No. 14-22-00764-CV

IN THE COURT OF APPEALS
FOR THE FOURTEENTH DISTRICT OF TEXAS,
HOUSTON, TEXAS

WC 4TH AND COLORADO, LP,

Appellant,

v.

COLORADO THIRD STREET, LLC,

Appellee

On Appeal from the 261st Judicial District Court
of Travis County, Texas, Cause No. D-1-GN-20-002781

APPELLANT'S MOTION FOR EN BANC RECONSIDERATION

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APPELLANT'S STATEMENT IN SUPPORT OF EN BANC RECONSIDERATION

En banc reconsideration is warranted in this matter for the following reasons:

1. To Maintain Uniformity

The panel's decision on rehearing creates an intra-court conflict with *Bran v. Spectrum MH, LLC*, No. 14-22-00479-CV, 2023 WL 5487421 (Tex. App.—Houston [14th Dist.] Aug. 24, 2023, pet. denied), where a different panel of this Court held that charging orders are the "exclusive remedy" under identical circumstances (indeed, involving the identical receivership order).

2. Extraordinary Circumstances

This case presents an unprecedented situation where:

(a) Two courts of appeals reached opposite conclusions on identical legal issues involving the same evidence and same parties.

(b) The panel here was required to apply Texas Rule of Appellate Procedure 41.3 to follow the other appellate court's precedent but did not.

(c) In violating Rule 41.3, the panel also created an expanded exception to statutory limits on receivership orders, which conflicts with this Court's precedent (as noted above)

and also undermines the charging order statutes' protection of non-judgment debtor entities.

3. Statewide Importance

The panel's decision affects all Texas judgment creditors, receivers, and business entities by creating uncertainty about when receivership orders can override statutory protections for LLCs, partnerships, and limited partnerships.

APPELLANT'S MOTION FOR EN BANC RECONSIDERATION

Appellant WC 4th and Colorado, LP ("WC 4th") files its Motion for En Banc Reconsideration pursuant to Tex. R. App. P. 49.5. As explained herein, this matter presents issues of exceptional importance requiring en banc consideration to maintain uniformity in this Court's decisions and to address the extraordinary circumstance of conflicting appellate decisions on materially identical records.

INTRODUCTION

This Court in the first paragraph of its opinion on rehearing stated: "Since our original opinion issued the parties clarified facts in the record important to our decision." *WC 4th & Colorado, LP v. Colorado Third St., LLC*, No. 14-22-00764-CV, 2025 WL 1225841, at *1 (Tex. App.—Houston [14th Dist.] Apr. 29, 2025, no pet. h.).

The clarified fact was that WC 4th was no longer a landlord because Colorado Third had foreclosed on WC 4th's sole real property asset. Based on this clarification, the Court issued a new opinion and affirmed the trial court's judgment allowing the receiver to dismiss WC 4th's claims against Colorado Third.

The new opinion and judgment put this Court in conflict with the Third Court of Appeals ("Austin Court"), which had reversed the trial court's judgment in a parallel appeal. Importantly, the key operative fact in this Court's reversal—that WC 4th had lost its real property to foreclosure when the receiver intervened and dismissed WC 4th's claims—was directly before the Austin Court when it reversed the trial court's judgment. *See WC 4th & Colorado, LP v. Colorado Third St., LLC*, No. 03-22-00781-CV, 2024 WL 3841676, at *2 (Tex. App.—Austin Aug. 15, 2024, pet. denied).

Appellant seeks reconsideration because the Texas Rules of Appellate Procedure bind this Court to the Austin Court's precedent in that parallel appeal, as it was decided *prior* to the opinion on rehearing and is now final (due to the Supreme Court of Texas's denial of review):

> In cases transferred by the Supreme Court . . . , the court of appeals to which the case is transferred must decide the case in accordance with the precedent of the transferor court under principles of stare decisis if the transferee court's decision otherwise would have been inconsistent with the precedent of the transferor court.

TEX. R. APP. P. 41.3

To be clear, the Austin Court adjudicated a parallel appeal between the same parties that involved: the same issues, the same

evidence, and the same receivership order. It reached the opposite conclusion as to the receiver's authority to act for WC 4th and, in turn, issued a prior judgment with which this Court's judgment conflicts. *See* 2024 WL 3841676, at *1.[1] In particular, the Austin Court reversed the trial court's judgment, held that the receiver exceeded his authority under the receivership order, and held that the order did not allow the receiver to take control of WC 4th. *Id*. at *1. This Court must follow that precedent.

SUMMARY OF ARGUMENT

There are additional issues beyond Rule 41.3 that undermine this Court's opinion on rehearing. First, this Court's opinion includes a factual error—that the underlying *Princeton* judgment was against Nate Paul individually—that appears to be material to the opinion and judgment. In fact, that judgment—the only judgment that the receiver was appointed to collect—was solely against World Class Capital Group, LLC ("WCCG") and Great Value Storage, LLC ("GVS"). It was not

[1] Colorado Third did not file a motion for rehearing in the appeal in the Austin Court; it instead filed a petition for review. The Supreme Court denied the petition on April 4, 2025. No. 24-0817; *Colorado Third Street, LLC v. WC 4th and Colorado, LP*; In the Supreme Court of Texas. The date for filing a motion for rehearing has passed but the mandate has not issued.

against Nate Paul in any capacity. *See Great Value Storage, LLC v. Princeton Capital Corp.*, No. 01-21-00284-CV, 2023 WL 3010773, at *5 (Tex. App.—Houston [1st Dist.] Apr. 20, 2023, no pet.), review granted, opinion vacated (Mar. 8, 2024).[2] (Princeton sued Nate Paul but those claims were severed and ultimately nonsuited with prejudice by Princeton following its summary judgment against WCCG and GVS.)

This Court's new opinion relies on what it termed a "*Heckert* exception." The judgment in that case, however, was solely against Clyde Heckert, individually. Because the opinion on rehearing relies on this Court's prior characterization of the *Heckert* exception, the Court's error in stating that the *Princeton* judgment was against Paul individually appears to be material to the opinion.

Next, the Court makes a statement in deference to the trial court that is unsupported by any evidence identified in the opinion or that exists in the record:

> The trial court could have reasonably concluded from the evidence before it that WCCG was the owner or manager of

[2] This error is also in the Court's first opinion. *WC 4th & Colorado, LP v. Colorado Third St., LLC*, No. 14-22-00764-CV, 2024 WL 3892892, at *1 (Tex. App.—Houston [14th Dist.] Aug. 22, 2024), opinion withdrawn and superseded on reh'g, No. 14-22-00764-CV, 2025 WL 1225841 (Tex. App.—Houston [14th Dist.] Apr. 29, 2025, no pet. h.). Appellant did not move for rehearing because the error was not material to the Court's conclusion and appellant received the same relief in both appeals.

> WC 4th. Moreover, multiple provisions within the Receivership Order make clear that the Receiver was acting within the Receivership Order's plain-language grant of authority when he took control of WC 4th and settled its lawsuit with Colorado Third.

2025 WL 1225841 at *3. In this Court's original opinion, the Court presumed (without deciding) that the receiver had authority to act for WC 4th. 2024 WL 3892892 at *4. In the opinion on rehearing, the Court goes further, and the extra step is an error for two reasons. First, it lacks any evidentiary foundation in the record. Second, it directly contradicts the holding of the Austin Court: "Given this lack of evidence, the trial court *could not have found* that Kretzer had the authority under the receivership order to seize control" of WC 4th and Colorado, GP, the general partner of WC 4th. 2024 WL 3841676, at *7 (emphasis added).

Finally, in approving an exception to the charging order statutes,[3] this Court failed to follow its own precedent in *Bran v. Spectrum MH, LLC*, No. 14-22-00479-CV, 2023 WL 5487421, at *6 (Tex. App.—Houston [14th Dist.] Aug. 24, 2023, pet. denied) ("We conclude that, under the

[3] The charging order statute at issue as to WC4th, a limited partnership, is Tex. Bus. Org. Code § 153.256. The statutes for limited liability companies, Tex. Bus. Org. Code § 101.112, and for general partnerships, Tex. Bus. Org Code § 152.308, are substantially identical. All of the statutes limit a judgment creditor's remedy against a member's or partner's interest in the entity to a charging order requiring payment of any distribution to the judgment creditor rather than to the member or partner.

plain text of section 101.112, *the entry of a charging order is the exclusive remedy* by which the [judgment creditor] may satisfy the Judgment out of a membership interest owned by one of the [judgment debtors] in a limited liability company.") (emphasis added). The Court stated here, however:

> We agree that the exception announced in *Heckert* applies. The record reflects that WC 4th is not an operating business and no party's interest would have been disrupted by granting turnover relief. *A charging order is not the receiver's exclusive remedy*, and the trial court did not abuse its discretion in granting the receiver's motion to dismiss with prejudice.

2025 WL 1225841, at *5 (emphasis added).

Yet the Austin Court rejected the same argument on the same record and, more generally, did not recognize any exception to the charging order statutes. 2024 WL 3841676 at *7; App. A (Appellee's Brief in No. 03-22-00781-CV) at 25–28. Likewise, with respect to this Court's precedent, the receivership order at issue in *Bran* was in all respects identical to the receivership order here. The *Heckert* exception is also unsound in any case, as it encourages judgment creditors and receivers to seek turnover orders that—unlawfully—determine the substantive rights of third parties in turnover proceedings.

ARGUMENT

A. The Third Court of Appeals precedent in the parallel appeal involving the same parties, evidence, and issues controls this Court's disposition of this appeal. [4]

This Court cited but did not otherwise apply Rule 41.3 in the opinion on rehearing. 2025 WL 1225841, at *1 n. 1. The definition and application of the *Heckert* exception to the plain language of the charging order statute was based on the Court's own jurisprudence. *Id*. at *5. The Court distinguished the facts in this appeal from the facts before the Eighth Court of Appeals (also sitting as the Austin Court) in the *La Zona Rio* cases and even acknowledged that the *La Zona Rio* court expressly declined to apply the *Heckert* exception. *Id*.

This Court then predicted what the Austin Court would do, but did so based on this Court's own prior jurisprudence, including *Gillet v. ZUPT, LLC*, 523 S.W.3d 749, 757 (Tex. App.—Houston [14th Dist.] 2017,

[4] The Austin Court issued its opinion and judgment on August 15, 2024. This Court issued its opinion and judgment on August 22, 2024. The two judgments granted identical relief. This Court issued its opinion on rehearing and new judgment on April 29, 2025, eight months later. The Austin Court's opinion and judgment are binding precedent when issued. *See Brazos Elec. Power Coop., Inc. v. Tex. Comm'n on Envtl. Quality*, 576 S.W.3d 374, 383 n.6 (Tex. 2019), quoting *United States v. Espinosa*, 327 F. App'x 848, 850 (11th Cir. 2009) ("the fact that a petition for rehearing is pending in another case does not change the status of [an opinion] as binding precedent").

no pet.); and *Klinek v. LuxeYard, Inc.*, 672 S.W.3d 830, 839 (Tex. App.—Houston [14th Dist.] 2023, no pet.).

