

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

OMNI FINANCIAL, LLC, a foreign limited liability company,

Appellant,

vs.

KAL-MOR-USA, LLC, a Nevada limited liability company,

Respondent

No. 82028

Electronically Filed
Nov 24 2020 12:14 p.m.

DOCKETING Elizabeth N. Brown
CIVIL APPEALS Clerk of Supreme Court

GENERAL INFORMATION

Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. See KDI Sylvan Pools v. Workman, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District Eighth Department 2
County Clark Judge Richard Scotti
District Ct. Case No. A-17-757061-C

2. Attorney filing this docketing statement:

Attorney Brian J. Pezzillo Telephone 702-257-1483
Firm Howard & Howard Attorneys, PLLC
Address 3800 Howard Hughes Pkwy., Suite 1000
Las Vegas, NV 89169

Client(s) Omni Financial, LLC

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

3. Attorney(s) representing respondents(s):

Attorney Bart Larsen Telephone 702-471-7432
Firm Shea & Larsen
Address 1731 Village Center Circle, Suite 150
Las Vegas, NV 89134

Client(s) Kal-Mor-USA, LLC

Attorney Joseph Gutierrez/Danielle Barraza Telephone 702-629-7900
Firm Maier Gutierrez Ayon
Address 400 South Seventh Street, Suite 400
Las Vegas, NV 89101

Client(s) First 100, LLC

(List additional counsel on separate sheet if necessary)

4. Nature of disposition below (check all that apply):

- | | |
|---|---|
| <input type="checkbox"/> Judgment after bench trial | <input type="checkbox"/> Dismissal: |
| <input type="checkbox"/> Judgment after jury verdict | <input type="checkbox"/> Lack of jurisdiction |
| <input checked="" type="checkbox"/> Summary judgment | <input type="checkbox"/> Failure to state a claim |
| <input type="checkbox"/> Default judgment | <input type="checkbox"/> Failure to prosecute |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief | <input type="checkbox"/> Other (specify): _____ |
| <input type="checkbox"/> Grant/Denial of injunction | <input type="checkbox"/> Divorce Decree: |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input type="checkbox"/> Review of agency determination | <input type="checkbox"/> Other disposition (specify): _____ |

5. Does this appeal raise issues concerning any of the following?

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

6. Pending and prior proceedings in this court. List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

N/A

7. Pending and prior proceedings in other courts. List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

N/A

8. Nature of the action. Briefly describe the nature of the action and the result below:

The action concerns ownership of 9 parcels of real property which were subject of an HOA super-priority sale. In 2014, Omni agreed to loan up to \$5 million to Defendant First 100, LLC ("First 100") to finance the purchase and enforcement of homeowner association ("HOA") receivables (the "Loan"). Deeds of Trust encumbered various properties as security for the Loan. First 100 defaulted under the agreement with Omni. Litigation was initiated between First 100 and Omni to which First 100 was also a party. The litigation was eventually settled through the execution of settlement agreements between Omni and First 100 and Omni and Kal-Mor-USA, LLC. Kal-Mor-USA, LLC asserted in the Complaint in this action that its interest in the subject properties was superior to those of Omni. By way of a motion for partial summary judgment, Kal-Mor-USA, in part, argued that the settlement agreement entered into between Omni and First 100 acted as a novation of any other agreements and eliminated Omni's interest in the real properties. The Court granted the motion for partial summary judgment on the grounds that the settlement agreement between Omni and First 100 operated as a novation of any other existing agreement.

9. Issues on appeal. State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

The issue on appeal with whether the District Court was correct in granting partial summary judgment on the basis of novation and holding that the settlement agreement entered into between Omni Financial and First 100 settling the disputes between them acted as a complete replacement of all prior agreements including the Deeds of Trust which secured the loans provided by Omni Financial to First 100.

10. Pending proceedings in this court raising the same or similar issues. If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

Omni Financial is not aware of any cases in which a similar issue has been raised.

11. Constitutional issues. If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☒ N/A

☐ Yes

☐ No

If not, explain:

12. Other issues. Does this appeal involve any of the following issues?

☐ Reversal of well-settled Nevada precedent (identify the case(s))

☐ An issue arising under the United States and/or Nevada Constitutions

☒ A substantial issue of first impression

☒ An issue of public policy

☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☐ A ballot question

If so, explain: It does not appear that the issue of whether a third party may collaterally attack an agreement to which it is not a party and assert novation has ever been addressed by any appellate court in Nevada. Nor has it been addressed whether a third party has standing to attack the meaning of an agreement it is not a party to when the parties to the agreement do not dispute the meaning and intent of the agreement.

