IN THE DISTRICT COURT OF APPEAL OF FLORIDA, THIRD DISTRICT

COHNREZNICK LLP, et al.,

Petitioners,

vs.

NEIL LURIA, etc., et al.,

Respondents.
_____/

CASE NO. 3D22-2090

L.T. CASE NO. 2020-27111-CA-01

RESPONSE TO PETITION FOR WRIT OF CERTIORARI

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INTRODUCTION

This case arises from the fallout over an elaborate fraud involving the sale of mobile solar generators. Respondents—the Victim Funds—seek over $2 billion in damages they suffered from the scheme.[1] The Complaint alleges fraudulent and negligent misrepresentation, aiding and abetting fraud, and violations of the Florida Deceptive and Unfair Trade Practices Act.

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[1] Respondents include both funds in receivership and funds that are not. **Neil Luria** acts as **Receiver** for the following investment funds: Solar Eclipse Investment Fund **III**, LLC; Solar Eclipse Investment Fund **IV**, LLC; Solar Eclipse Investment Fund **V**, LLC; Solar Eclipse Investment Fund **VI**, LLC; Solar Eclipse Investment Fund **X**, LLC; Solar Eclipse Investment Fund **XI**, LLC; Solar Eclipse Investment Fund **XII**, LLC; Solar Eclipse Investment Fund **XV**, LLC; Solar Eclipse Investment Fund **XVI**, LLC; Solar Eclipse Investment Fund **XVII**, LLC; Solar Eclipse Investment Fund **XVIII**, LLC; Solar Eclipse Investment Fund **XIX**, LLC; Solar Eclipse Investment Fund **XXI**, LLC; Solar Eclipse Investment Fund **XXII**, LLC; Solar Eclipse Investment Fund **XXIII**, LLC; Solar Eclipse Investment Fund **XXIV**, LLC; Solar Eclipse Investment Fund **XXVI**, LLC; Solar Eclipse Investment Fund **XXVIII**, LLC; Solar Eclipse Investment Fund **XXIX**, LLC; Solar Eclipse Investment Fund **XXX**, LLC; Solar Eclipse Investment Fund **XXXI**, LLC; Solar Eclipse Investment Fund **XXXIII**, LLC; ***and*** Solar Eclipse Investment Fund **XXXIV**, LLC ("**Receiver Funds**"). The remaining Respondents are Solar Eclipse Investment Fund **VII**, LLC; Solar Eclipse Investment Fund **VIII**, LLC; Solar Eclipse Investment Fund **XIV**, LLC; Solar Eclipse Investment Fund **XXVII**, LLC; Solar Eclipse Investment Fund **XXXII**, LLC; and Solar Eclipse Investment Fund **XXXV**, LLC ("**Non-Receiver Funds**"). We refer to the Respondents collectively as the "**Victim Funds**."

The Victim Funds only sue Petitioners in Florida. But, in May 2021, after a non-evidentiary hearing, the circuit court granted Defendants' joint motion to stay the proceedings until resolution of two California cases—one in state court and one in federal court. The Victim Funds were never parties in the Federal Case and had only asserted claims—now settled and dismissed—against two defendants in California state court, neither of which was a defendant in this Florida case. The Victim Funds now assert no claims in California at all.

The original stay order prohibited the Victim Funds from pursuing their *only* claims against Petitioners. The Victim Funds sought review in this Court. But after briefing was complete, the Parties stipulated that discovery obtained in the California state case could be used in this case. In exchange, the Victim Funds agreed to dismiss their petition. They did not, however, agree to forego their right to seek reconsideration of the stay. Petitioners agreed to the Stipulation anyway.

That was a year ago. But after the Respondents' case had been stayed for over a year, Respondent Neil Luria moved to lift it. At an

evidentiary hearing, the Parties were given an opportunity to present evidence about the propriety of lifting the stay. The Victim Funds submitted evidence, including witness testimony. Petitioners presented none. Some months later, the circuit court lifted the stay. After a stay of *a year-and-a-half*, the Victim Funds are now finally able to pursue their only claims against Petitioners.

Lifting the stay after eighteen months of substantial prejudice to the Victim Funds does not depart from the essential requirements of law. And Petitioners cannot show that lifting the stay results in material injury to them. Instead, maintaining the stay indefinitely would irreparably harm the Victim Funds, none of which are part of either of the California actions. The Petition should be denied.

STATEMENT OF RELEVANT FACTS[2]

For years, two affiliated companies purportedly in the solar-energy business—DC Solar Solutions, Inc. ("DC Solutions"), and DC Solar Distribution, Inc. ("DC Distribution") (together "DC Solar")—

[2] The Victim Funds state the facts as alleged in the Amended Complaint, which Petitioners addressed in their reply in support of their motion to stay and at the hearing on that motion, and as found in the order lifting the stay based on unrebutted testimony at the evidentiary hearing.

perpetrated a massive fraud scheme (A. 1183–84, 1199–01).[3] DC Solutions purportedly manufactured mobile solar generators ("MSGs"), while DC Distribution purportedly leased back the MSGs and collected lease payments from third-party lessees (A. 1199–00).

The Victim Funds are limited liability companies (A. 1183–84, 1187). Certain investing corporations ("Investors") owned a 99% interest in one or more Victim Funds, but each fund was a separate corporate entity, most managed then by Carl Jansen, a Florida resident (A. 1188, 1194–95, 1201–08, 1221–23).[4]

DC Solar marketed the MSGs to the Victim Funds as an environmentally friendly investment, citing strong demand for MSGs (A. 1199–1200). Petitioners, Defendants below, consist of financial

[3] "A. #" refers to Petitioners' Appendix, which accompanied the petition. "S.A. #" refers to Respondents' Supplemental Appendix, which accompanies this Response. "Pet. #" refers to the Petition.

[4] The Investors are Sherwin-Williams Company, GEICO Corporation, Progressive Casualty Insurance Company, United Bank, N.A. (now People's United Bank), United Financial, Inc. (now People's United Financial), East West Bank, East West Bancorp, Inc., ADHI-Solar, LLC, DV VNB Community Renewables Fund, LLC, DV VNB Community Renewables Fund III, LLC, and Pardee Solar 1, LLC (A. 1209–10). Each Investor owned a 99% interest in at least one Victim Fund (*id.*).

advisors, tax advisors, consultants, accountants, and purported former DC Solar lessees (A. 1183–85). They either marketed the MSGs or confirmed to the Victim Funds the existence and viability of DC Solar's operations and revenues, the number of MSGs and their value, and the number of DC Solar customers (A. 1183–86, 1199–1200, 1211–65).

The MSGs, which owners could purportedly lease out for $900 a month, were purportedly worth $150,000 each (A. 1200). The Victim Funds paid DC Solutions $45,000 for each MSG—about 30% of the purchase price—and executed a promissory note for the remaining amount owed (*id.*). Based on the information they received from DC Solar and Petitioners, the Victim Funds expected to repay the promissory notes with the revenue generated from the MSG leases, which DC Distribution would manage (*id.*). Each Victim Fund spent between $15 million to over $342 million on MSGs (A. 1201–09). Collectively, they bought about 13,900 purported MSGs with a represented value of over $2 billion (A. 1183–84).