By contrast, the Austin Court decided the parallel appeal based on its determination that that no evidence in the record established that WCCG was in fact a "member" of either WC 4th or WC 4th's general partner (WC 4th and Colorado GP, LLC). 2024 WL 2841676, at *7. The Court also held that no evidence supported the receiver's claim to have authority to unilaterally terminate WC 4th's lawsuit:

> [N]o evidence in the record would have allowed the trial court to disregard the separate business structure of each entity and treat them as one and the same as World Class or to establish that [WCCG] was a member of [WC 4th and] Rio Grande, LP's general partner (an LLC) such that Kretzer would have been entitled to control [WC 4th's] lawsuits by taking over management of the LLC.

2024 WL 3841676, at *5.

Colorado Third also argued for the *Heckert* exception in that appeal. App. 1 at 25–28. But the Austin Court (based on its holdings as to the evidence) impliedly rejected Colorado Third's argument for applying the *Heckert* exception. This Court, sitting as the Austin Court, should not have disregarded this holding. *See Virginia Oak Venture, LLC v. Fought*, 448 S.W.3d 179, 187 (Tex. App.—Texarkana 2014, no pet.) (reviewing

argument presented to and rejected by the Fifth Court of Appeals and following that court's precedent under Rule 41.3). The Supreme Court made clear that "transferee courts have no authority to deviate from the procedural requirements of Rule 41.3 even if they are convinced that this Court would disagree with the transferor court's precedent."[5] *Mitschke v. Borromeo*, 645 S.W.3d 251, 258 n.12 (Tex. 2022).

The Court's most obvious oversight as to Rule 41.3 and the Austin Court's parallel precedent relates to disregarding Nate Paul's affidavit (CR 1786–1788) in which he stated that WCCG did not have an interest in WC 4th. Appellant's Brief at 18-19. The evidence before the Austin Court included Paul's verification (App. 2 at 9) of this same fact. The Austin Court identified the verification and pleading as "unequivocal" and stated that Colorado Third had "not controverted" the pleading with its evidence. 2024 WL 3841676, at *5. Colorado Third relied on the same evidence in both appeals to establish that WCCG had an interest in WC 4th's general partner, if not a direct interest in WC4th:

[5] Rule 41.3 allows this Court to state that the result would have been different under this Court's precedent.

These documents establish that:

(1) World Class is a member and manager of World Class Real Estate, LLC, *see* CR.2784, 2792-93, 2830, 2835, 2843; *see also* CTSI.CR.2015, 2045, 2209, 2176-77, 2230-32;

(2) World Class Real Estate, LLC is a member and manager of WC 4th and Colorado GP, LLC, *see* CR.2784, 2792-93, 2830, 2835, 2840; *see also* CTSI.CR.2015, 2045, 2209, 2230-32; and

(3) WC 4th and Colorado GP, LLC is the general partner of WC 4th, *see* CR.2784, 2792-93, 2830, 2835, 2837; *see also* CTSI.CR.2015, 2045, 2209, 2230-32.

Far from being "uncontroverted," the trial court was well within its discretion in determining that World Class had the necessary interest in WC 4th for the Receiver to act for WC 4th below. CR.2784, 2792-93, 2830, 2835, 2837, 2840, 2843; CTSI.CR.2015, 2045, 2176-77, 2209, 2230-32; *cf. 1st & Trinity Super Majority*, 657 S.W.3d at 357-58 (confirming that Mr. Paul does "business through a network of entities which used 'World Class' or 'WC' in their names," including "limited liability corporations with almost the same name as the [limited] partnerships").

Compare App. 1 (Appellee's Brief in No. 03-22-00781-CV) at 22, *with* Appellee's Brief at 17-18. This Court credited the evidence as establishing a justification for the receiver's actions. 2025 WL 1225841 at *3. But the Austin Court held to the contrary, specifically explaining that the relevant "signature lines . . . establish mere *management* of the

subsidiary entities by Paul. ***Management of an LLC is not ownership, and managers need not be members (i.e., owners)***." 2024 WL 3841676, at *6 (emphasis added).

Based on the same evidence, this Court reached the opposite conclusion by placing the burden on Nate Paul to show that the limited partners in WC 4th were *un*related to him, presumably because that would be evidence that the turnover relief could disrupt the interests of third parties. 2025 WL 1225841, at *4. This is a critical mistake in terms of the burden of proof. In particular, even if the *Heckert* statutory exception were recognized by the Austin Court's precedent (which it is not), the burden to establish its applicability would be on the party invoking (*i.e.*, the receiver).[6] And here, there was simply no evidence demonstrating that these entities—Sangreal Investments, LLC and Independence Holdings I, LLC—were related to Nate Paul.

Nevertheless, this Court effectively decided that WCCG and WC 4th (or at least WC 4th's general partner) were alter egos of each other. Doing this was an invalid endorsement of Colorado Third's unsupported

[6] 1 TEX. PRAC. GUIDE EVID. § 3:23 ("The burden of proof on a statutory exception rests on the party seeking to benefit from the exception.").

allegation that WC4th is a "non-operating, single purpose business ***with no partners***." *Id*. (emphasis added).

Yet the Austin Court found that the evidence before it—which was the same evidence before this Court—demonstrated that: (a) WC 4th is a separate legal entity from WCCG; (b) the evidence presented by the receiver at best demonstrated a hierarchy of management (that was *not* evidence of ownership); and (c) the receivership order did not authorize the receiver to take any action without first adjudicating the substantive rights of WC 4th. 2024 WL 3841676, at *5–*6. The Austin Court also expressly held that Colorado Third failed to present legally sufficient evidence to defeat the presumption that WC 4th is a separate and distinct legal entity from WCCG. *Id*. at *7.

Under Rule 41.3, this Court "must decide the case in accordance with the precedent of the transferor court under principles of stare decisis if the transferee court's decision otherwise would have been inconsistent with the precedent of the transferor court." And given the identity of parties, evidence, and issues, it is hard to imagine a situation where principles of stare decisis would be any stronger. Simply stated, there is no rational way that the Austin Court could have decided these

two cases differently. This Court should vacate its opinion on rehearing, reinstate its original judgment, and issue an opinion consistent with Rule 41.3.

B. This Court applied the *Heckert* exception under a material misunderstanding of the underlying judgment which the receiver was appointed to collect.

This Court stated in both the original opinion and the opinion on rehearing that "a Harris County court in a separate suit ordered WCCG, Paul, and Great Value to pay over $9.7 million in damages to a different lender—Princeton Capital—for failure to pay amounts owed under an unrelated note purchase agreement." 2025 WL 1225841, at *1. The judgment, however, resulted from Princeton severing its claims against Nate Paul and seeking entry of a final judgment awarding Princeton damages on its breach-of-contract claim against Great Value and WCCG. *Princeton*, 2023 WL 3010773, at *6.

That the judgment is against two entities and not against Nate Paul individually is a material difference from the judgment in *Heckert*. Teresa Heckert brought a personal injury suit against Clyde Heckert while their divorce suit was pending. A jury awarded Teresa $381,342.47 in damages against Clyde. *Heckert v. Heckert*, No. 02–16–00213–CV,

2017 WL 5184840, at *1 (Tex. App.—Fort Worth Nov. 9, 2017, no pet.) (mem. op.). Teresa later filed a motion seeking the turnover of Clyde's nonexempt assets—or alternatively the appointment of a receiver—in satisfaction of the judgment. *Id*. After an evidentiary hearing, the trial court appointed a receiver and ordered Clyde to turn over, among other assets, his interests in a limited partnership—A2R, Ltd.—and in a limited liability company—Averse 2 Risk, LLC. Clyde formed both entities after the divorce and while Teresa's personal injury suit was pending. *Id*.

Averse 2 Risk was the general partner of A2R, Ltd., and Clyde was the sole limited partner of A2R and the sole member of Averse 2 Risk. A2R held stock—an otherwise nonexempt asset—that had been awarded to Clyde in the divorce; he then transferred the stock to A2R while the personal injury suit was pending. *Id*. at *7. Relying in part on this Court's holding in *Gillet*, 523 S.W.3d at 758, the Fort Worth Court found an exception to the plain language of the charging order statutes because "both entities appear to have been formed by Clyde for the sole purpose of taking ownership of nonexempt assets awarded to him in the divorce."

Id. *9. And Clyde admittedly *had* signed nonexempt assets over to A2R while the divorce suit was pending.

The Fort Worth Court did not, however, create a general exception to the charging order statutes for entities that had been dispossessed of their assets. Rather, the court allowed a judgment creditor to reach assets that the judgment debtor had admittedly placed beyond the reach of the judgment creditor during the pendency of the suit resulting in a judgment. It was material to *Heckert* that the personal injury suit judgment was against Clyde individually and that he formed and then misused the corporate form during that proceeding to protect his assets.

This Court's characterization in *Klinek*, 672 S.W.3d at 840, of the *Heckert* exception as applicable where an LLC "was not operating any business" is thus misleading, as the crux of the *Heckert* decision was misuse of the corporate form by an individual judgment debtor. By contrast, as explained above, apart from the fact that the *Princeton* judgment was not even against Nate Paul individually, there is also no evidence in this record that Nate Paul created WC 4th to shield nonexempt assets from judgment creditors.

For these reasons, this Court should not have applied, let alone expanded, the *Heckert* exception, particularly where this Court is limited by Rule 41.3. On this basis, the Court should vacate its opinion on rehearing, reinstate its original judgment, and issue an opinion correctly stating the terms of the *Princeton* judgment.

C. The panel decision creates intra-court conflict regarding statutory limits on receivership orders, which requires en banc resolution.

In *Bran*, 2023 WL 5487421, at *11, this Court held:

> The entry of a charging order is the exclusive remedy by which the Spectrum Parties may satisfy the Judgment out of a membership interest owned by one of the Bran Parties in a limited liability company.

As explained in WC 4th's response to the first Motion for Rehearing in this matter, the receivership order at issue in *Bran* is ***identical*** to the receivership order here. Appellant's Response to Appellee's Motion for Rehearing at 5. The unstinting holding in *Bran* is consistent with the plain language of the charging order statutes and does not leave room for an exception to those statutes.

Creating an after-the-fact exception—as the Court did here based on the perceived purpose behind the charging order statutes—invites judgment creditors to ask trial courts for turnover relief that openly

flouts the limits of the charging order statutes and impliedly determines the property rights of non-judgment debtors. That is what occurred when this Court disregarded WC 4th's status as a separate entity by naming it a "non-operating, single purpose business with no partners." 2025 WL 1225841, at *4. Receivers, like the receiver here, can exploit unlawful receivership orders against non-judgment debtors, leaving the non-judgment debtors, as here, to litigate statutory limits on turnover orders only by proving that they are viable corporate entities.