13. Assignment to the Court of Appeals or retention in the Supreme Court. Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

This matter falls within matters heard by the Supreme Court pursuant to NRAP 17(11) and NRAP 17(12). The issue of whether a third-party may attack the meaning of an agreement it is not a party to in order to assert novation has not been decided by any appellate court in Nevada and thus constitutes a matter of first impression pursuant to NRAP 17(11). This issue potentially effects the interpretation and enforceability of contracts and the ability of third-parties to collaterally attack agreements to which they are not a party thus implicating important public policy.

14. Trial. If this action proceeded to trial, how many days did the trial last? 0 _____

Was it a bench or jury trial? n/a _____

15. Judicial Disqualification. Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?
N/A

TIMELINESS OF NOTICE OF APPEAL

16. Date of entry of written judgment or order appealed from October 2, 2018

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

17. Date written notice of entry of judgment or order was served October 3, 2018

Was service by:

☐ Delivery

☒ Mail/electronic/fax

18. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

☐ NRCP 50(b) Date of filing _____

☐ NRCP 52(b) Date of filing _____

☐ NRCP 59 Date of filing _____

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev. ____, 245 P.3d 1190 (2010).

(b) Date of entry of written order resolving tolling motion _____

(c) Date written notice of entry of order resolving tolling motion was served _____

Was service by:

☐ Delivery

☐ Mail

19. Date notice of appeal filed October 27, 2020

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:
n/a

20. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other

NRAP 4(a); NRCP 54(b)

SUBSTANTIVE APPEALABILITY

21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:

(a)

- | | |
|---|---------------------------------------|
| <input checked="" type="checkbox"/> NRAP 3A(b)(1) | <input type="checkbox"/> NRS 38.205 |
| <input type="checkbox"/> NRAP 3A(b)(2) | <input type="checkbox"/> NRS 233B.150 |
| <input type="checkbox"/> NRAP 3A(b)(3) | <input type="checkbox"/> NRS 703.376 |
| <input type="checkbox"/> Other (specify) _____ | |

(b) Explain how each authority provides a basis for appeal from the judgment or order:
The Order appealed from was originally entered on October 2, 2018 and notice of entry of the order was filed on October 3, 2018. The District Court entered an order pursuant to NRCP 54(b) certifying the October 2, 2018 order as final on September 30, 2020. Notice of Entry of the Order Certifying as Final was filed the same day on September 30, 2020. The appeal did not become ripe until September 30, 2020. The appeal was filed on October 27, 2020, less than 30 days later and thus was timely.

22. List all parties involved in the action or consolidated actions in the district court:

(a) Parties:

Omni Financial, LLC

Kal-Mor-USA, LLC

First 100, LLC

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, *e.g.*, formally dismissed, not served, or other:

N/A

23. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.

See Exhibit "1".

24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?

☐ Yes

☒ No

25. If you answered "No" to question 24, complete the following:

(a) Specify the claims remaining pending below:

See Exhibit 1

(b) Specify the parties remaining below:

Kal-Mor-USA, LLC

Omni Financial, LLC

First 100, LLC

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☒ Yes

☐ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☒ Yes

☐ No

26. If you answered "No" to any part of question 25, explain the basis for seeking appellate review (*e.g.*, order is independently appealable under NRAP 3A(b)):

27. Attach file-stamped copies of the following documents:

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

Omni Financial, LLC

Name of appellant

Brian J. Pezzillo/Robert Hernquist

Name of counsel of record

November 23, 2020

Date



Signature of counsel of record

Clark County, Nevada

State and county where signed

CERTIFICATE OF SERVICE

I certify that on the 24 day of November, 2020, I served a copy of this completed docketing statement upon all counsel of record:

☒ By personally serving it upon him/her; or

☐ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

Joseph A. Gutierrez, Esq.
MAIER GUTIERREZ AYON
400 South Seventh Street, Suite 400
Las Vegas, NV 89101

Attorneys for First 100 LLC

Bart K. Larsen, Esq.
SHEA & LARSEN
1731 Village Center Circle, Suite 150
Las Vegas, Nevada 89134

Attorney for Plaintiff Kal-Mor-USA, LLC

Dated this 24 day of November, 2020



Signature

EXHIBIT “1”

EXHIBIT “1”

23. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.