In February 2019, the bottom fell out. DC Solar filed for Chapter 11 bankruptcy (A. 1266) and a federal investigation

uncovered the fraud (A. 1265). The Victim Funds soon learned that over half of the MSGs sold to the Victim Funds—9,700 MSGs—never existed, and that those that did exist were worth much less than Petitioners had represented (A. 1183–84, 1200). And, despite what Petitioners had told them, there was virtually no market for the MSGs. Even the lease agreements that DC Distribution purportedly managed did not exist (*id.*). Instead, DC Solar's owners exploited the Victim Funds' money to orchestrate a fraud scheme for their personal gain (A. 1200–01). The Petitioners facilitated their scheme (A. 1183–86, 1199–1200, 1211–65).

I. The Fallout from the $2 Billion Fraud Scheme and the Ensuing Litigation

Predictably, DC Solar's $2 billion fraud engendered multiple lawsuits. This one ("Florida Case") and the two filed in California at issue ("California Cases") are three of them. Nevertheless, as we show below, the *only* case in which the Victim Funds assert claims against Petitioners is this one.

A. The L.A. County Case

In December 2019, the Investors sued the four Petitioners plus ten other defendants ("Eight California Defendants") in Los Angeles

County Superior Court ("L.A. County Case") (A. 148–49, 153, 156–57).[5] Plaintiffs amended the complaint three times, making the Third Amended Complaint the operative one ("L.A. County Complaint") (A. 3527–33).

The Investors—*not* the Victim Funds—brought 31 separate counts, some individually and others with fellow Investors, alleging claims against various iterations of groups of Petitioners and the Eight California Defendants: claims for fraudulent, negligent, and intentional misrepresentation; aiding and abetting fraud; and breach of fiduciary duty (A. 3530–33).[6] They also asserted violations of six states' securities laws (A. 3532–33). The Victim Funds are *not* plaintiffs in *any* of those counts against Petitioners (A. 3527–29).

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[5] The original *Ten* California Defendants consisted mainly of law firms and financial-services firms: Nixon Peabody LLP, Foley Lardner LLP, Bryan Cave Leighton Paisner LLP, Miles & Stockbridge P.C., Fallbrook Credit Finance LLC, Fallbrook Capital Securities Corporation, Marshall & Stevens, Inc., Radius GGE, Inc., Montage Services, Inc., and Forrest David Milder (A. 3528–29). Because two of those defendants have since been dismissed, s*ee infra* n.7, we refer to them as the "Eight California Defendants."

[6] The counts totaled 36 before dismissal of certain defendants. *See infra* n.7, 9.

The Victim Funds brought only four counts—all against the law firm of Nixon Peabody and one of its partners (A. 3531). Neither one was a defendant here (A. 1181–82). And both have since settled (S.A. 26).[7]

In sum, none of the Victim Funds asserts any claims in the L.A. County Case.

B. The Federal Case

On the same day as the L.A. County Complaint was filed, another victim of the fraud—Solarmore Management Services, Inc.—filed a single-plaintiff complaint in the United States District Court for the Eastern District of California ("Federal Case") (A. 384–85). Solarmore later amended the complaint twice, making the Second Amended Complaint the operative one ("Federal Complaint") (A. 4720–21).

[7] This Court can consider and take judicial notice of the Receiver's Notice of Filing his declaration notifying the circuit court of this settlement, filed with the circuit court only days after Petitioners filed their Petition. *See* § 90.202(6), Fla. Stat. ("A court may take judicial notice of . . . [r]ecords of any court of this state or of any court of record of the United States or of any state, territory, or jurisdiction of the United States."); *Velazquez v. Rosen*, 107 So. 3d 1178, 1179–80 (Fla. 3d DCA 2013) (taking judicial notice of new orders and developments after oral argument on appeal).

Solarmore—a corporation wholly owned by Carl Jansen—is the former manager, and a member, of twenty Victim Funds (A. 4727–50). It retained a 1% ownership interest in certain funds and was promised a 95% interest in them (A. 4747). In the Federal Complaint, Solarmore asserted claims against three of the four Petitioners plus *40* other defendants ("Forty Federal Defendants") (A. 4723–24, 4732–33, 4736).[8]

The Federal Complaint asserts 28 separate claims, including multiple counts of federal RICO violations, civil conspiracy, fraudulent and negligent misrepresentation, and several other causes of action (A. 4723–24). No Investor and no Victim Fund is a party in the Federal Case (A. 4720–21).

[8] The number of defendants sued in the Federal Case initially totaled 45, including three of the Petitioners and two of the Settlement Defendants. *See infra* n.9. The Federal Complaint did not assert claims against CohnReznick LLP, even though it is mentioned (A. 4723–24, 4732–33, 4736). The Forty Federal Defendants include law firms, financial-services firms, and individuals, such as the owners of DC Solar (*id.*). Of those 40, 36 are unique to the Federal Case and only four overlap with the Eight California Defendants: Fallbrook Capital Securities Corporation, Marshall & Stevens, Inc., Radius GGE, Inc., and Montage Services, Inc. (A. 3527–29). *None* overlaps with Petitioners here.

C. The Florida Case

For years, Carl Jansen, a Florida resident, managed many of the Victim Funds (A. 1201–08). In July 2020, the circuit court appointed Petitioner Neil Luria as Receiver for the Receiver Funds (A. 519–36, 538–51). After investigating the MSG transactions and leases, Luria discovered that many were completed in Florida (A. 1186–88); and as Receiver for the Receiver Funds, he—along with the six Non-Receiver Funds—filed the complaint below in December 2020 (A. 34–35). The Victim Funds amended the complaint in March 2021, making the First Amended Complaint the operative one (A. 1181–82).

The Victim Funds bring the eight remaining claims in the Complaint, including claims under the Florida Deceptive and Unfair Trade Practices Act (FDUTPA) and fraudulent and negligent misrepresentation counts against all defendants (A. 1266–97).[9] They also allege aiding and abetting fraud against Ahern Rentals, Inc. (A. 1293–95). This is the only court in which the Victim Funds have

[9] Defendants Barry Hacker, Novogradac & Company LLP, and Vistra International Expansion (USA) Inc. ("Settlement Defendants") have since settled (A. 4227–47, 4249–66; S.A. 26). Five other counts have settled or have been dismissed (*id.*).

brought claims related to the DC Solar fraud scheme against Petitioners (A. 1181–82; S.A. 25–26; *supra* Statement of Relevant Facts Parts I.A.–I.B.).

II. The Stay Order and the Victim Funds' Petition

In February 2021, Petitioners jointly moved to stay the proceedings below until resolution of both California Cases (A. 128–29). They accused plaintiffs of forum-shopping and claimed that this was the second case plaintiffs had filed "against the same defendants, based on the same allegations arising out of what has become known as the alleged 'DC Solar' Ponzi scheme" (A. 129). They argued that a stay was appropriate primarily based on principles of comity and claim preclusion, insisting that the claims brought by the Investors in California were the same as claims brought by the Victim Funds themselves (A. 129–30, 134–41). The Victim Funds responded that this is the only case in which they have sued these Defendants (A. 553–55); and that, even though the three cases arise from the same fraud scheme, the claims the Victim Funds assert here are distinct from those the Investors and Solarmore assert in the California Cases (A. 555–56).