The status of the entity as a partnership, limited partnership, or limited liability company is what entitles the entity to the protection of the charging order statutes. Voiding that protection without adjudication of WC 4th's substantive rights as a limited partnership cannot have been the Court's intention in creating a *Heckert* exception. It is well-settled law that courts may not use turnover proceedings to determine the substantive rights of a non-judgment debtor to its property. *See Alexander Dubose Jefferson & Townsend LLP v. Chevron Phillips Chem. Co., L.P.*, 540 S.W.3d 577, 580 (Tex. 2018).

As explained in the response to the first Motion for Rehearing, in *Gillet* "the judgment creditor seeking the membership interest was the

entity from which the membership interest derived" and "an explicit award of the membership interest itself from one party to the other was part of the judgment." *Gillet v. ZUPT, LLC*, 523 S.W.3d 749, 758 (Tex. App.—Houston [14th Dist.] 2017, no pet.). Under those unusual circumstances, it is not obvious that *Gillet*—which required the judgment creditor to give a dollar-for-dollar credit against the judgment when the judgment debtor turned over his LLC interest as ordered by the judgment—created an exception to the charging order statutes. Response at 11 n.7.

Given two opportunities in *Klinek* and *Bran* to allow for exceptions to the plain language of the charging order statutes, this Court twice declined. The appearance of the *Heckert* exception here arises from this Court and the Fort Worth Court citing each other's opinions. The Fort Worth Court looked to this Court's opinion in *Gillet* to explain its reasoning for allowing the turnover order in *Heckert* and acknowledged that the relief granted exceeded permissible relief under the charging order statutes. 2017 WL 5184840, at *8. The Fort Worth Court justified the turnover in *Heckert* by noting both that neither affected entity "is an operating business" and "both entities appear to have been formed . . .

for the sole purpose of taking possession on nonexempt assets awarded to him in the divorce." *Id*. at *9 (emphasis added).

This Court in *Klinek* then cited *Heckert* and noted only that it allowed an exception where "the company was not operating any business, and no party's interest would have been disrupted by granting turnover relief." This Court, however, found that those circumstances were not present and declined to disregard the plain language of the charging order statutes. *Klinek*, 672 S.W.3d at 840. Now, however, by adopting the *Heckert* exception—yet defining it based on the description in *Klinek*—this Court disregards the plain language of the charging order statutes, its prior opinion in *Bran* striking the same receivership order, and the legal principle limiting turnover proceedings to their purpose as procedural devices only.

The *Heckert* exception, as this Court describes it, invites judgment debtors and receivers to shoot first and ask questions later. It undermines the integrity of the charging order statutes and burdens non-judgment debtors with litigation to protect their separate status. The Court should vacate its opinion on rehearing, reinstate the prior judgment, and issue a new opinion consistent with the statutes.

CONCLUSION AND PRAYER

WC 4th respectfully moves this Court to Court grant en banc rehearing to:

Resolve the conflict between the panel's decision and *Bran*;

Provide guidance on Rule 41.3's application given the conflict between the panel's decision and the decision of the Austin Court;

Clarify what exceptions, if any, exist to the charging order statutes' plain language; and

Ensure uniform application of statutory limits on receivership orders when judgment creditors seek to control non-judgment debtor entities.

Dated: June 3, 2025

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

As required by Tex. R. App. P. 9.4(i)(2)(D), I certify that the number of words in Appellant's Motion for En Banc Reconsideration is 4,212. I relied on the computer program used to prepare the document for the word count.

/s/ Brent C. Perry

_____

Brent C. Perry

CERIFICATE OF SERVICE

On June 3, 2025, I served the foregoing document in accordance with Tex. R. App. P. 9.5 on all counsel of record by service via the court's electronic filing system.

/s/ Brent C. Perry

_____

Brent C. Perry

APPENDIX

Tab	Description
A	Appellee's Brief in Parallel Appeal (No. 03-22-00781-CV)
B	Nate Paul's Verification in Parallel Appeal (No. 03-22-00781-CV)

TAB A

No. 03-22-00781-CV

IN THE THIRD COURT OF APPEALS
AUSTIN, TEXAS

WORLD CLASS CAPITAL GROUP, LLC AND
WC 4TH AND COLORADO, LP,

Appellants,

v.

COLORADO THIRD STREET, LLC

Appellee.

On Appeal from the 261st District Court of Travis County, Texas
Cause No. D-1-GN-20-004259

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STATEMENT REGARDING RECORD AND PARTY REFERENCES

The Clerk's Record and Reporter's Record will be referenced as "CR.[page]" and "RR.[page]," respectively. Appellants World Class Capital Group, LLC and WC 4th and Colorado, LP will be referenced as "World Class" and "WC 4th," respectively, and as the "WC Parties," collectively. Appellee Colorado Third Street, LLC will be referenced as "Colorado Third."

STATEMENT REGARDING ORAL ARGUMENT

Not only have the arguments raised by the WC Parties been rejected by multiple Texas courts, but they also turn on the straightforward application of settled Texas law to facts fully resolved by the trial court below. Oral argument is thus unlikely to aid in the Court's decisional process. If the Court decides to hold oral argument, however, Colorado Third requests an opportunity to participate and present its side.

STATEMENT OF THE CASE

Nature of the Case: This case involves a challenge to actions taken by a receiver pursuant to a receivership order issued in a different Harris County suit that has been affirmed by the First Court of Appeals. WC 4th defaulted on a loan held by Colorado Third. CR.12, 111. After Colorado Third began exercising its contractual right to foreclose on the property secured by the loan, CR.66, 81-82, WC 4th declared bankruptcy, which stayed the foreclosure sale and separate litigation pending in Travis County, CR.2846-49. During that stay, Colorado Third filed the underlying lawsuit against World Class and Nate Paul as guarantors of the defaulted loan. CR.8. Subsequently, a Harris County court appointed a receiver over World Class and granted the receiver the authority to seize, manage, and operate entities in which World Class had an interest. CR.2755-56, 2759, 2762. The Harris County court also granted the receiver the express authority to take possession of "all real property, … causes of action, … [and] contract rights" of World Class's interests. CR.2755-56. Acting pursuant to the receivership order—and after the bankruptcy stay was lifted, the property was foreclosed on, and WC 4th intervened in this litigation—the receiver appeared in this case on the WC Parties' behalf. CR.1887-90; *see infra* p. 22 (explaining chain of ownership). The receiver and Colorado Third then settled the underlying litigation and jointly moved to dismiss all claims in this suit with prejudice. CR.1939-43. The WC Parties challenged the receiver's authority to settle and then move to dismiss this case through a Rule 12 motion, CR.1952, but they never properly set the motion for a hearing or otherwise brought their arguments regarding the receiver's authority to the trial court's attention to obtain a ruling. Rather, after the trial court granted the joint motion to dismiss, CR.1944, and severed the dismissed claims into an appealable final judgment, CR.2654, the WC Parties moved for a new trial, CR.2666.

Trial Court: Hon. Maria Cantú Hexsel; 261st Judicial District Court of Travis County, Texas

Trial Court's Disposition: The Travis County trial court denied the WC Parties' motion for new trial. CR.3038-39.

ISSUES PRESENTED

1. Whether the WC Parties' arguments in this Travis County appeal constitute an impermissible collateral attack on the Receivership Order entered in a different Harris County suit when:

    a. the core bases of the WC Parties' claims are that the Receivership Order gave the Receiver authority that was too broad under Texas law and that the Receiver lacked legal authority to take actions authorized by that order;

    b. the First Court of Appeals already affirmed the Receivership Order on direct appeal; and

    c. another Texas court of appeals has already held that similar claims by World Class entities constituted impermissible collateral attacks on receivership orders entered in other suits.

2. Whether the WC Parties preserved their challenge to the Receiver's authority when they sought a ruling on the issue for the first time in their motion for new trial, eight months after the purported error became apparent.

3. Whether the trial court abused its discretion by granting the parties' joint motions to release funds, dismiss claims with prejudice, and sever the dismissed claims, or by denying the WC Parties' motion for new trial when:

    a. the Receivership Order plainly authorized the Receiver to take each of the actions the WC Parties challenge here; and

    b. there was no stay order in place when the Receiver took each of the challenged actions.

INTRODUCTION

World Class—and its myriad affiliates, all controlled by Austin real estate investor Nate Paul—are involved in widespread litigation throughout the state. As a result of World Class's failure to pay a nearly ten-million-dollar judgment in one such lawsuit, a Harris County court appointed a receiver (the "Receiver") over World Class. That order appointing the Receiver (the "Receivership Order") has been the subject of multiple collateral challenges brought by World Class, WC 4th, and other entities controlled by Nate Paul in Travis County courts.

At the same time, World Class and WC 4th have made identical arguments in a direct attack on the Receivership Order in the Harris County trial court that signed the order. World Class has also made identical arguments in a direct attack in the First Court of Appeals. But those arguments have now been rejected. Less than a month ago, the First Court of Appeals unanimously affirmed the Receivership Order and the judgment that led to its issuance. *See Great Value Storage, LLC v. Princeton Cap. Corp.*, No. 01-21-00284-CV, 2023 WL 3010773, at *1 (Tex. App.—Houston [1st Dist.] Apr. 20, 2023, no pet. h.) (mem. op.).

Nevertheless, the WC Parties continue to object to the Harris County Receivership Order here—in yet another collateral forum. The WC Parties argue that the Receivership Order was improper and that, in any event, the Travis County trial court wrongly denied their motion for new trial. But complaints about the

validity of the Receivership Order are barred from consideration here; they should have been (and were) brought by World Class in the Harris County trial and appellate courts and have been resolved by those courts. Weighing in on the Receivership Order here would permit an impermissible collateral attack on an order entered by a trial court and affirmed by an appellate court in another case in another county. Travis County courts—including the trial court here—have rejected similar attacks. This Court should do the same.

The Court should affirm on the merits too. The WC Parties failed to preserve for appeal their argument regarding the Receiver's authority. And in any event, the Receiver had the authority to settle and dismiss the underlying claims pursuant to the Receivership Order, so the trial court did not abuse its discretion in denying the WC Parties' motion for new trial or in granting the parties' joint motions. Contrary to the WC Parties' surprising claim that it is "uncontroverted" that World Class had no connection to WC 4th, the trial court was presented with a convincing record establishing the chain of ownership between the WC Parties. On that record, the trial court correctly determined that the Receiver acted appropriately on the WC Parties' behalf in this case.

This Court should affirm in all respects.

STATEMENT OF FACTS

A. *WC 4th defaulted on a loan held by Colorado Third and guaranteed by World Class, unsuccessfully sought to enjoin Colorado Third from exercising its contractual right to foreclose on the property securing the loan, and then declared bankruptcy to avoid foreclosure.*

Much of the litigation surrounding World Class and its affiliates stems from those entities' defaulting on loans. *See* CTSI.CR.7-8 (describing history).[1] This is one such suit. World Class has an ownership interest in WC 4th, *see infra* p. 22, which is a single-purpose real estate entity that owned commercial property in Austin. Appellant.Br.1. WC 4th (like many other World Class entities) defaulted on the loan secured by that property after it had fully matured. CR.12; CTSI.CR.8-9, 80-83, 952-59. World Class and Nate Paul are unconditional guarantors on the loan. CR.92 (Paul guaranty), 96 (World Class guaranty).