Plaintiff Kal-Mor-USA, LLC's claims against Omni Financial, LLC

1. Declaratory Relief – October 2, 2018 (Summary Judgment) as certified as final on September 30, 2020.
2. Quiet Title – October 2, 2018 (Summary Judgment) as certified as final on September 30, 2020.
3. Unjust Enrichment – Remains pending in district court.
4. Conversion – Remains pending in district court.
5. Slander of Title – Remains pending in district court.
6. Intentional Interference with Contractual Relations – Remains pending in district court.
7. Injunctive Relief – Remains pending in district court.

Plaintiff Kal-Mor-USA, LLC's claims against First 100, LLC

1. Breach of Contract – Remains pending in district court.
2. Breach of Implied Covenant of Good Faith and Fair Dealing – Remains pending in district court
3. Negligent Misrepresentation – Remains pending in district court.
4. Declaratory Relief – Remains pending in district court.
5. Quiet Title – Remains pending in district court.

Omni Financial, LLC's Counterclaims Against Kal-Mor-USA, LLC

1. Declaratory Relief: October 2, 2018 (Summary Judgment) as certified as final on September 30, 2020.
2. Unjust Enrichment: Remains pending in district court.
3. Conversion: Remains pending in district court.

4. Constructive Trust: Remains pending in district court
5. Accounting: Remains pending in district court.

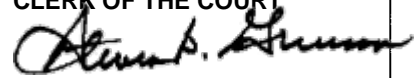
Omni Financial, LLC's Crossclaims Against First 100, LLC

1. Intentional Misrepresentation: Remains pending in district court.

EXHIBIT “2”

Complaint of Kal-Mor-USA, LLC

EXHIBIT “2”



COMP

BART K. LARSEN, ESQ.
Nevada Bar No. 08538
ERIC D. WALTHER, ESQ.
Nevada Bar No. 13611

KOLESAR & LEATHAM

400 South Rampart Boulevard, Suite 400
Las Vegas, Nevada 89145
Telephone: (702) 362-7800
Facsimile: (702) 362-9472
E-Mail: blarsen@klnevada.com
ewalther@klnevada.com

*Attorneys for Plaintiff,
Kal-Mor-USA, LLC*

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

* * *

KAL-MOR-USA, LLC, a Nevada limited
liability company,

Plaintiffs,

vs.

OMNI FINANCIAL, LLC, a foreign limited
liability company; FIRST 100, LLC, a Nevada
limited liability company; DOES I through X;
and ROE ENTITIES I through X, inclusive,

Defendants.

CASE NO. A-17-757061-C

DEPARTMENT NO. Department 18

COMPLAINT

**Exempt from Arbitration: Equitable and
Declaratory Relief Sought; Concerns Title
to Real Property; Damages in Excess of
\$50,000**

Plaintiff Kal-Mor-USA, LLC ("Kal-Mor"), by and through its undersigned counsel of the
law firm of Kolesar & Leatham, hereby complains and alleges against Defendants Omni
Financial, LLC ("Omni") and First 100, LLC ("First 100") as follows:

JURISDICTIONAL ALLEGATIONS

1. Plaintiff Kal-Mor is a Nevada limited liability company that, at all times relevant
hereto, was conducting business in Clark County, Nevada.

2. Defendant Omni is a California limited liability company that, at all times
relevant hereto, was conducting business in Clark County, Nevada.

4. The true names and/or capacities, whether individual, corporate, partnership, associate, company, and/or otherwise, of the Defendants named herein as Does I through X, and/or Roe Entities I through X, are unknown to Plaintiff at the present time, who therefore sues said Doe and Roe Defendants by such fictitious names. Plaintiff will ask leave of Court to amend its Complaint to show the true names and/or capacities when the same have been ascertained. Plaintiff believes that each Defendant names as a Doe and/or a Roe Defendant, or as a Roe Entity Defendant, is responsible in some manner or way for a portion of or all of the events referred to herein, and caused damages proximately thereby to Plaintiff as alleged herein.

GENERAL ALLEGATIONS

THE OMNI LOAN AGREEMENT

6. On May 27, 2014, First 100 and Omni entered into a Loan Agreement under which Omni agreed to loan up to \$5,000,000 to First 100. In connection therewith, First 100 executed a Promissory Note dated May 27, 2014 in favor of Omni (the “Omni Loan”).