In April 2021, the circuit court held a non-evidentiary hearing on the Motion (A. 938–39). A few days later, the court in the L.A. County Case denied a motion to stay or dismiss (A. 1970, 1975). The California court held that "[u]nder California law, passive investors do not control or manage LLCs [like the Victim Funds]" (A. 1983–84). The California court did not find that the Victim Funds and the Investors were "closely related" (*id.*). The Victim Funds notified the court below of the order (A. 1969–71).

A. The Stay Order

In May 2021, the trial court issued an order granting the stay motion ("Stay Order") (A. 8). The Stay Order found that: (1) the L.A. County Case was a prior-filed action between the same or substantially similar parties or privies; (2) the subject matter of the L.A. County Case and the subject matter of this case "is practically identical"; and (3) allowing "the parties to litigate both cases simultaneously" would result in "a duplication of resources and a waste of judicial labor" (A. 11). Citing allegations found in both complaints, the court reasoned that a stay of this case was appropriate because the L.A. County Case "would resolve many of the

issues involved" in this case (A. 11, 19). The court did not explain *how* the L.A. County Case would resolve *any* issues in this case or analyze the law of claim- or issue preclusion. In passing, and without elaboration, the court found that the Federal Case is also "substantially similar" to this one (A. 18).

The court ultimately ordered this case "stayed until the completion of both the [L.A. County Case] and [Federal Case]" (A. 20).

B. The Victim Funds Petition This Court to Quash the Stay Order

The Stay Order *indefinitely* prohibited the Victim Funds from prosecuting their only claims against Petitioners in their chosen forum (A. 1139–43). The stay also indefinitely prevented the Receiver from carrying out his duties and winding up the Receiver Funds (*id.*). The Victim Funds thus filed a petition in this Court seeking certiorari relief, Case No. 21-1353 (A. 1116–18). Among other things, the petition noted that this is the only case in which the Victim Funds have brought claims against the Petitioners and that the California Cases will continue for untold years (A. 1142).

The Victim Funds argued that the Stay Order departed from the essential requirements of law because the parties in this case are not

substantially similar to those in the California Cases and Petitioners cannot impute others' claims to the Victim Funds, which are separate entities (A. 1145–55). The Victim Funds also argued that the claims asserted in the Florida Case and the California Cases are not substantially similar (A. 1155–59). Finally, they argued that the Stay Order departed from the essential requirements of law because it was indefinite and undefined (A. 1160–61). We elaborate on these arguments in the argument section below.

C. The Petitioners Agree that Discovery in the L.A. County Case Can Be Used in the Florida Case

After the petition had been fully briefed, the parties executed a stipulation that the Victim Funds would voluntarily dismiss their petition in exchange for the Petitioners' agreement that discovery obtained in the L.A. County Case can be used in this case (A. 2506). The parties "retain[ed] and [did] not waive all other rights" (*id.*). The Victim Funds specifically refused to stipulate away their right to move to lift the stay in the future (*id.*; S.A. 17–18). In exchange for avoiding duplicative discovery, Petitioners accepted the risk that the Victim Funds would move to lift the stay (A. 2506; S.A. 17–18). The Victim Funds dismissed the Petition, but only because the Stipulation

lessened their irreparable harm because it permitted them to obtain discovery related to the general facts of the fraud scheme despite the stay (*id.*).

Discovery in the L.A. County Case proceeded (A. 4830, 4836–37). The Victim Funds also continued negotiating with Defendants and were able to settle with some of them. *See supra* n.8. While the Stipulation lessened some of the harm the Stay Order had caused, after that order had been in effect for over a year, the Victim Funds—and especially the Receiver and the Receiver Funds—could no longer withstand the other irreparable harms the stay continued to cause (A. 2459–61).

Soon after the Victim Funds dismissed their petition, the Victim Funds' receivership expenses increased substantially. Specifically, tax authorities demanded payment (A. 4047, 4067). The Receiver also had to incur significant, but necessary, expenses to protect the Victim Funds' interests in several bankruptcies (A. 4124). To cover the costs and because of the stay, the Victim Funds were forced to settle with certain Defendants below, but at a discount (A. 4069–70). The Stay had become untenable for the Victim Funds.

III. After Eighteen Months, the Circuit Court Lifts the Stay

In July 2022, the Receiver moved to lift the stay (A. 2447). The Receiver argued, in part, that the California Cases would not resolve any issues in the Florida Case below, that the Victim Funds are separate entities to which the Investors' claims cannot be imputed, and that the stay prevented him from carrying out his duties as Receiver (A. 2449–51).

On July 27, 2022, counsel for the Victim Funds noticed the evidentiary hearing on the motion to lift the stay for "August 19, 2022," so that the Parties could "present evidence and argument to the Court" (S.A. 11). But when the Parties appeared at the hearing over three weeks later, Petitioners claimed that the hearing was not "noticed as an evidentiary hearing" and objected to calling the Receiver as a witness (A. 3966). Petitioners argued that they needed "notice" to be able to "call any counterwitness" they wished and to "be prepared to cross-examine" the Receiver (*id.*). The circuit court continued the hearing, allowing Petitioners to do just that (*id.*).

Two weeks later, in September 2022, the circuit court held the evidentiary hearing (A. 4039). Only the Receiver testified (A. 4044–

4157). Despite Petitioners' arguments two weeks earlier about counterwitnesses, not one of the Petitioners presented witnesses (*id.*; S.A. 7, 10). Nor did Petitioners submit substantive evidence (A. 4044–4157). Both parties did present legal argument (A. 4133–57). After the hearing, both sides filed the legal authorities on which they relied at the hearing (A. 3999, 4189) and Defendants filed a post-hearing memorandum (A. 4389, 4683).

In November 2022—*after an eighteen-month-long stay*—the circuit court issued the order lifting the stay ("Lift Order"). The Lift Order acknowledged that there were two California cases, including the Federal Case in which Solarmore was the only plaintiff (A. 24–25). The court found that the Victim Funds' claims are independent of the Investors' claims because they are separate legal entities that have "no control over the Investors' claims" (A. 30–31). Crediting and quoting the Receiver's testimony, the court also found that the stay is harming and prejudicing him and the Receiver Funds, in part because the Victim Funds continue to incur millions of dollars in expenses (A. 29–31). The court cited specific case law and legal authority "warranting a lifting of the stay" (A. 25–27).

ARGUMENT

This Court grants certiorari relief only when a non-final order (1) cannot be remedied on postjudgment appeal, (2) results in material injury for the rest of the case, and (3) departs from the essential requirements of law. *See, e.g.*, *Farach v. Rivero*, 305 So. 3d 54, 56 (Fla. 3d DCA 2019). "The first two prongs of the analysis are jurisdictional." *Id.* (quoting *Dade Truss Co., Inc. v. Beaty,* 271 So. 3d 59, 62 (Fla. 3d DCA 2019)).