[1] This Court has recognized that it "may take judicial notice of its own records in a cause involving the same subject matter between the same, or practically the same, parties." *WC 1st & Trinity, LP v. Roy F. & JoAnn Cole Mitte Found.*, No. 03-19-00799-CV, 2021 WL 4465995, at *1 n.1 (Tex. App.—Austin Sept. 30, 2021, pet. denied) (mem. op.) (quoting *Reynolds v. Quantlab Trading Partners US, LP*, 608 S.W.3d 549, 558 n.3 (Tex. App.—Houston [14th Dist.] 2020, no pet.)). Thus, just as this Court has done in other World-Class-related cases, *see id.*, the Court should take judicial notice of the record in the related case of *WC 4th and Colorado, LP v. Colorado Third Street, LLC*, No.14-22-00764-CV ("*Colorado Third I*"), which involves the same entities and the same subject matter of this suit. Like this case, *Colorado Third I* was appealed to this Court, but it has since been transferred to the Fourteenth Court of Appeals for docket equalization purposes. This brief references the record in *Colorado Third I* as "CTSI.CR.[pagenumber]."

In May 2020, Colorado Third acquired the loan and related security instruments from the original lender. CR.111. Upon being notified of the assignment by the original lender, WC 4th's principal and guarantor (Mr. Paul) denied Colorado Third's rights as the assignee of the documents, CTSI.CR.53, demanded access to Colorado Third's "business people," CTSI.CR.14-20, threatened to interfere with the assignment of the property's tenant's leases, CTSI.CR.53, and threatened to "take swift and strong action" by suing Colorado Third, CTSI.CR.24, 53.

All the while, WC 4th remained in default. CR.12; CTSI.CR.8-9, 80-83, 952-59. In light of WC 4th's threats of litigation (among other things), Colorado Third filed suit against WC 4th in Travis County (*Colorado Third I*), seeking a declaration of its rights under the loan documents. CTSI.CR.30-31, 53. Colorado Third also began exercising its contractual rights by posting the property for non-judicial foreclosure in Travis County. CR.66, 81-82; CTSI.CR.774, 977-79. Colorado Third also filed the underlying Travis County suit against the guarantors on the loan, Mr. Paul and World Class, seeking payment of WC 4th's obligations. CR.8-15.

Rather than making any attempt to fulfill their repayment obligations, World Class, WC 4th, and Mr. Paul spent the next ten months unsuccessfully attempting to obstruct Colorado Third's exercise of its contractual foreclosure rights. WC 4th first moved to enjoin the foreclosure sale in *Colorado Third I*, CTSI.CR.773-83, but the

trial court denied WC 4th's requested relief and allowed the foreclosure sale to proceed, CTSI.CR.1659. WC 4th then filed for bankruptcy protection, automatically staying the foreclosure sale of its property. CR.2846-49. The bankruptcy court ultimately lifted the stay after WC 4th failed to submit a confirmable plan to pay off WC 4th's creditors. App.A at 1-2.[2]

World Class and Mr. Paul, as the guarantors of WC 4th's obligations, then sought to enjoin Colorado Third from exercising its foreclosure rights in the guarantor suit underlying this appeal. CR.223-42. But the trial court denied their requested relief, again allowing the foreclosure sale to proceed. CR.1219. WC 4th then intervened in this litigation and again sought to enjoin the sale, CR.1220, 1411, but the trial court again denied the request, App.B at 1. Colorado Third later foreclosed on the property pursuant to its rights under the loan documents. CTSI.CR.1659; CR.66, 81-82.

B. *Meanwhile, a Harris County court appointed a receiver over World Class after it failed to pay a separate $9.9 million judgment.*

While WC 4th's bankruptcy was pending, a Harris County court in separate litigation found that World Class and an affiliate failed to pay amounts owed under

[2] This Court can "take judicial notice of another court's records if a party provides proof of the records." *Freedom Commc'ns, Inc. v. Coronado*, 372 S.W.3d 621, 623 (Tex. 2012) (per curiam). Because Colorado Third has attached proof of the cited court orders in the Appendix to this brief, this Court can take judicial notice of those orders.

a note purchase agreement with a different lender, Princeton Capital Corporation ("Princeton") and ordered World Class to pay $9.9 million in damages. App.C at 1. World Class did not pay the final judgment. CR.2755. So in September 2021, the Harris County court appointed the Receiver to "take possession of and sell the[ir] leviable assets" to satisfy the judgment. CR.2755.

In the Receivership Order, the Harris County court ordered World Class "to identify and turn over to the [R]eceiver all interests of [World Class] in any business or venture, including limited liability companies and limited partnerships." CR.2759. The Harris County court also expressly authorized the Receiver to "seize the membership interest of any Limited Liability Company in which [World Class] is a member, and to sell, manage, and operate the Limited Liability Company as the Receiver shall think appropriate." CR.2762. That included the express authority to take possession of all "real property … causes of action … [and] contract rights." CR.2755-56.

World Class appealed the Receivership Order to the First Court of Appeals, App.D at 1-2, but during the pendency of that appeal and following oral argument, World Class elected to settle the case and the appeal, with Princeton being "paid in full," RR.13. Still, following the settlement, World Class insisted in the First Court of Appeals that its appeal was not moot. On April 20, 2023, the First Court of

Appeals issued an opinion unanimously affirming the Princeton judgment and the Receivership Order in full. *See Great Value Storage*, 2023 WL 3010773, at *1.

C. *The Receiver, acting on the WC Parties' behalf pursuant to the Receivership Order, settled the WC Parties' claims against Colorado Third.*

On November 18, 2021—after the bankruptcy court had lifted the automatic stay in WC 4th's bankruptcy proceedings, after Colorado Third had foreclosed on the property, and after WC 4th had intervened in this case, App.A at 1-2; CTSI.CR.1659; CR.66, 81-82—the Receiver appeared here for the WC Parties pursuant to the authority granted to him in the Receivership Order. CR.1887-88; *see also* CR.2762 (authorizing the Receiver to "manage and operate" World Class and entities in which World Class has an interest); *infra* p. 22 (showing the chain of ownership between World Class and WC 4th); CR.2762 (authorizing the Receiver to seize the interests of World Class and to manage and operate World Class's interests), 2755-56 (authorizing the Receiver to take possession of real property, causes of action, and contract rights of World Class and World Class's interests). The Receiver also stated that he was replacing the WC Parties' prior counsel. CR.1887.

The Receiver (on the WC Parties' behalf)—joined by Colorado Third—then filed a Joint Motion to Release Funds, requesting the release to Colorado Third of certain funds that had been held in escrow during the bankruptcy. CR.1873-74. The

motion stated that "[Colorado Third and the WC Parties] had resolved all claims asserted in this case, as between themselves" and that "[a]s part of the settlement, the Parties agreed that the [escrowed] Funds should be released … to [Colorado Third]." CR.1874. The trial court granted that motion a few weeks later. CR.1907-09. The WC Parties (through the Receiver) and Colorado Third subsequently filed an Agreed Partial Motion to Dismiss, stating that Colorado Third and the WC Parties "have resolved certain claims asserted in this case[.]" CR.1939. The trial court granted that motion shortly thereafter. CR.1944-47.

With the authority granted to him in the Receivership Order to, among other things, take possession of the WC Parties' real property, causes of action, and contract rights and to control WC 4th's general partner (a limited liability company) "as the Receiver shall think appropriate," the Receiver was expressly authorized by the Harris County court to settle the underlying claims on behalf of the WC Parties. CR.2755-56, 2759, 2762.

D. *The WC Parties unsuccessfully challenged the Receiver's authority to act on their behalf in this litigation.*

After the trial court granted the parties' joint motions to release funds and dismiss their claims pursuant to their settlement, the WC Parties filed a motion to show authority pursuant to Texas Rule of Civil Procedure 12. CR.1952; *see also* TEX. R. CIV. P. 12 (permitting a party to file a sworn motion alleging that a suit is being litigated without authority on its behalf). Months earlier, WC 4th had filed a

nearly identical Rule 12 motion in *Colorado Third I*, challenging the Receiver's authority to act on WC 4th's behalf in that case. CTSI.CR.1683. After full briefing and an evidentiary hearing, the court in *Colorado Third I* rejected WC 4th's arguments and denied its Rule 12 motion. CTSI.CR.2408-09. But in this case, the WC Parties never properly set their Rule 12 motion for a hearing, and it was never ruled on. For the sake of judicial efficiency, the trial court here subsequently severed the dismissed claims so that they could become final and appealable. CR.2575, 2654-58.

In response to the severance order (and after WC 4th's Rule 12 motion in *Colorado Third I* was denied, CTSI.CR.2408-09), the WC Parties filed a Motion for New Trial, arguing that the Receiver lacked authority to act on their behalf because the Receivership Order (issued in the Harris County suit) gave the Receiver authority that was too broad under Texas law. CR.2668-69, 2672-73. The WC Parties also alleged that the Receiver could not act on WC 4th's behalf because there was no ownership connection between World Class and WC 4th. CR.2670-71. This was the first time the WC Parties asked for a ruling on these contentions. On November 21, 2022, the trial court rejected each of the WC Parties' contentions and denied their motion for new trial. CR.3038. This appeal followed. CR.3506-07.

SUMMARY OF THE ARGUMENT

The cornerstone of the WC Parties' position on appeal is that the Receivership Order entered in the Harris County suit authorized the Receiver to take actions that are improper under Texas law. But the validity of the Receivership Order is not appropriately before this Court. World Class directly appealed the Receivership Order to the First Court of Appeals, and that court affirmed the Receivership Order. By continuing to challenge the Receivership Order in this and other courts throughout the state, the WC Parties mount a legally impermissible collateral attack on that order. Another Texas court of appeals recently rejected a similar collateral attack on receivership orders by other World Class entities. This Court should do the same here.

The Court should also affirm on the merits. First, the WC Parties sought a ruling on their challenge to the Receiver's authority for the first time in their motion for new trial, so that issue was untimely presented to the trial court. The argument is not preserved for appeal.

Second, the Receivership Order plainly authorized each of the Receiver's actions that the WC Parties challenge in this suit. The Receivership Order required World Class "to identify and turn over to the [R]eceiver all interests of [World Class] in any business or venture, including limited liability companies and limited partnerships." The Receivership Order also broadly authorized the Receiver to "sell,

manage, and operate" limited liability companies in which World Class had an ownership interest. That includes representing the entities in litigation in which World Class has an interest. It also includes managing, operating, and controlling "real property, … causes of action, … [and] contract rights." And, despite the WC Parties' contentions (supported only by Nate Paul's conclusory and self-serving jurat), there can be no legitimate dispute that World Class had an interest in WC 4th at the time of the settlement—certainly it was not an abuse of discretion for the district court to consider the briefing and evidence and reject the WC Parties' attacks on the Receiver's actions.

