss.

I, NICOLE J. HANSEN, Certified Court Reporter in and for the State of Nevada, do hereby certify:

That the foregoing proceedings were taken by me at the time and place therein set forth; that the proceedings were recorded stenographically by me and thereafter transcribed via computer under my supervision; that the foregoing is a full, true and correct transcription of the proceedings to the best of my knowledge, skill and ability.

I further certify that I am not a relative nor an employee of any attorney or any of the parties, nor am I financially or otherwise interested in this action.

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

Dated this July 13, 2022.

Nicole J. Hansen, CCR #446, RPR
CRR, RMR