As we show below, the Petition should be dismissed because (I) Petitioners fail to show that lifting the stay would result in *any* material injury, and certainly no greater injury than the injury that maintaining the stay would inflict on the Victim Funds. Even if the Petition is not dismissed, the Petition should be denied on the merits because (II) the Lift Order satisfies the essential requirements of law. *See Farach*, 305 So. 3d at 56.

I. The Lift Order Will Not Result in Irreparable Material Injury to Petitioners, Warranting Dismissal of the Petition

The Petition should be dismissed because (A) Petitioners have failed to show that the Lift Order will result in material injury to them for the rest of the case that cannot be remedied on postjudgment

appeal; and (B) they certainly cannot show that the harm to them would exceed the harm to the Victim Funds that would result from maintaining the stay.

A. Petitioners Have Not Established that the Lift Order Will Result in Irreparable Injury to Them

Petitioners mention harm to them merely four times and only in passing (Pet. 5, 6, 25, 33). They summarily claim that the Lift Order will "subject [them] to duplicative litigation, needlessly duplicate[] judicial labor, and create[] the risk of inconsistent results" (Pet. 5). Just as sweepingly, they claim, without elaborating, that it "would bring the administration of justice itself into disrepute" (Pet. 33)—strong words for an order that merely allows litigation to proceed. But even after nearly six weeks' notice about the evidentiary hearing on the motion to lift the stay, Petitioners submitted no evidence of the purported harm they would suffer if the stay was lifted (A. 4039–4157).

Petitioners' protest of some amorphous harm ignores that the very Stipulation to which they agreed in exchange for the Victim Funds dismissing the prior petition avoids "duplicative" or "inconsistent" harm (A. 2506). The Stipulation assures that

discovery in the L.A. County Case can be used in the Florida Case (*id.*). And only the L.A. County Court has expended—or will expend—judicial labor in resolving disputes about that discovery (*id.*; A. 4830–4915). The Parties have also kept the circuit court informed of any relevant non-discovery orders and developments in the L.A. County Case (A. 2514, 4220–21).

Thus, Petitioners cannot show that they will suffer any irreparable harm that cannot be remedied on postjudgment appeal. *See Farach*, 305 So. 3d at 56. Meanwhile, as we now show, the Victim Funds would be significantly harmed if the stay persists.

B. An Ongoing Stay Would Inflict Irreparable Injury on the Victim Funds

A continuing stay will result in irreparable injury to the Victim Funds. Indeed, as Florida courts acknowledge, parties "have a right to proceed in their chosen forum, state court, without undue delay." *Harper v. E.I. du Pont de Nemours & Co.*, 802 So. 2d 505, 511 (Fla. 4th DCA 2001). And "there is no adequate remedy for the delay caused by abatement [or stay] after final judgment." *Homeowners Prop. & Cas. Ins. Co. v. Hurchalla*, 171 So. 3d 230, 232 (Fla. 4th DCA

2015) (quoting *Britamco Underwriters, Inc. v. Cent. Jersey Invs., Inc.*, 632 So. 2d 138, 139 (Fla. 4th DCA 1994)).

Here, the Stipulation offered the Victim Funds a short respite from the harm that the Stay Order inflicted on them by allowing them to access discovery produced in the L.A. County Case. They made due for as long as they could, even settling with two defendants (A. 4043, 4060–61, 4100–01). But as the Receiver testified at the hearing, the Stay Order has harmed his ability to maximize settlements and the recovery to the Victim Funds (A. 4069–70, 4119)—not least because they have incurred, and will continue to incur, millions of dollars in administrative expenses and tax liabilities (A. 4047, 4067, 4127). Indeed, to cover rising expenses arising from tax liabilities and from the Receiver's attempts to protect the Victim Funds' interests in several bankruptcy proceedings, the Victim Funds were forced to enter into discounted settlements with certain defendants (A. 4069, 4119). The stay has also prevented the Receiver from carrying out his other duties as Receiver, such as winding up and liquidating the Receiver Funds. *See* § 605.0704(1), Fla. Stat. ("A court in a judicial proceeding brought to dissolve a limited liability

company may appoint [a] receiver[] to wind up and liquidate . . . the limited liability company[.]").

As long as the stay continues indefinitely, the Victim Funds will continue to be irreparably harmed. *See Super Prods., Ltd. Liab. Co. v. Intracoastal Envtl., Ltd. Liab. Co.*, 252 So. 3d 329, 331 (Fla. 2d DCA 2018) (noting that irreparable harm is evident when a "stay is indefinite," leaving plaintiffs "stuck in limbo with no way to pursue its lawsuit"); *see also PS Capital, LLC v. Palm Springs Town Homes, LLC*, 9 So. 3d 643, 646 (Fla. 3d DCA 2009) (disapproving of an order staying execution on a judgment in part because it was "for an indefinite period"). The indefinite stay is particularly harmful because the California Cases—in which no Victim Funds are involved—are likely to continue for years. *See Neale v. Aycock*, 340 So. 2d 535, 536 (Fla. 1st DCA 1976) ("Common experience teaches us that where large sums are involved litigation tends to move slowly and repetitiously.").

The California Cases involve 12 other plaintiffs and 50 other defendants—none of which is part of this case. And the Victim Funds' claims are not proceeding in any other forum. Such

circumstances demonstrate irreparable harm to the Victim Funds if the stay continues. *See Shoemaker v. State Farm Mut. Auto. Ins. Co.*, 890 So. 2d 1195, 1197 (Fla. 5th DCA 2005) ("The stay entered in this case is indefinite and dependent on matters over which [Plaintiff] has no control. When the pending [] matters involving [Defendant] will be resolved is anyone's guess. Consequently, the stay entered here could lead to excessive delay, something not capable of being remedied on direct appeal[.]").

II. The Lift Order Satisfied the Essential Requirements of Law

If this Court does not dismiss the petition, it should deny the petition on the merits because the circuit court did not abuse its discretion and the Lift Order otherwise satisfied the essential requirements of law. *See Farach*, 305 So. 3d at 56. A trial court "has broad discretion to grant or deny a motion to stay a case pending before it." *Verlingo v. Telsey*, 801 So. 2d 1009, 1010 (Fla. 4th DCA 2001). But "stays should be rare[.]" *Cole v. Douglas*, 464 So. 2d 229, 231 (Fla. 4th DCA 1985) ("Florida litigation need not be [as a matter of course stayed] because of a previously-filed action in a federal district court.") (quoting *ITT-Cmty. Dev. Corp. v. Halifax Paving, Inc.*,

350 So. 2d 116, 117 (Fla. 1st DCA 1977)); *see also Vicario v. Blanch*, 306 So. 3d 1098, 1102 (Fla. 3d DCA 2020) ("[A] trial court is not always required to stay proceedings when prior proceedings involving the same issues and the same parties are pending before a court in another jurisdiction.").