Third, even if this Court chooses to review a Harris County district court order that has been affirmed by the First Court of Appeals in separate litigation, the Receivership Order is not overly broad under Texas law. The WC Parties ignore Texas law holding that a charging order is *not* the exclusive remedy for a judgment creditor who wishes to satisfy a judgment from a judgment debtor's interests in limited liability companies or limited partnerships. When, as here, the underlying purpose of a charging order is not implicated, Texas courts have declined to apply the inflexible rule offered by the WC Parties.

Fourth, the Harris County court's October 2022 stay of the Receivership Order pending settlement of the Princeton litigation could not have *retroactively* invalidated the Receiver's actions—let alone the actions of the district court. The

WC Parties' arguments defy logic and are unsupported by Texas law. The Receiver took every action the WC Parties challenge here before the Harris County court's October 2022 stay of the Receiver's collection efforts. And the stay had no effect on the trial court's actions below.

This Court should therefore hold that the trial court did not abuse its discretion when it granted the parties' joint motions, severed the dismissed claims, and denied the WC Parties' motion for new trial.

ARGUMENT

I. The Court Reviews the Challenged Rulings for an Abuse of Discretion.

The trial court's orders granting the joint motions, severing the dismissed claims, and denying the WC Parties' motion for new trial are all reviewed for an abuse of discretion. *W. Prado v. Leal*, No. 09-19-00154-CV, 2020 WL 6164309, at *4-6 (Tex. App.—Beaumont Oct. 22, 2020, no pet.) (mem. op.) (authority to seek release of funds); *HMT Tank Serv. LLC v. Am. Tank & Vessel, Inc.*, 565 S.W.3d 799, 810 (Tex. App.—Houston [14th Dist.] 2018, no pet.) (dismissal); *Adams v. Baxter Healthcare Corp.*, 998 S.W.2d 349, 356 (Tex. App.—Austin 1999, no pet.) (severance); *Beck v. Law Offices of Edwin J. (Ted) Terry, Jr. P.C.*, 284 S.W.3d 416, 445 (Tex. App.—Austin 2009, no pet.) (motion for new trial).

This highly deferential standard is satisfied only if the trial court "act[ed] without reference to any guiding rules or principles, such that its ruling [is] arbitrary

or unreasonable." *Am. Flood Rsch., Inc. v. Jones*, 192 S.W.3d 581, 583 (Tex. 2006) (per curiam). Further, courts "defer to the trial court's factual determinations if they are supported by evidence, but review legal determinations de novo." *Haedge v. Cent. Tex. Cattlemen's Ass'n*, 603 S.W.3d 824, 827 (Tex. 2020) (per curiam) (internal quotations and citations omitted).

II. The WC Parties' Appeal Constitutes an Impermissible Collateral Attack on the Receivership Order and the First Court of Appeals' Judgment Affirming the Receivership Order.

The WC Parties' argument on appeal is that the Receiver lacked the authority "to act for WC 4th, displace its retained counsel, and dismiss its counterclaims against Colorado Third." Appellant.Br.13. One basis for that argument is the WC Parties' contention that the Receivership Order gave the Receiver authority that was too broad under Texas law. Appellant.Br. 13-14, 16, 23. The WC Parties' repeated attacks on the Receivership Order and the rendering Harris County court make that clear. *See, e.g.*, Appellant.Br.16 (arguing that the Receivership Order "had an expansive, but unlawful, grant of authority"); Appellant.Br.19 (arguing that "Texas law precluded the [R]eceiver from seizing any interest that [World Class] could have in WC 4th" despite the Receivership Order's permitting just that); Appellant.Br.22 (arguing that the Receiver's authority should have been limited to "obtaining a charging order and monitor[ing] partnership distributions [to] effectuate a charging order").

The WC Parties' arguments also make clear that this appeal is nothing more than an improper collateral attack on the Receivership Order, which was issued by a different court, in a different county, in a different suit, and that was appealed to and affirmed by a different appellate court. *See Great Value Storage*, 2023 WL 3010773, at *1; App.D at 1-2. Indeed, WC 4th has also intervened in the Harris County suit, seeking this same relief. In effect, WC 4th is pursuing parallel tracks in different courts, but the proper court to resolve these issues has already affirmed the Receivership Order. To allow WC 4th to try again here is a black-letter impermissible collateral attack.

World Class also sought identical relief by directly appealing the Receivership Order to the First Court of Appeals, which has now unanimously *affirmed* the Receivership Order. *See Great Value Storage*, 2023 WL 3010773, at *1 ("We affirm both the trial court's summary judgment and the order appointing a receiver."). And the court did so over objections identical to the WC Parties' here. *See, e.g.*, *id.* at *15 ("[World Class] argued that the trial court abused its discretion by ordering [it] to turn over to the receiver all interests [it] held in any limited liability company and limited partnership."). Especially given that the First Court of Appeals has now resolved the direct attack on the Receivership Order by affirming the propriety of that order, this Court should reject the WC Parties' impermissible collateral attack here.

A "collateral attack" is "an attempt to avoid the binding force of a judgment in a proceeding not instituted for the purpose of correcting, modifying, or vacating the judgment, but in order to obtain some specific relief which the judgment currently stands as a bar against." *Browning v. Prostok*, 165 S.W.3d 336, 346 (Tex. 2005). In other words, "when a party initiates a separate lawsuit to attack a trial court's order that is otherwise appealable, the lawsuit constitutes an impermissible 'collateral attack' on the order." *1st & Trinity Super Majority, LLC v. Milligan*, 657 S.W.3d 349, 364 (Tex. App.—El Paso, 2022, no pet.) (citing *Browning*, 165 S.W.3d at 345-46).[3]

Texas law generally prohibits collateral attacks because they flout the policy of giving finality to judgments and attempt "to bypass the appellate process in challenging the integrity of a judgment." *Browning*, 165 S.W.3d at 345-46. Consequently, the only time collateral attacks are permissible under Texas law is when the underlying judgment is void by virtue of the rendering court's lack of jurisdiction or "capacity to act," *id.* at 346, such as when a court renders a default judgment against someone who was not served with process and was therefore not subject to the rendering court's personal jurisdiction. *See Wagner v. D'Lorm*, 315 S.W.3d 188, 192 (Tex. App.—Austin 2010, no pet.).

[3] *1st & Trinity Super Majority* originated in this Court but was transferred for docket equalization purposes. 657 S.W.3d at 357 n.1.

The WC Parties have made no such allegations regarding the rendering court here. Nor can they. The WC Parties have no quarrel with the underlying judgment against World Class, and the First Court of Appeals has already affirmed that judgment. *Great Value Storage*, 2023 WL 3010773, at *1. Instead, the WC Parties attack "the possession, control, or management of the property by the receiver" by asking this Court to issue an order that would necessarily "conflict with an[] order of the appointing court about [the Receiver's] control of the receivership property." *See Campbell v. Wood*, 811 S.W.2d 753, 756 (Tex. App.—Houston [1st Dist.] 1991, no pet.). For almost a century, Texas courts have recognized that as an improper collateral attack. *Prince v. Miller*, 69 S.W.2d 52, 54 (Tex. Comm'n App. 1934) (orig. proceeding) ("[T]he court, other than the one in which the receiver is appointed, may not make any order or take any action in such suit that will disturb the possession, control, or management of the assets by the receiver."); *Campbell*, 811 S.W.2d at 756 (similar). And the WC Parties' collateral attack on the "order of the appointing court" is doubly improper here because the Receivership Order has been affirmed on direct appeal. *Great Value Storage*, 2023 WL 3010773, at *1.

Texas courts have routinely rejected similar collateral attacks on receivership orders. For example, in *Davis v. West*, 317 S.W.3d 301, 308-10 (Tex. App.—Houston [1st Dist.] 2009, no pet.), the court held that a judgment debtor's claim in a Brazoria County suit that a receiver's "powers exceed[ed] that allowed by the

statute" constituted an impermissible "collateral attack on the turnover order" that appointed the receiver in a prior Harris County suit. Similarly, in *Sun Tec Computer, Inc. v. Recovar Group, LLC*, No. 05-14-00257-CV, 2015 WL 5099191, at *2-4 (Tex. App.—Dallas Aug. 31, 2015, no pet.) (mem. op.), the court held that a judgment debtor could not attack "actions taken by the receiver" pursuant to a turnover order or assert that the "turnover order" appointing the receiver was void in a separate lawsuit because doing so constituted a collateral attack on that order.

In fact, a Texas court applying Third Court precedent has already rejected collateral attacks on receivership orders asserted by World Class affiliates (like the WC Parties do here). In *1st & Trinity Super Majority*, the majority owners of two World Class limited partnerships "challenge[d] the lawfulness" of two other "receivership orders and the receiver's authority." 657 S.W.3d at 364. But the receivership orders had been entered and "separately challenged" in "a different case." *Id.* at 357. As a result, the Court held that "the current lawsuit [wa]s an improper collateral attack," and the "proper venue to make" the challenges to the receivership orders and the receiver's authority was in the case appointing the receiver. *Id.* at 364. Like in *1st & Trinity Super Majority*, it is apparent that "the [WC Parties] brought this collateral attack on the receivership proceedings, in an attempt to get a [third] bite at the apple" after their first bite was rejected by the

Harris County trial court and their second bite was rejected by the First Court of Appeals. *See id.* at 379.

This Court should thus reject the WC Parties' collateral attacks on the Receivership Order and the First Court of Appeals' judgment affirming it.

III. The WC Parties Failed to Preserve Their Challenge to the Receiver's Authority.

Even ignoring the improper nature of the WC Parties' collateral attack on the Receiver's authority, that issue was not preserved for appeal. Rule 12 requires that a motion to show authority be heard and determined before trial. And an argument is waived when a party "assert[s] its applicability for the first time in its motion for new trial." *Kelley-Coppedge, Inc. v. Highlands Ins. Co.*, 980 S.W.2d 462, 467 (Tex. 1998); *Murray v. Pinnacle Health Facilities XV*, No. 01-13-00527-CV, 2014 WL 3512773, at *3 (Tex. App.—Houston [1st Dist.] July 15, 2014, pet. denied) (mem. op.) (collecting cases); *Kohler v. M&M Truck Conversions*, No. 2-08-332-CV, 2009 WL 2579639, at *1 (Tex. App.—Fort Worth Aug. 21, 2009, no pet.) (mem. op.); *see also* TEX. R. APP. P. 33.1(a).