7. The Omni Loan was secured by a Security Agreement dated May 27, 2014 (the “Security Agreement”) under which First 100 pledged certain real and personal property as collateral for the Omni Loan.

8. Among other things, the collateral purportedly pledged pursuant to the Security Agreement was evidenced by (i) a Deed of Trust dated May 27, 2014 (the “May 2014 Deed of Trust”), (ii) a Deed of Trust dated June 17, 2014 (the “June 2014 Deed of Trust”), and a Deed of Trust dated August 21, 2014 (the “August 2014 Deed of Trust” and together with the May 2014 Deed of Trust and June 2014 Deed of Trust, the “Deeds of Trust”).

9. The May 2014 Deed of Trust was recorded in the official records of the Clark County, Nevada Recorder (the "Official Records") as instrument number 20140529-0001342 on May 29, 2014.

10. Under the May 2014 Deed of Trust, First 100 purported to pledge various real properties as collateral for the Omni Loan, including, but not limited to:

- a. The property commonly known as 1217 Neva Ranch Avenue, North Las Vegas, Nevada 89081, also designated as Clark County Assessor Parcel Number ("APN") 124-26-311-029;
- b. The property commonly known as 230 East Flamingo Road #330, Las Vegas, Nevada 89169, also designated as APN 162-16-810-355;
- c. The property commonly known as 2615 West Gary Avenue #1065, Las Vegas, Nevada 89123, also designated as APN 177-20-813-127; and
- d. The property commonly known as 6575 Shining Sand Avenue, Las Vegas, Nevada 89142, also designated as APN 161-10-511-072.

11. The legal descriptions set forth in the May 2014 Deed of Trust for the foregoing real properties are in many cases incomplete or incorrect.

12. The June 2014 Deed of Trust was recorded in the Official Records as instrument number 20140718-0001253 on July 18, 2014.

13. Under the June 2014 Deed of Trust, First 100 purported to pledge certain additional real properties as collateral for the Omni Loan, including, but not limited to:

- a. The property commonly known as 4921 Indian River Drive #112, Las Vegas, Nevada 89103, also designated as APN 163-24-612-588;
- b. The property commonly known as 5009 Indian River Drive #155, Las Vegas, Nevada 89103, also designated as APN 163-24-612-639;
- c. The property commonly known as 5295 Indian River Drive #314, Las Vegas, Nevada 89103, also designated as APN 163-24-612-798; and
- d. The property commonly known as 4400 Sandy River Drive #16, Las Vegas, Nevada 89103, also designated as APN 163-24-612-500.

14. The legal descriptions set forth in the June 2014 Deed of Trust for the foregoing real properties are in many cases incomplete or incorrect.

15. The August 2014 Deed of Trust was recorded in the Official Records as instrument number 20140826-0001916 on August 26, 2014.

16. Under the August 2014 Deed of Trust, First 100 purported to pledge as collateral for the Omni Loan the real property commonly known as 5782 Camino Ramon Avenue, Las Vegas, Nevada 89156, also designated as APN 140-21-611-018.

17. The August 2014 Deed of Trust, however, did not include any legal description for the property located at 5782 Camino Ramon Avenue, Las Vegas, Nevada 89156.

18. On October 5, 2016, Omni re-recorded the August 2014 Deed of Trust in the Official Records with the legal description for the property located at 5782 Camino Ramon Avenue, Las Vegas, Nevada 89156 attached as Addendum "A" as instrument number 20161005-0002287.

KAL-MOR PURCHASE OF REAL PROPERTIES AT ISSUE

1217 Neva Ranch Avenue, North Las Vegas, Nevada 89081 (APN 124-26-311-029)

19. The real property located at 1217 Neva Ranch Avenue, North Las Vegas, Nevada and described more particularly as APN 124-26-311-029 (the "Neva Ranch Property") is located within a common interest community created pursuant to Chapter 116 of Nevada Revised Statutes and is subject to certain covenants, conditions, and restrictions associated therewith, including membership in the unit-owners' association commonly known as the Creekside III Homeowners Association (the "Creekside III HOA").

20. The Creekside III HOA foreclosed upon a lien for delinquent assessments levied against the Neva Ranch Property on or about May 4, 2013 and caused the Nevada Ranch Property to be sold to First 100 for good and valuable consideration.