Florida courts list several factors courts should consider in deciding whether to stay a case because of an earlier-filed case. *See Sauder v. Rayman*, 800 So. 2d 355, 358 (Fla. 4th DCA 2001) (explaining that a stay requires substantial similarity of *both* parties and actions); *see also Landis v. N. Am. Co.*, 299 U.S. 248, 255–57 (1936) (noting that courts, in deciding on a stay, also consider, among other factors, hardship, complexity of issues, and length of stay); *Friedman v. Heart Inst. of Port St. Lucie, Inc.*, 863 So. 2d 189, 195 (Fla. 2003) (directing courts to *Landis* for guidance on stays); *Office Depot, Inc. v. Marsh & McLennan Cos.*, 937 So. 2d 1139, 1140 (Fla. 4th DCA 2006) (listing other factors courts consider, including the unlikelihood of disposition in the purported first-filed proceedings or in a federal case and whether the case at issue involves unique fact issues that the other cases will not resolve).

As we explain below, the circuit court properly exercised its discretion to lift the stay because (A) the parties in the California Cases are not substantially similar; (B) the claims in the California Cases are also not substantially similar; (C) the stay was indefinite and undefined; and (D) the Lift Order properly considered the hardship the stay has caused the Receiver, the Receiver Funds, and creditors. Finally, (E) the circuit court was not required to address the four cases the Stay Order cited, which do not apply anyway.

A. The Parties in the California Cases Are Not Substantially Similar to Those Involved Here

The Stay Order found that "a previously-filed action was filed in California between the same or substantially similar parties or privies" (A. 11). But the parties in the California Cases are not substantially similar to the ones here (A. 2450–51, 2454–59, 4685–86, 4693–94). As we will show, (1) the Victim Funds no longer assert claims in the California Cases because they settled with the only two defendants they sued in California—defendants who were never parties to the case below; and (2) they are entities separate and distinct from the Investors.

1. The Victim Funds Are Not Parties in the California Cases

A stay below was never appropriate because the Florida Case is the only case in which the Victim Funds have sued Petitioners (A. 231–34, 443, 447–58, 1266–97). But it is certainly inappropriate now because, after settling with Nixon Peabody and its partner, the Victim Funds no longer assert any claims in any court but Florida (S.A. 26). *See, e.g.*, *Regions Bank v. Glendinning*, 960 So. 2d 819, 819 (Fla. 4th DCA 2007) (affirming the denial of a stay in part because petitioner was not a party to the Bahamas case in question).

Apart from the four Petitioners, the L.A. County Case includes 20 other parties: 12 Investor plaintiffs and the Eight California Defendants (A. 231–34). And while Petitioners claim that the Stay Order contained "unimpeachable analysis of the legal and factual factors relating to the stay issue" (Pet. 25), it hardly mentioned the Federal Case (A. 18). Despite staying the case below "until the completion of both the California state and California federal case" (A. 20), the Stay Order never explained why it made sense to stay the Florida Case pending resolution of the Federal Case. It never addressed the 41 other parties involved in the Federal Case—

Solarmore, the only plaintiff, and the Forty Federal Defendants—that have nothing to do with this case (A. 447–58). Thus, the parties in the two California Cases—which together involve 61 other parties not involved here—are not substantially similar to the parties involved here. *See, e.g.*, *Glendinning*, 960 So. 2d at 819 (affirming the denial of a stay in part because petitioner was not a party to the Bahamas case in question); *see also Harper*, 802 So. 2d at 510 (quashing a stay in part because "[n]either all of Petitioners nor all of Respondents [were] parties in the federal actions" and some petitioners had "been forced to await the conclusion of federal actions to which they are not parties, before they [could] prosecute their claims").

The Stay Order was also inappropriate because it ignored the sheer number of parties involved in the California Cases—over five dozen parties not involved here. The parties in the Florida Case cannot be substantially similar to those in the California Cases when one California case involves nearly two dozen additional parties and the other forty-one. *See Navas v. Brand*, 130 So. 3d 766, 769 (Fla. 3d DCA 2014) (approving the trial court's reasoning that "the causes of action and the parties are different between the two suits"); *Brand*

v. Navas, et al., No. 10-601607, at 31 (Fla. 11th Cir. Ct. Sept. 26, 2012) (considering the number of different parties involved in the suit before it and a Costa Rican case, and finding that the parties "differ[ed]" because "only three parties" were the same in the two cases, while the case before it included twenty different parties and the Costa Rican case included six) (order included in Appendix at A. 2044, 2074), *aff'd*, 130 So. 3d 766 (Fla. 3d DCA 2014).

None of the cases on which Petitioners have relied in their briefing regarding the stay involved the sheer number of parties as are involved in the California Cases. *See Roche v. Cyrulnik*, 337 So. 3d 86, 87 (Fla. 3d DCA 2021) (involving only one plaintiff and six defendants in the later-filed action, with only one of those defendants and the one plaintiff involved in the first-filed action); *Kurland v. Hamilton L. Firm, PL*, 319 So. 3d 783, 783–84 (Fla. 3d DCA 2021) (involving the same two parties in both the first-filed case and the later-filed case); *Reliable Restoration, LLC v. Panama Commons, L.P.*, 313 So. 3d 1207 (Fla. 1st DCA 2021) (involving the same four parties in the first-filed case and the later-filed case); *Ocwen Loan Servicing, LLC v. 21 Asset Mgmt. Holding, LLC,* 307 So. 3d 923, 924–25 (Fla. 3d

DCA 2020) (involving only four parties in both the first-filed S.D.N.Y. case and in the Florida case); *OPKO Health, Inc. v. Lipsius,* 279 So. 3d 787, 791 (Fla. 3d DCA 2019) (involving only one set of defendants, OPKO, OPKO's CEO, and other OPKO directors or officers, in multiple cases); *Benihana of Tokyo, Inc. v. Benihana, Inc.*, 129 So. 3d 1153, 1154 (Fla. 3d DCA 2014) (involving only six parties, half of whom were involved in the first-filed case); *Sorena v. Gerald J. Tobin, P.A.,* 47 So. 3d 875, 876–77 (Fla. 3d DCA 2010) (involving only a law firm, the firm's partner, the client who failed to pay his fees, and the client's three business partners); *In re Guardianship of Morrison*, 972 So. 2d 905, 910 (Fla. 2d DCA 2007) (involving duplicative suits to appoint a guardian for an individual and his property); *Hirsch v. DiGaetano*, 732 So. 2d 1177 (Fla. 5th DCA 1999) (involving the same three parties in both the first-filed case and the later-filed case); *REWJB Gas Invs. v. Land O'Sun Realty, Ltd.*, 645 So. 2d 1055 (Fla. 4th DCA 1994) (involving "the same [four] parties" in the later-filed action and in the first-filed declaratory action).

Those cases cannot compare with the scale and magnitude of the California Cases.

Petitioners focus on this Court's decision in *Pilevsky v. Morgans Hotel Grp. Mgmt., LLC,* 961 So. 2d 1032, 1035 (Fla. 3d DCA 2007). But in that case, this Court found the parties similar only because one of the parties was the only one named in the first-filed action and the only additional defendants in the later-filed action were one company's "individual investors and officers." *Id.*

In sum, no judicial efficiency will be gained by waiting until other courts resolve dozens of unrelated claims brought by different plaintiffs against dozens of different defendants. Quite the opposite—it will take years for those cases to conclude. Meanwhile, the Victim Funds' claims would sit on the circuit court's docket for years more. Eighteen months is long enough.