The WC Parties received notice that the Receiver was settling their claims pursuant to the Receivership Order in March 2022 at the latest.[4] CR.1939-41. The Joint Motion to Dismiss was filed and served on the WC Parties in March, and it

[4] The WC Parties had notice that the Receiver was appearing in the underlying litigation on their behalf as early as November 2021. CR.1887-88.

was granted the same month. CR.1939-41, 1944-45. The Joint Motion to Dismiss was also signed and submitted by the Receiver on the WC Parties' behalf, and it expressly stated that "[the WC Parties] have resolved certain claims asserted in this case." CR.1939-41. Yet despite that notice, the WC Parties did not have the issue of the Receiver's authority heard and determined until they moved for a new trial—nearly eight months after the purported error that forms the basis of this appeal became apparent.

Although the WC Parties filed a Rule 12 motion related to the Receiver's authority before moving for a new trial, the Rule 12 motion was never properly set for a hearing, it was never properly presented to the trial court, and the WC Parties never sought a ruling on it. *See* TRAVIS CNTY. L.R. 2.2, 2.9; *see also Saenz v. Garcia*, No. 03-05-00318-CV, 2007 WL 74279, at *3 n.9 (Tex. App.—Austin Jan. 12, 2007, no pet.) (mem. op.) ("Travis County local rules require counsel to request a central docket setting … and to notify counsel of the setting and time estimate."). As a result, the issue of the Receiver's authority was not properly preserved. *See Kohler*, 2009 WL 2579639, at *1 (objection raised for the first time in a motion for new trial "was not timely because it was not raised when the error became apparent").

IV. The Trial Court Did Not Abuse Its Discretion in Granting the Parties' Joint Motions and Denying the WC Parties' Motion for New Trial.

The WC Parties also contend that the Receivership Order did not authorize the Receiver's actions below. Appellant.Br.18-19. But the Receivership Order's

plain text justified the Receiver's actions, which—despite the WC Parties' improper arguments to the contrary—were taken while no stay order was in place. The Court should reject the WC Parties' claims that the trial court abused its discretion by granting the parties' joint motions to release funds, dismiss the claims, and sever the dismissed claims or by denying the WC Parties' motion for new trial.

A. *The Receiver's actions fall within the plain language of the Receivership Order.*

The WC Parties are correct that a receiver "has only that authority conferred by the Court's order appointing him." Appellant.Br.18 (quoting *Ex parte Hodges*, 625 S.W.2d 304, 306 (Tex. 1981) (orig. proceeding)). Here, however, the Receivership Order conferred authority on the Receiver to take all the actions about which the WC Parties complain.

For example, the Receivership Order directed World Class "to identify and turn over to the [R]eceiver all interests of [World Class] in any business or venture, including limited liability companies and limited partnerships." CR.2759. It then broadly authorized the Receiver to, among other things, "seize the membership interest of any Limited Liability Company in which [World Class] is a member" and "to sell, manage, and operate the Limited Liability Company as the [R]eceiver shall think appropriate." CR.2762. That included the express authority to take possession of "real property … causes of action … [and] contract rights." CR.2755-56.

The Receiver did just that by seizing World Class's membership interest in the general partner of WC 4th (a limited liability company) and acting on WC 4th's behalf in this litigation. CR.1887-88. Indeed, managing litigation falls squarely within the descriptions of "manag[ing]" and "operat[ing]" an entity as the Receiver thought appropriate. *See, e.g.*, *Penny v. El Patio, LLC*, 466 S.W.3d 914, 920 (Tex. App.—Austin 2015, pet. denied) (where operating agreement gave manager "sole and exclusive control over the company's business" and granted him "the powers and rights needed to conduct that business," the manager was "authori[zed] to litigate on behalf of the LLC"). Thus, the Receiver was acting within the Receivership Order's plain-language grant of authority when he took control of World Class and WC 4th and settled their claims against Colorado Third.

The WC Parties do not (and cannot) dispute that the Receiver had the authority to act on World Class's behalf below. *See* CR.2755-56, 2759, 2762. And this Court should reject the WC Parties' contention that the Receiver could not also act on WC 4th's behalf. The WC Parties make the remarkable claim—based entirely on Nate Paul's conclusory and self-serving jurat—that the "uncontroverted" evidence shows that World Class has no interest in WC 4th. Appelant.Br.20. But that claim is belied by the record, including multiple sworn statements and representations, all of which were considered by the trial court. For instance, the underlying loan documents—each signed by and *sworn to* by Mr. Paul—make clear that World Class did/does

have an ownership interest in WC 4th. *See* CR.2784 (sworn Deed of Trust), 2792-93 (sworn Loan Modification), 2830 (sworn WC 4th and Colorado GP, LLC Guaranty), 2835 (sworn World Class Guaranty).

These documents establish that:

(1) World Class is a member and manager of World Class Real Estate, LLC, *see* CR.2784, 2792-93, 2830, 2835, 2843; *see also* CTSI.CR.2015, 2045, 2209, 2176-77, 2230-32;

(2) World Class Real Estate, LLC is a member and manager of WC 4th and Colorado GP, LLC, *see* CR.2784, 2792-93, 2830, 2835, 2840; *see also* CTSI.CR.2015, 2045, 2209, 2230-32; and

(3) WC 4th and Colorado GP, LLC is the general partner of WC 4th, *see* CR.2784, 2792-93, 2830, 2835, 2837; *see also* CTSI.CR.2015, 2045, 2209, 2230-32.

Far from being "uncontroverted," the trial court was well within its discretion in determining that World Class had the necessary interest in WC 4th for the Receiver to act for WC 4th below. CR.2784, 2792-93, 2830, 2835, 2837, 2840, 2843; CTSI.CR.2015, 2045, 2176-77, 2209, 2230-32; *cf. 1st & Trinity Super Majority*, 657 S.W.3d at 357-58 (confirming that Mr. Paul does "business through a network of entities which used 'World Class' or 'WC' in their names," including "limited liability corporations with almost the same name as the [limited] partnerships").

Even the WC Parties concede that the Receivership Order gives the Receiver authority over "entities in which [World Class] has an ownership interest." Appellant.Br.13. That—in addition to the collateral nature of the attacks on the propriety of the Receivership Order (which the First Court of Appeals has already affirmed)—is likely why multiple Travis County trial courts have already rejected similar challenges to the Receiver's authority filed by World Class entities. *See* CR.2730-31 (denying nearly identical Rule 12 motion brought by WC 4th in nearly identical proceedings), 2733 (similar), 2735 (similar). Certainly, in light of the mountain of sworn evidence presented below, it could not have been an abuse of discretion for the trial court to find that World Class had an interest in WC 4th covered by the Receivership Order at the time the Receiver acted for WC 4th.

In arguing otherwise, the WC Parties rely exclusively on Mr. Paul's one-sentence jurat appended to the WC Parties' motion for new trial.[5] Appellant.Br.20; *see also* CR.2675. But nowhere in the record does Mr. Paul address or explain the pages of his sworn statements (and other evidence) establishing that World Class is/was the managing member of a limited liability company (*i.e.*, World Class Real

[5] In a footnote, the WC Parties cite to Nate Paul's conclusory and self-serving affidavit from *Colorado Third I*. Appellant.Br. 6 n.3. But that affidavit was not before the trial court here, so the court could not have considered it. The WC Parties also attempt to buttress Mr. Paul's jurat with WC 4th's limited partnership agreement. Appellant.Br.8 (citing CR.2293). But that agreement only confirms the ownership chain discussed *supra* p. 22. *See* CR.2293 ("WC 4th and Colorado GP, LLC, as the General Partner" of WC 4th).

Estate, LLC) that itself is/was the managing member of WC 4th and Colorado GP, LLC, which is WC 4th's general partner that controls and manages WC 4th. CR.2784, 8792-93, 2830, 2835, 2837, 2840, 2843.

Given the ample sworn evidence in the record and the lack of any independent facts supporting Mr. Paul's "verified" filing,[6] it was not an abuse of discretion for the trial court to determine that the Receiver had authority to act for WC 4th. *Long v. Sw. Funding, LP*, No. 03-15-00020-CV, 2017 WL 672445, at *7 (Tex. App.—Austin Feb. 16, 2017, no pet.) (mem. op.) (holding that a party's "own statement in an affidavit" did "not raise a fact issue" as to ownership of a note because the affidavit was "unsupported by independent facts," making it "self-serving and conclusory"); *see also Fisher v. First Chapel Dev. LLC*, No. 14-19-00111-CV, 2021 WL 2154108, at *5 (Tex. App.—Houston [14th Dist.] May 27, 2021, no pet.) (mem. op.) (affirming trial court's rejection of "self-serving statements in [an] affidavit" because they conflicted with contradictory statements in separate sworn filings).

The Receivership Order authorized the Receiver to act on World Class's and WC 4th's behalf here, and because the trial court did not abuse its discretion in light

[6] As it relates to the credibility of Mr. Paul's verified filing, one Travis County trial court recently found Mr. Paul in contempt for, among other things, repeatedly "providing false testimony to the Court, i.e., perjury." App.E at 4. The same court also found that "Mr. Paul's lies to the Court while under oath were pervasive and inexcusable, and served to deliberately thwart the functions of the Court …." *Id.* at 5.

of the substantial sworn evidence of World Class's ownership interest in WC 4th, this Court should affirm the trial court's order denying the WC Parties' motion for new trial and severing the dismissed claims.

B. *The Receiver's actions are valid under Texas law.*

The WC Parties argue that the Receivership Order could not, as a matter of law, authorize the Receiver to "have the authority that he claimed in this action." Appellant.Br.13. At the outset, that argument constitutes an improper collateral attack on the Harris County Receivership Order—which has now been affirmed by the First Court of Appeals—that cannot be asserted in this Travis County suit. *See supra* Part II. Moreover, in addition to the First Court of Appeals, multiple Travis County courts have rejected World Class entities' attempts to invalidate the Receivership Order on these grounds. *See* CR.2730-31, 2733, 2735.

But beyond all of that, WC 4th's argument is wrong. The Harris County court appointed the Receiver pursuant to Section 31.022(b)(3) of the Texas Civil Practice and Remedies Code, which permits a court to appoint a receiver to "take possession" of a judgment debtor's nonexempt property. Such "nonexempt property" includes a judgment debtor's membership interests in limited liability companies and limited partnerships. *Heckert v. Heckert*, No. 02-16-00213-CV, 2017 WL 5184840, at *7 (Tex. App.—Fort Worth Nov. 9, 2017, no pet.) (mem. op.) (judgment debtor's membership interests in a limited liability company and a limited partnership were

"nonexempt" for purposes of Section 31.002 of the Texas Civil Practice and Remedies Code); TEX. BUS. ORGS. CODE § 101.106(a) ("A membership interest in a limited liability company is personal property.").

The Receivership Order thus appropriately authorized the Receiver to take possession of World Class's interests in "any business or venture, including limited liability companies and limited partnerships." CR.2759. And because World Class has an interest in WC 4th (via the limited liability company that serves as WC 4th's general partner, *supra* p. 22), the Receiver justifiably seized World Class's interest in those entities and assumed management of them pursuant to the Receivership Order.