21. A Foreclosure Deed upon Sale conveying title to the Neva Ranch Property to First 100 was recorded in the Official Records on May 7, 2013 as instrument number 20130507-0003557.

22. On or about April 6, 2015, First 100 agreed to sell the Neva Ranch Property to Kal-Mor for good and valuable consideration. In connection with this sale, First 100 executed a Deed of Sale conveying title to the Neva Ranch Property to Kal-Mor, which was recorded in the Official Records on April 9, 2015 as instrument number 20150409-0000740.

23. First 100 did not disclose to Kal-Mor at any time prior to the sale that First 100 had previously purported to pledge the Neva Ranch Property as collateral for the Omni Loan under the May 2014 Deed of Trust.

24. To the contrary, at the time of the sale First 100 represented that it was transferring to Kal-Mor the full rights, title, and interests First 100 acquired in the Neva Ranch Property from the Creekside III HOA under the Foreclosure Deed upon Sale recorded on May 7, 2013.

25. At the time of the sale, Kal-Mor did not have actual notice of the May 2014 Deed of Trust, that First 100 had purported to pledge the Neva Ranch Property as collateral for the Omni Loan, or that Omni claimed a security interest in the Neva Ranch Property.

230 East Flamingo Road, #330, Las Vegas, Nevada 89169 (APN 162-16-810-355)

26. The real property located at 230 East Flamingo Road, #330, Las Vegas, Nevada 89169 and described more particularly as APN 162-16-810-355 (the "East Flamingo Property") is located within a common interest community created pursuant to Chapter 116 of Nevada Revised Statutes and is subject to certain covenants, conditions, and restrictions associated therewith, including membership in the unit-owners' association commonly known as the Meridian Private Residences Homeowners Association (the "Meridian HOA").

27. The Meridian HOA foreclosed upon a lien for delinquent assessments levied against the East Flamingo Property on or about July 13, 2013 and caused the East Flamingo Property to be sold to First 100 for good and valuable consideration.

28. A Foreclosure Deed upon Sale conveying title to the East Flamingo Property to First 100 was recorded in the Official Records on July 16, 2013 as instrument number 20130716-0002104.

29. On or about April 9, 2015, First 100 agreed to sell the East Flamingo Property to Kal-Mor for good and valuable consideration. In connection with this sale, First 100 executed a Deed of Sale conveying title to the East Flamingo Property to Kal-Mor, which was recorded in the Official Records on April 9, 2015 as instrument number 20150409-0000739.

30. First 100 did not disclose to Kal-Mor at any time prior to the sale that First 100 had previously purported to pledge the East Flamingo Property as collateral for the Omni Loan under the May 2014 Deed of Trust.

31. To the contrary, at the time of the sale First 100 represented to Kal-Mor that it was transferring to Kal-Mor the full rights, title, and interests First 100 acquired in the East Flamingo Property from the Meridian HOA under the Foreclosure Deed upon Sale recorded on July 16, 2013.

32. At the time of the sale, Kal-Mor did not have actual notice of the May 2014 Deed of Trust, that First 100 had purported to pledge the East Flamingo Property as collateral for the Omni Loan, or that Omni claimed a security interest in the East Flamingo Property.

2615 West Gary Avenue, #1065, Las Vegas, Nevada 89123 (APN 177-20-813-127)

33. The real property located at 2615 West Gary Avenue, #1065, Las Vegas, Nevada 89123 and described more particularly as APN 177-20-813-127 (the "West Gary Property") is located within a common interest community created pursuant to Chapter 116 of Nevada Revised Statutes and is subject to certain covenants, conditions, and restrictions associated therewith, including membership in the unit-owners' association commonly known as the Southgate Condominium Unit-Owners' (the "Southgate HOA").

34. The Southgate HOA foreclosed upon a lien for delinquent assessments levied against the West Gary Property on or about May 4, 2013 and caused the West Gary Property to be sold to First 100 for good and valuable consideration.

35. A Foreclosure Deed upon Sale conveying title to the West Gary Property to First 100 was recorded in the Official Records on May 7, 2013 as instrument number 20130507-0003558.