2. The Victim Funds' Corporate Relationship With Investors Does Not Create "Substantial Similarity" Because the Victim Funds Are Separate Entities

Consistent with basic tenets of corporate law, the Lift Order found that the Investors cannot assert the Victim Funds' claims in the L.A. County Case because they are separate legal entities (A. 27). *See* § 605.0108(1), Fla. Stat. ("A limited liability company is an entity distinct from its members."); *Ferro v. ECI Telecom, Inc.*, 314 So. 3d

711, 713 (Fla. 3d DCA 2021) ("Equally well-established is the principle that affiliates, even parent corporations and their wholly owned subsidiaries, constitute separate and distinct legal entities."); *Palma v. South Florida Pulmonary & Critical Care, LLC*, 307 So. 3d 860, 866 (Fla. 3d DCA 2020) (It is a "principle of law deeply ingrained in our legal and economic system that an LLC is an autonomous legal entity, separate and distinct from its members."); *Gasparini v. Pordomingo,* 972 So. 2d 1053, 1055 (Fla. 3d DCA 2008) ("A general principle of corporate law is that a corporation is a separate legal entity, distinct from the persons comprising them.").

Despite the black-letter law, Petitioners want to equate the Investors' claims in the L.A. County Case with the Victim Funds' claims here—without explaining why the Court should disregard the Victim Funds' corporate identities (Pet. 31). They rely on this Court's decision in *Sorena,* but that case involved only one law firm, the firm's partner, the client who failed to pay his fees, and the client's three business partners. 47 So. 3d at 876–77. In the first-filed case, the partner sued his client and the client's business partners; while in the later-filed case the law firm sued one of the client's business

partners. *See id.* The resolution of either case before the other would not have caused inordinate harm because they would be waiting for resolution of issues pertaining only to them. Here, the Victim Funds would have to wait until the various claims *other parties* have filed against not just Petitioners, but the nearly 50 other defendants involved in the California Cases, are resolved.

The Petitioners also refer to the Stay Order's theoretical concerns about duplicative recoveries by the Investors and the Victim Funds (Pet. 19–20). But as courts have noted, the damages for which Defendants are liable in one case can be "reduced by any damages" recovered in another. *Verlingo*, 801 So. 2d at 1010; *see also Rodriguez v. Yount*, 623 So. 2d 618, 619 (Fla. 4th DCA 1993) ("[E]ven if the damages were identical, there is no bar to proceed against a concurrent or subsequent tortfeasor where the prior judgment remains uncollected.").

The circuit court agreed (A. 29–30). The Victim Funds purchased—or at least thought they purchased—MSGs. The Investors did not. The MSG transactions form the basis for the Victim Funds' damages. The Investors' damages are based on their

interests in the LLCs, which include tax losses. *See, e.g.*, *Eckert Cold Storage v. Behl*, 943 F. Supp. 1230, 1234 (E.D. Cal. 1996) ("In the circumstances here, benefit of the bargain damages would give plaintiffs the monetary value of the illusory tax benefits they expected to receive."). Thus the potential for duplicative recoveries is illusory at best.

The Petitioners' argument also fails based on the evidence submitted at the evidentiary hearing. The Victim Funds' Limited Liability Company Agreements, as submitted into evidence at the hearing, provide that "no Member, in its capacity as such, other than the Managing Member will have any right, power or authority to take part in the management or control of the business of . . . the Company, . . . or to bind the Company in any manner whatsoever" (A. 3788, 4066). Petitioners identify no provision under which a Victim Fund agreed to be bound by an Investor's litigation strategy. *See Thews v. Wal-Mart Stores E., Ltd. P'ship*, 210 So. 3d 723, 725 (Fla. 2d DCA 2017) (listing the circumstances under which a nonparty to litigation "may be in privity with a party to the prior action," such as where the nonparty agrees to be bound by the

litigation of others, the parties have a legal relationship, and the nonparty was adequately represented by a party to the suit).

Thus, the Stay Order was unwarranted because the parties in the Florida Case are not substantially similar to those in the California Cases. The Lift Order satisfied the essential requirements of law in finding that the Victim Funds' claims are independent of the Investors' claims.

B. The Claims Asserted in the Three Cases Are Not Substantially Similar

The Lift Order correctly concluded that this Court's decision in *Vicario* militated against maintaining the stay based on the lack of substantial similarity between the claims brought in this case and those in the California Cases. *See Sauder*, 800 So. 2d at 358 (noting that a stay of a purported later-filed action requires "substantial similarity of parties *and* actions.") (emphasis added). As we show below, 1) the California Case will not resolve many of the issues in the Florida Case; and 2) the California Complaints assert claims different from those asserted in the Florida Case.

1. Unrebutted Evidence Showed that the California Cases Will Not Resolve Many of the Issues in the Florida Case

The Stay Order compared allegations in the Florida Complaint to those in the L.A. County Complaint, while ignoring the Federal Complaint (A. 11–18). To be sure, all three complaints arise from the same DC Solar fraud scheme. "[T]he facts [of the fraud scheme] are the same" (A. 28), so some allegations will be the same. But contrary to Petitioners' arguments, having to defend multiple cases alleging wrongdoing by them and brought by different plaintiffs is no reason to stay a case. *See Shoemaker*, 890 So. 2d at 1196–97 (quashing a stay that the trial court had imposed in part because the defendant was defending 22 similar cases).

Petitioners argue that "any negligence, fraud or statutory violations" by them, "whether raised in California" or by the Victim Funds here "is expressly based on the same evidence of alleged actions or omissions by [them]" (Pet. 35). But the parties already agreed to the Stipulation to ensure that "evidence" relevant to the same general allegations is available in both cases.

To paraphrase another court, "[t]he fact that litigants[], not parties in the instant state court fraud action[], filed fraud actions against [a Petitioner] in [the California Cases], which are similar to the state court fraud actions filed by Petitioners, is irrelevant." *Harper*, 802 So. 2d at 510. Any proof the Investors may offer—or fail to offer—about misrepresentations made to them, and their reliance on those misrepresentations, will not move the needle in this case. Each Victim Fund will have to prove misrepresentations made to it, and its reliance on those misrepresentations. *See, e.g.*, *Shoma Dev. Corp. v. Vazquez*, 749 So. 2d 1287, 1288 (Fla. 3d DCA 2000) ("[T]he demands of the various defrauded parties are not only legally distinct, but each depends upon its own facts[.]"); *Hoechst Celanese Corp. v. Fry*, 753 So. 2d 626, 626–28 (Fla. 5th DCA 2000) (explaining that plaintiffs' "fraudulent statement" cause of action required that plaintiffs prove "defendants defrauded *each* plaintiff, that *each* plaintiff relied on misrepresentations by the defendants, [] that as a result of those alleged misrepresentations" they were damaged, and how each plaintiff was damaged) (emphasis added). Evidence

relating to the general fraud scheme will do little to meet any specific fund's burden of proof.