Even so, the WC Parties argue that the Receivership Order is too broad and that the Receiver's authority must be limited to "obtaining a charging order and monitoring partnership distributions to effectuate a charging order." Appellant.Br.14 (cleaned up). The WC Parties rely primarily on the Texas turnover statute, *see* TEX. BUS. ORGS. CODE § 153.256, and *Pajooh v. Royal West Investments LLC, Series E*, 518 S.W.3d 557, 562-65 (Tex. App.—Houston [1st Dist.] 2017, no pet.), to support this proposition.

The turnover statute states that "the entry of a charging order is the exclusive remedy by which a judgment creditor of a partner or of any other owner of a partnership interest may satisfy a judgment out of the judgment debtor's partnership

interest." TEX. BUS. ORGS. CODE § 153.256(d); *see also id.* § 101.112(d) (similar for judgment debtor's interest in limited liability companies). The *Pajooh* court confirmed that this is the general rule by noting that "a charging order is the exclusive remedy by which a *judgment creditor* of a partner may satisfy a judgment from the judgment debtor's partnership interest" or membership interest in a limited liability company. 518 S.W.3d at 565-66 (emphasis added). *Pajooh* further held that when the general rule applies, a judgment creditor cannot "participate in the partnership" or limited liability company. *See id.* at 563. But that general rule is facially inapplicable; the plain language of Section 153.256(d), and *Pajooh*'s interpretation of it, limits its application to "judgment creditors," not court-appointed receivers.

There are also exceptions to that general rule. A charging order's purpose is to prevent a judgment creditor from disrupting "an entity's business by forcing an execution sale of the partner's or member's entity interest to satisfy a debt of the individual partner or member." *Heckert*, 2017 WL 5184840, at *8. When that purpose "has not come into play," a charging order is not a judgment creditor's "exclusive remedy." *Id.*; *see also Jiao v. Xu*, 28 F.4th 591, 600 (5th Cir. 2022) (affirming turnover of membership interest because "the reasoning behind requiring a charging order as the exclusive remedy is inapposite" (internal quotations and citations omitted)). Such is the case when the limited partnership or limited liability

company is not an "operating business," as a non-operational business cannot have its operations disrupted. *Heckert*, 2017 WL 5184840, at *9; *see also id.* at *8 (collecting other examples of exceptions).

This exception applies here because it is undisputed that WC 4th merely holds commercial property and is not an operating business, and there is nothing in the record establishing otherwise. Appellant.Br.1 (asserting that WC 4th "is a single-purpose real estate entity that owns valuable commercial property in downtown Austin"); CR.2846-49 (WC 4th's bankruptcy petition describing its business as "Single Asset Real Estate"). The *Heckert* court blessed the appointment of a receiver over a judgment debtor's (read "World Class") membership interests in an LLC (read "WC 4th and Colorado GP, LLC," via World Class Real Estate, LLC) that was the general partner of a non-operating limited partnership (read "WC 4th"). *See Heckert*, 2017 WL 5184840, at *7-9. That is this case. The trial court did not abuse its discretion in rejecting the WC Parties' motion for new trial and severing the dismissed claims.

C. *The Harris County court's stay pending settlement has no effect on the Receiver's actions, which preceded the stay.*

The WC Parties erroneously contend that the Harris County court's October 6, 2022 stay of the Receiver's collection efforts renders the Receiver's actions in this litigation improper. Appellant.Br.24-25. That stay, however, was imposed months after all of the Receiver's challenged actions in this lawsuit. *Compare* CR.2663

(October 2022 stay), *with* CR.1873-82, 1887-90, 1939-43. And the stay was entered only because World Class agreed to a multi-million dollar settlement of the Princeton litigation, after the settlement and other events in this case below played out. *See* RR.13; App.D at 1-2. And even after that stay was entered, the First Court of Appeals still—at World Class's urging—reviewed the Receivership Order and affirmed it in its entirety. *See Great Value Storage*, 2023 WL 3010773, at *1; App.D at 1-2. The October 2022 stay cannot retroactively invalidate any of the actions involved in this suit, and the WC Parties identify no case law supporting any other result.

The WC Parties also imply that an earlier stay of the Receivership Order by the First Court of Appeals renders the trial court's signing of orders on the Receiver's joint motions invalid. *See* Appellant.Br.19 (discussing December 2021 stay); CR.1907-08. But that stay order (which was lifted weeks after entry) merely precluded the Receiver from "acting pursuant to the [Receivership Order] during the pendency of this stay order." CR.1913. Again, none of the Receiver's challenged actions were taken during that stay. And even if they had been, the First Court of Appeals' temporary stay would *not* have prevented the trial court in this suit from signing the orders pending before it at that time. *See, e.g.*, *In re Reynolds*, No. 14-10-00951-CV, 2010 WL 3872100, at *2 (Tex. App.—Houston [14th Dist.] Oct. 5, 2010, orig. proceeding) (mem. op.) (per curiam) (where order "specifically stayed

only [a] sanctions order" in a property dispute, trial court "did not violate the stay by ruling" on a summary judgment motion in a related suit for custody of children).[7]

The stay orders the WC Parties reference were not in place when the Receiver took the challenged actions, and they did not affect the trial court's ability to rule on the motions then-pending before it. The trial court could not therefore have abused its discretion in doing so by denying the WC Parties motion for new trial and severing the dismissed claims.

[7] WC 4th also argues in a footnote that World Class "superseded the Harris County District Court judgment on November 24, 2021." Appellant.Br.20 n.8. WC 4th cites to nothing in the record that supports that assertion, and it is factually inaccurate. The First Court of Appeals ordered World Class and its affiliate in the Harris County suit to return to the Harris County trial court for a determination of an appropriate bond amount. CR.2029-30. World Class and its affiliate ignored that instruction and "did not comply with [the First Court of Appeals'] order." CR.2029-30. Instead, World Class posted a nominal $100 deposit purportedly in lieu of a supersedeas bond. CR.2029-30. The Harris County court rejected that bonding effort, making it clear that World Class had not posted sufficient bond in compliance with the First Court of Appeals' orders, and enjoined World Class "from dissipating or transferring assets to avoid satisfaction of the judgment." CR.2031-32. Indeed, in its recent opinion affirming the Receivership Order on direct appeal, the First Court of Appeals reiterated that the appellants there had "failed to comply with [the] court's prior order to obtain from the trial court a determination concerning supersedeas." *Great Value Storage*, 2023 WL 3010773, at *7.

PRAYER

For the foregoing reasons, Appellee Colorado Third Street, LLC respectfully requests that the Court affirm the trial court's orders granting the Joint Motion to Release Funds, the Joint Motion to Dismiss, and the Joint Motion to Sever and the trial court's order denying World Class Capital Group, LLC and WC 4th and Colorado, LP's Motion for New Trial. Appellee also prays for all other relief to which it is entitled.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the Brief of Appellee was served on the following via eFileTexas.gov on May 17, 2023:

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CERTIFICATE OF COMPLIANCE

This brief complies with the length limitations of TEX. R. APP. P. 9.4(i) because this brief consists of 7,496 words, excluding the parts of the brief exempted by TEX. R. APP. P. 9.4(i)(1).

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TAB B

CAUSE NO. D-1-GN-20-004259

COLORADO THIRD STREET, LLC Plaintiff, vs. NATIN PAUL, AND WORLD CLASS CAPITAL GROUP, LLC Defendants	§	IN THE DISTRICT COURT
WC 4TH AND COLORADO, LP. Intervenor – Plaintiff vs.	§	OF TRAVIS COUNTY, TEXAS
COLORADO THIRD STREET, LLC et al Intervenor-Defendants	§	126TH JUDICIAL DISTRICT

WORLD CLASS CAPITAL GROUP, LLC's and WC 4TH AND COLORADO, LP MOTION TO VACATE AGREED ORDER

SWORN MOTION TO SHOW AUTHORITY OF KRETZER & VOLDBERDING, P.C., SETH KRETZER, AND JAMES W. VOLDERBING TO REPRESENT WORLD CLASS CAPITAL GROUP, LLC and WC 4TH AND COLORADO, LP

MOTION TO VACATE SETH KRETZER'S ACTIONS FOR LACK OF STANDING OR CAPACITY,
AND
MOTION FOR RULE 13 SANCTIONS

World Class Capital Group, LLC, Defendant and WC 4th and Colorado, LP Intervenor Plaintiff (collectively "**Movants**") move the Court to vacate and nullify the Agreed Order Granting Joint Partial Motion to Dismiss Certain Claims with Prejudice signed on March 21, 2022 by Judge Aurora Martinez Jones, in the above styled and numbered cause and hereby requests under Texas Rule of Civil Procedure 12 that Seth Kretzer and KRETZER & VOLDBERDING, P.C. ("**Attorneys**")

show their authority to represent and act for Movants and that, upon their failure to prove this authority, their actions be stricken and vacated:

I. Factual Background

1. In early 2021, judgment was entered against Great Value Storage LLC ("**GVS**") and World Class Capital Group, LLC ("**WCCG**") in Cause No. 2019-18855, *Princeton Capital Corp. v. Great Value Storage LLC, World Class Capital Group, LLC, and Natin Paul*, in the 165th Judicial District of Harris County, Texas (the "**Princeton Suit**").

2. In June 2021, GVS and WCCG appealed the judgment in the Princeton Suit. The appeal is pending in the First Court of Appeals as Case No. 01-21-00284 ("**GVS Appeal**"). In November 2021 WCCG made a cash deposit in lieu of a Supersedes Bond. The Deposit is good and sufficient under Texas law and suspends collection efforts. (See Clerk of Court's Certificate Exhibit 2)

3. In September 2021, the trial court in the Princeton Suit appointed Seth Kretzer ("**Receiver**") as a post-judgment turnover receiver for WCCG and GVS under Texas Civil Practices & Remedies Code § 31.002 ("**Receiver Order**" attached as Exhibit 1). GVS and WCCG also appealed the Receiver Order and asked the First Court of Appeals to grant an emergency stay of the Receiver Order, which the First Court did on October 26, 2021, but stayed the appeal of the Receiver Order for GVS and remanded the appeal to determine whether appellee's rights would be adequately protected by supersedeas or another order made under Rule 24 (Tx Rules App. Proc., Rule 29.3). The First Court of Appeals asked GVS to file a status report on the remand on November 15, 2021.

4. On November 15, 2021, GVS sent a status report to the First Court of Appeals, which then withdrew its temporary stay on November 18, 2021. On November 16, 2021, however,

GVS had already stayed enforcement of the underlying judgment as to GVS by filing a cash deposit in lieu of bond, which likewise stayed the Receiver's ability to act against GVS. WCCG has now also filed a cash deposit in lieu of bond to supersede the judgment against it and stay enforcement of the underlying judgement as to WCCG. Tex. R. App. P. 24.1(f); *e.g., In re L&S Pro-Line, LLC*, Cause No. 09-21-00174-CV, 2021 WL 4312981, at *3 (Tex. App.—Beaumont, Sept. 23, 2021, no pet. h.) (orig. proceeding) (mem. op.) ("The filing of a cash deposit in lieu of a bond in an amount supported by an affidavit of net worth supersedes the judgment and all enforcement efforts must cease.").