Indeed, at the evidentiary hearing, the only testimony on the issue was that the L.A. County Case would *not* resolve many of the issues related to the Victim Funds' claims in the Florida Case (A. 4073). Petitioners chose not to present evidence on the matter (A. 4044–4157). And the Receiver's testimony on the subject, including that the Victim Funds' damages—mainly the MSG purchases—and the Investors' damages—primarily tax credit losses—are different, went unrebutted (A. 4072). The Receiver's unrebutted testimony demonstrates that there is no basis to stay the Victim Funds' only claims because the California Cases will *not* resolve them. *See Vicario*, 306 So. 3d at 1105 (holding that there is no substantial similarity of claims, and that a court "cannot be said to be capable of 'resolving many of the issues' raised in the Florida [C]ase," when a court "cannot and will not address any matters pertaining to the parties' assets and liabilities"). And the circuit court appropriately relied on the Receiver's testimony to find that "neither the Receiver nor the Funds will receive a recovery" in the L.A. County Case (A. 29–

30). *See Warlen v. Badeaux*, 314 So. 3d 412, 415 (Fla. 3d DCA 2020) (holding that substantial, competent evidence should not be second guessed by the appellate court).

2. The California Complaints Assert Claims Different from Those Asserted in the Florida Complaint

As the Stay Order did, Petitioners ignore significant differences between the claims brought in the Florida Case and those brought in the California Cases. While in the L.A. County Case the Investors sue for fraudulent and negligent misrepresentation—as the Victim Funds do here—they also sue for professional and legal malpractice, breach of fiduciary duty, and violations of the securities laws of six states (A. 3530–33). The Victim Funds assert none of those claims here. In total, the L.A. County Complaint contains 31 remaining counts against 12 remaining defendants (A. 231–34). In contrast, the complaint here alleges eight remaining counts against the four Petitioners (A. 1266–97). *See Verlingo*, 801 So. 2d at 1010 ("Although the facts underlying the two proceedings are related, the claims against the different sets of respondents are . . . different and distinct, and nothing suggests that the defendants in this case will be bound in any way[.]").

Similarly, in the Federal Case Solarmore brings 20 counts against 43 defendants, alleging myriad claims that the Victim Funds do not assert here—such as violations of federal RICO, intentional interference with contractual relations, intentional interference with economic relations, professional negligence, breach of fiduciary duty, and equitable contribution (A. 443, 447–48).

Petitioners also ignore another critical difference: neither California complaint asserts FDUTPA claims against Petitioners (A. 231–34, 443, 447–58, 1266–97). FDUTPA makes unlawful "unfair or deceptive acts or practices in the conduct of any trade or commerce." § 501.204(1), Fla. Stat. (2020). No California plaintiff asserts a statutory consumer claim that, like FDUTPA, is interpreted consistent with the Federal Trade Commission Act, 15 U.S.C. § 45(a)(1). *See* § 501.204(2).

None of the cases on which Petitioners rely involved claims as disparate as those between the Florida Case and the California Cases. Nor do they involve complex sets of facts like the ones involved here. In fact, their cases primarily involve claims arising from a single contract, transaction, or relationship among a few

parties. *See, e.g.*, *Kurland*, 319 So. 3d at 783–84 (unpaid contract for divorce legal services); *Reliable Restoration*, 313 So. 3d at 1208 (single contract for hurricane restoration work on one property); *Ocwen,* 307 So. 3d at 924–25 (unpaid fees under a servicing agreement); *Benihana*, 129 So. 3d at 1154 (assignment of trademarks and a contract and amendment); *Sorena,* 47 So. 3d at 876 (contract for legal services); *Pilevsky,* 961 So. 2d at 1033 (management contract); *Morrison*, 972 So. 2d at 910 (appointment of a guardian for an individual and his property); *Hirsch*, 732 So. 2d at 1177 (contract action).

Unlike the Stay Order, the Lift Order correctly found that a stay is not warranted because resolution of the California Cases will not resolve many of the issues in this case (A. 31). Thus, the Lift Order satisfied the essential requirements of law. *See Sauder*, 800 So. 2d at 358 (affirming denial of a stay where an "Illinois complaint involve[d] actions by [defendants] to inflate the value of the business prior to the sale, and the Florida complaint involve[d] representations by the directors before the sale and management decisions they made after the sale," because "[e]ach suit would require proof of different

facts"); *see also Vicario*, 306 So. 3d at 1105–06 (explaining that, even where claims involve identical facts, a stay is inappropriate when the court could not adjudicate all the issues).

C. The Stay Order Was Indefinite and Undefined

The Lift Order corrected the Stay Order's imposition of an unlimited, indefinite stay. The Stay Order stayed the Florida Case until completion of *both* the L.A. County Case *and* the Federal Case (A. 20). Yet the Victim Funds have no control over either case because they are not parties in either one. And even Petitioners have little control over the Federal Case, given the other 40 defendants involved in that case.

Petitioners argue that "the relevant facts and law mandating a stay" have not changed (Pet. 2). But the California Cases have now proceeded for two years; and the Victim Funds settled the only claims they had pending in the L.A. County Case (A. 443, 447–58; S.A. 26). *See Marti v. Iberostar Hoteles y Apartamentos S.L.*, 54 F.4th 641, 646 (11th Cir. 2022) (recognizing that five more months had passed, so that the length of the stay had more than doubled, which amounted to "new circumstances"—particularly because the stay had no

specified end date). Eighteen months into the Stay Order, both cases are likely to continue for several more years. *See Shoemaker*, 890 So. 2d at 1197 ("The stay entered in this case is indefinite and dependent on matters over which [Plaintiff] has no control. When the pending [] matters involving [defendant] will be resolved is anyone's guess."); *Rowell v. Smith*, 342 So. 2d 149, 149–50 (Fla. 1st DCA 1977) (holding that a stay departed from the essential requirements of law where disposition of the case would be delayed even more by appeals and there was "no clear likelihood that [the] case [would] be controlled by the results of the other [case]"). There is no trial date in either case. In the Federal Case, the court has not even advanced to the motion-to-dismiss stage. Meanwhile, the Receiver Funds continue to incur expenses to protect their interests, instead of winding up.

By staying this case indefinitely, the Stay Order essentially allowed Defendants to choose the forum for resolving the parties' claims. *See Harper*, 802 So. 2d at 510–11. The Lift Order was proper because, under the Stay Order, the sheer number of parties and claims involved in the California Cases would cause undue delay.

Such undue delay constitutes "extraordinary circumstances" that justifies lifting the stay. *Cf. Siegel v. Siegel*, 575 So. 2d 1267, 1272 (Fla. 1991) ("[D]enial of a stay could be justified upon a showing of the prospects for undue delay in the disposition of a prior action.") (cleaned up); *see also Vicario*, 306 So. 3d at 1102 (quoting *Siegel*); *Maraj v. Maraj*, 642 So. 2d 1103, 1104 (Fla. 4th DCA 1994) (citing *Siegel*).