5. Therefore, the Receiver as of today has no current authority to seek enforcement of the WCCG or GVS judgment by acting in this case. The judgment debtors have stayed any enforcement of the judgment by superseding the underlying judgment that supports the Receiver's actions.

6. Despite that the final judgment in the Princeton Suit is on appeal and has been superseded, Kretzer improperly and illegally in his capacity as Receiver, attempted in interfere in this suit on behalf of third parties, namely WC 4th and Colorado, LP.

7. Movants also ask this Court to disqualify the Attorneys and any all actions of the receiver against Movants because, under basic Texas law on charging orders, the Receiver has never had authority to act on behalf of Movants nor hire counsel for Movants and so the Attorneys have always lacked authority to represent Movants. Movants also ask the Court to vacate any actions taken by the Receiver because he lacks authority, standing, and capacity to act for the same reason.

II. Motion to Show Authority

A. The Attorneys bear the burden to show they have authority to represent Movants.

8. Texas Rule of Civil Procedure 12 "allows a party to argue before the trial court that the law suit is being prosecuted or defended without authority." *Boudreau v. Fed. Tr. Bank*, 115 S.W.3d 740, 741 (Tex. App.—Dallas 2003, pet. denied). "The challenged attorney must appear before the court and show his authority to act." *Id.* At the hearing on the motion, the "burden of proof is on the challenged attorney" to show authority to act on behalf of the client. *Id.* The "main purpose behind the rule" is that a person has a right to know who authorized the attorney's actions or suit. *Id.*

9. To meet this burden, a challenged lawyer must show that he was retained by a client representative with the authority to hire him for this case. *See Candle Meadow Homeowners Ass'n v. Jackson*, 2018 WL 6187616, at *3–4 (Tex. App.—Dallas Nov. 27, 2018, no pet.). A lawyer lacks authority if a representative without authority hired him. *See id.* (affirming trial court's ruling that attorney lacked authority where board of directors did not authorize lawsuit); *Square 67 Dev. Corp. v. Red Oak State Bank*, 559 S.W.2d 136, 138 (Tex. Civ. App.—Waco 1977, writ ref'd n.r.e.) ("It is our view that under these statutes the president of a corporation is not authorized to employ an attorney to conduct litigation for the company absent express authority or implied authority . . .").

10. "If the challenged attorney fails to show authority, the trial court must refuse to permit the attorney to appear in the cause and must strike the pleadings if no other authorized person appears." *Boudreau*, 115 S.W.3d at 741.

B. The Attorneys cannot show they have authority because the Receiver lacked authority to hire them.

11. Kretzer & Voldberding, P.C., the self-proclaimed new attorneys for Movants can prove their authority only if the person hiring them (Kretzer as Receiver for WCCG) had authority to act for Movants. *See Candle Meadow*, 2018 WL 6187616, at *3–4; *Square 67*, 559 S.W.2d at 138. Because the Receiver retained the Attorneys, the Attorneys must now show that the Receiver had authority to hire them as Movants' counsel, or at a minimum that they retain such authority. *See id*. They cannot meet this burden.

12. The Receiver grounds his authority to manage, operate, and hire counsel for Movants by his appointment as a turnover receiver by the trial court in the Princeton Suit. (Exhibit 1) He believes that, as receiver of WCCG, he is empowered to direct any entity, including WC 4TH AND COLORADO, LP that he falsely claims are (i) owned by WCCG or (ii) for which WCCG is the managing member or general partner. See Exhibit 3 filed in this case. Even if this were true, which it is not, the Receiver misunderstands black letter Texas law.

13. A receiver appointed under the turnover statute exists only to help a judgment creditor collect on its judgment. Tex. Civ. Prac. & Rem. Code § 31.002(a)–(b). Thus, his powers are not unlimited. Rather, "[t]he receiver's powers should be limited to those necessary to fulfill the duties set out in the turnover statute." *Blount v. Hibernia Nat'l Bank*, 1991 WL 237824, at *5 (Tex. App.—Dallas Oct. 23, 1991, no writ) (comparing turnover receiver's lesser authority to receiver under Texas Property Code and holding, "Likewise, the [turnover] order exceeds the scope of the statute by giving the receiver all powers and authority of a trustee under the Texas Trust Code."). Inexplicably, Kretzer claims to have full trustee powers.

14. One thing a receiver may not do, however, is seize, manage, operate, or otherwise "participate in" a judgment debtor's interest in a general partnership, limited partnership, or limited liability company. *Pajooh v. Royal W. Investments LLC, Series E*, 518 S.W.3d 557, 562 (Tex.

App.—Houston [1st Dist.] 2017, no pet.). To be clear, "imposing a receivership and turnover order" over interests in a limited partnership or limited liability company is an abuse of discretion. *Id*. at 565–67. The receiver is instead limited to obtaining a charging order and "monitor[ing] partnership distributions [to] effectuate a charging order." *Pajooh*, 518 S.W.3d at 567. Such is the case even when the judgment debtors own 100% of the partnership or LLC. *See generally id*.

15. This is, of course, because Texas has implemented statutes making charging orders "the **exclusive** remedy by which a judgment creditor of a member [or partner] or of any other owner of a membership [or partnership] interest may satisfy a judgment out of the judgment debtor's membership [or partnership] interest." Tex. Bus. Orgs. Code §§ 101.112 (LLC), 153.256 (LP), 152.308 (general partnership) (emphasis added).

16. Texas law's prohibition on judgment creditors and their turnover receiver's seizing and managing equity interests means that the Receiver lacked authority to hire the Attorneys. As a result, the Attorneys as a matter of law cannot show their authority to represent Movants, and they must be forever barred from appearing in this case on that basis.

C. WCCG Does Not Own or Control Movants

17. Even if that wasn't black letter law, Kretzer and his attorneys still cannot meet their burden to show that the Receiver Order gives them any authority to act for Movants in this case. In their notice of appearance, the Receiver and his law firm claim, without evidence, that WC 4th and Colorado, LP is a subsidiary of WCCG. (See Exhibit 3, Receiver's Notice of Appearance). Kretzer and his attorneys make these outlandish, false claims without any evidence to back up their statements. And they cannot, because WC 4th and Colorado, LP is not owned by WCCG, and is not managed or controlled by a general partner or member owned by WCCG. Another burden that Kretzer and his attorneys cannot meet.

III. Motions to Vacate Receiver's Actions for Lack of Standing or Capacity and Strike All Pleadings in This Case by the Receiver Appointed Attorneys

18. A litigant must have both standing and capacity. *Austin Nursing Ctr., Inc. v. Lovato*, 171 S.W.3d 845, 848 (Tex. 2005). "[S]tanding focuses on whether a party has a sufficient relationship with the lawsuit so as to have a justiciable interest in its outcome, whereas the issue of capacity is conceived of as a procedural issue dealing with the personal qualifications of a party to litigate." *Id.* at 849 (internal quotations omitted).

19. "The standing inquiry focuses on the question of who may bring an action." *Vernco Constr., Inc. v. Nelson*, 460 S.W.3d 145, 149 (Tex. 2015) (internal quotation omitted). "A plaintiff has standing when it is personally aggrieved, regardless of whether it is acting with legal authority." *Austin*, 171 S.W.3d at 849. Capacity is closely related to standing. Capacity asks if a party has authorization and "personal qualifications" to sue. *Austin*, 171 S.W.3d at 849. The Court may consider both pleadings and outside evidence. *John C. Flood of DC, Inc. v. SuperMedia, L.L.C.*, 408 S.W.3d 645, 650 (Tex. App.—Dallas 2013, pet. denied).

20. Whether couched as a capacity or standing issue, this is clear: the Receiver lacks authority to retain counsel for WC 4th and Colorado, LP or act for them in this case. Typically, when a lawyer acts without authority, the pleadings of the party he represents are stricken unless a lawyer with authority appears that adopts those pleadings. *Boudreau*, 115 S.W.3d at 741; *Kinder Morgan SACROC, LP v. Scurry County*, 622 S.W.3d 835, 846 (Tex. 2021) ("While Rule 12 requires the trial court to dismiss counsel who fails to show authority to prosecute or defend the proceeding, pleadings filed by any such counsel are not nullified and may only be stricken if no person who is authorized to prosecute or defend appears.").

21. As a result, Movants' undersigned counsel asks the Court to strike and vacate the filings and actions of the Receiver related to this case, including any proposed or actual settlement agreements with Defendants. Alternatively, Movants' undersigned authorized counsel should be permitted to contest and withdraw every action and filing by the Receiver and the Attorneys.

III. Motion for Rule 13 Sanctions

22. The Receiver has extensive experience acting as a turnover receiver, as emphasized in his filings. His experience has no doubt taught him as a Receiver and as Attorneys that represent him that their actions exceed their authority by a factor of ten. Yet they persist. They persist in the face of supersedeas of the judgment giving them the right to conduct collection efforts. They persist, although their acts are contrary to black letter law, and they persist even though the Movants are not owned by, managed or controlled by WCCG.

23. Texas Rule of Civil Procedure 13 prohibits attorneys from filing pleadings, motions, or other papers that are groundless and brought in bad faith. When, as here, bad faith motions are filed, the Court is empowered to sanction the lawyer who signs then and the represented party. Movants ask the Court to sanction both the Receiver and Attorneys, who are both acting in gross violation of their ethical duties.

IV. Prayer

The Receiver lacks authority to hire the Attorneys to act for Movants. As a result, the Attorneys should be disqualified, their filings should be stricken, and the Receiver's actions should be vacated, including any attempts at ill- conceived settlements with Defendants when they should be representing the interests of the Movants even if they had rights. Additionally, both the Attorneys and the Receiver should be sanction for their gross disregard for Texas law and for leading this Court down a path to mandamus. Movants thus pray this Court grants their motion,

strikes all their filings, vacates actions that impair Movants' rights in this case, awards them reasonable attorney's fees, and for any other relief to which they are entitled.

Respectfully submitted,

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COUNSEL FOR WORLD CLASS CAPITAL GROUP, LLC

CERTIFICATE OF SERVICE

I hereby certify that I have caused a true and correct copy of the above foregoing document to be served upon all lawyers for all parties to this lawsuit in accordance with Rule 21a of the Texas Rules of Civil Procedure electronically by transmission to an electronic filing service provider for service through the state's electronic filing manager, email, and/or facsimile on this 18th day of April, 2022.

Manfred Sternberg

JURAT

My name is Natin Paul, I am over the age of 18 years old and my address is 814 Lavaca Street, Austin, Texas 78701. I declare under penalty of perjury that every statement in the foregoing Motion to show Authority is within my personal knowledge and is true and correct.
Executed in Travis County, State of Texas, on April 18, 2022.

DISTRICT COURT OF TRAVIS COUNTY TEXAS

Declarant – Natin Paul

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Filing Description: Appellant's Motion for Rehearing
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