D. The Lift Order Properly Considered the Hardship the Stay Has Caused the Receiver, the Receiver Funds, and Creditors

Petitioners object to the Lift Order's reliance on the only testimony offered at the hearing: the Receiver's (Pet. 40–45). But not one of the Petitioners or their counsel chose to rebut the Receiver's testimony with their own witness testimony. They decided not to present witnesses at the evidentiary hearing even though the court postponed the hearing for two weeks, in part to allow them to do just that.

The circuit court, having observed the Receiver and heard his unrebutted testimony, appropriately credited his testimony (A. 4044–157). In particular, the Receiver testified that the Victim Funds' LLC

agreement—which stated that "no member . . . , other than the managing member, will have any right . . . to take part in the management or control of the business of . . . or to bind the company in any manner whatsoever"—was "enforced" (A. 4066); that the Receiver Funds have had to pay various tax-related fees in California, as well as to the IRS (A. 4067); that he has had to incur expenses and legal fees to defend claims in bankruptcy (A. 4124); that the Receivership's "[p]rimary asset" is "the litigation" below (A. 4056); that it was "likely" that the settlements he obtained "could have been higher," but he had to "bring funds in" for the receivership and his leverage was reduced by his inability "to drive forward in the litigation in Florida" (A. 4069, 4105); and that he is pursuing damages different from the Investor's damages because he is not "pursuing damages related to the tax credits" (A. 4072).

The circuit court specifically referred to the Receiver's testimony, on which it relied (A. 28–31). Thus, the court's findings "are supported by competent, substantial evidence." *See Warlen*, 314 So. 3d 412, 415 (Fla. 3d DCA 2020) ("Our review [] is not based upon whether we agree or disagree with the trial court's conclusions, but

whether those conclusions are supported by competent, substantial evidence."); *see also F.R. v. Dep't of Children & Families*, 826 So. 2d 449, 450 (Fla. 5th DCA 2002) ("In the event the evidence is conflicting *or turns on credibility of the witnesses*, all credence and presumption of correctness must be given to the trial court.") (emphasis added); *Smiley v. Greyhound Lines*, 704 So. 2d 204, 205 (Fla. 5th DCA 1998) ("Because it is the trial court who has the first-hand opportunity to hear and observe the witnesses as they testify, the trial court is in a superior position to weigh the evidence and credibility of the witnesses."); *Citibank, N.A. v. Julien J. Studley, Inc.*, 580 So. 2d 784, 785–86 (Fla. 3d DCA 1991) ("It is not the function of this court to reweigh the evidence and the credibility of the witnesses in the trial court proceedings.").

The Receiver's testimony was unrebutted. Based on that testimony, the Lift Order found that the Receiver and the Receiver Funds will continue to be prejudiced if the stay persists because they are not receiving income to pay for their ongoing expenses (A. 30–31). They will continue to incur those expenses while the Florida Case remains pending (*id.*). And they continue to be prejudiced because

the stay has lowered—and would continue to lower—their claims' settlement value, and because the Receiver cannot wind up and liquidate the Receiver Funds (*id.*).

As Florida courts acknowledge, a trial court "has power to weigh the circumstances for and against a stay," *Halifax Paving*, 350 So. 2d at 118, and the "broad discretion to grant or deny a motion to stay a case pending before it," *Verlingo*, 801 So. 2d at 1010. In deciding whether to stay litigation, a trial court may consider—in addition to whether the parties and claims are substantially similar—factors such as hardship, complexity of issues, and length of the stay. *See Landis*, 299 U.S. at 255–57 (1936); *see also Friedman*, 863 So. 2d at 195 (directing courts to *Landis* for guidance on stays); *Office Depot*, 937 So. 2d at 1140 (listing factors such as the unlikelihood of disposition in the first-filed proceedings and whether the case involves unique issues that the other case will not resolve).

Here, the circuit court properly considered the hardship to the Receiver, to the Receiver Funds, and to creditors—including that the Stay Order has allowed Petitioners to dictate when the Receiver can wind up and liquidate the Receiver Funds. *See* § 605.0704(1), Fla.

Stat. (providing that one of a receiver's duties may be "to wind up and liquidate . . . the limited liability company").

At the evidentiary hearing, only the Receiver testified about hardship (A. 4044–157). Petitioners could have countered his testimony with their own witnesses, but chose not to. Thus, in evaluating the hardship to the Receiver and the Receiver Funds, the circuit court properly relied on his unrebutted testimony. *See Siegel*, 575 So. 2d at 272 ("There may well be circumstances under which denial of a stay could be justified upon a showing of the prospects for undue delay in the disposition of a prior action.") (cleaned up).

E. The Circuit Court Was Not Required to Address the Four Cases Cited in the Stay Order, But Those Cases Do Not Apply Anyway

Finally, despite the Lift Order's reliance on the evidence presented and on binding authority, Petitioners complain that it does not address the four cases cited in the Stay Order (Pet. 30, 31, 37, 39). But the court was not required to cite those cases. And as the Victim Funds have already shown, those cases address much different circumstances. *See Ocwen*, 307 So. 3d at 924–25 (unpaid fees under a servicing agreement, involving only four parties); *OPKO*

Health, 279 So. 3d at 789 (shareholders' derivative action involving only one set of defendants—OPKO, OPKO's CEO, and other OPKO directors and officers); *Sorena,* 47 So. 3d at 876 (single misrepresentation related to a contract for legal services and involving only a law firm, the law firm's partner, the client who failed to pay his fees, and the client's three business partners); *Pilevsky,* 961 So. 2d at 1034–35 (involving a management contract and noting that the only additional parties in the Florida action were individual investors and officers of the plaintiff in the New York action—the actual party that plaintiff sought to hold liable but whose investors and officers plaintiff had named as "nominal defendants in [the] second-filed action" in Florida).

None of these cases considered the number of parties nor the complexity of issues as are involved in the Florida Case and the California Cases. This is the Victim Funds' *only* suit against Petitioners. They never brought claims against Petitioners in any of the California Cases and have no involvement in either of the cases. The California Cases involve myriad other parties—about five dozen—not involved here. The law—and the only evidence presented at the

evidentiary hearing—demonstrate that the California Cases will not resolve many of the issues involved in the case below. *See Marti*, 54 F.4th at 649 (reversing an order denying a stay and holding that a stay was "immoderate" and denied justice by its delay because it was indefinite and that, among other considerations, neither "comity" nor "judicial economy" could overcome that).

And also unlike in the cases cited in the Stay Order, this case has already been stayed for eighteen months, with no end in sight for resolution of the California Cases. It is time for the case to proceed.

CONCLUSION

For the reasons stated, the Victim Funds request that the Court dismiss or deny the petition.

Date: February 2, 2023

Respectfully submitted,

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CERTIFICATE OF SERVICE

I CERTIFY that a copy of this Petition was served by electronic transmission on February 2, 2023, to all counsel and the official listed on the attached Service List.

/s/ *Raoul G. Cantero*
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CERTIFICATE OF COMPLIANCE

I CERTIFY that this petition is submitted in Bookman Old-Style 14-point font, and that it does not exceed 13,000 words.

/s/ *Raoul G. Cantero*
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