36. On or about April 9, 2015, First 100 agreed to sell the West Gary Property to Kal-Mor for good and valuable consideration. In connection with this sale, First 100 executed a Deed of Sale conveying title to the West Gary Property to Kal-Mor, which was recorded in the Official Records on April 9, 2015 as instrument number 20150409-0000742.

37. First 100 did not disclose to Kal-Mor at any time prior to the sale that First 100 had previously purported to pledge the West Gary Property as collateral for the Omni Loan under the May 2014 Deed of Trust.

38. To the contrary, at the time of the sale First 100 represented to Kal-Mor that it was transferring to Kal-Mor the full rights, title, and interests First 100 acquired in the West Gary Property from the Southgate HOA under the Foreclosure Deed upon Sale recorded on May 7, 2013.

39. At the time of the sale, Kal-Mor did not have actual notice of the May 2014 Deed of Trust, that First 100 had purported to pledge the West Gary Property as collateral for the Omni Loan, or that Omni claimed a security interest in the West Gary Property.

6575 Shining Sand Avenue, Las Vegas, Nevada 89142 (APN 161-10-511-072)

40. The real property located at 6575 Shining Sand Avenue, Las Vegas, Nevada 89142 and described more particularly as APN 161-10-511-072 (the "Shining Sand Property") is located within a common interest community created pursuant to Chapter 116 of Nevada Revised Statutes and is subject to certain covenants, conditions, and restrictions associated therewith, including membership in the unit-owners' association commonly known as the Sahara Sunrise Homeowners Association (the "Sahara HOA").

41. The Sahara HOA foreclosed upon a lien for delinquent assessments levied against the Shining Sand Property on or about September 13, 2011 and took title to the Shining Sand Property through a Trustee's Deed upon Sale recorded in the Official Records on September 14, 2011 as instrument number 20110914-0001783.

42. The Sahara HOA later sold the Shining Sand Property to First 100 for valuable consideration on or about March 18, 2014. A Quitclaim Deed transferring title to the Shining

1 Sand Property to First 100 was recorded in the Official Records on March 18, 2014 as instrument
2 number 20140318-0002205.

3 43. On or about April 10, 2015, First 100 agreed to sell the Shining Sand Property to
4 Kal-Mor for good and valuable consideration. In connection with this sale, First 100 executed a
5 Deed of Sale conveying title to the Shining Sand Property to Kal-Mor, which was recorded in the
6 Official Records on April 13, 2015 as instrument number 20150413-0002986.

7 44. First 100 did not disclose to Kal-Mor at any time prior to the sale that First 100
8 had previously purported to pledge the Shining Sand Property as collateral for the Omni Loan
9 under the May 2014 Deed of Trust.

10 45. To the contrary, at the time of the sale First 100 represented to Kal-Mor that it
11 was transferring to Kal-Mor the full rights, title, and interests First 100 acquired in the Shining
12 Sand Property from the Sahara HOA under the Quitclaim Deed recorded on March 18, 2014.

13 46. At the time of the sale, Kal-Mor did not have actual notice of the May 2014 Deed
14 of Trust, that First 100 had purported to pledge the Shining Sand Property as collateral for the
15 Omni Loan, or that Omni claimed a security interest in the Shining Sand Property.

16 ***4921 Indian River Drive, #112, Las Vegas, Nevada 89103 (APN 163-24-612-588)***

17 47. The real property located at 4921 Indian River Drive, #112, Las Vegas, Nevada
18 89103 and described more particularly as APN 163-24-612-588 (the "4921 Indian River
19 Property") is located within a common interest community created pursuant to Chapter 116 of
20 Nevada Revised Statutes and is subject to certain covenants, conditions, and restrictions
21 associated therewith, including membership in the unit-owners' association commonly known as
22 the Bella Vita Homeowners Association (the "Bella Vita HOA").

23 48. The Bella Vita HOA foreclosed upon a lien for delinquent assessments levied
24 against the 4921 Indian River Property on or about July 10, 2013 and caused the 4921 Indian
25 River Property to be sold to First 100 for good and valuable consideration.

26 49. A Deed of Sale conveying title to the 4921 Indian River Property to First 100 was
27 recorded in the Official Records on July 16, 2014 as instrument number 20140716-0002749.
28

1 50. On or about April 10, 2015, First 100 agreed to sell the 4921 Indian River
2 Property to Kal-Mor for good and valuable consideration. In connection with this sale, First 100
3 executed a Deed of Sale conveying title to the 4921 Indian River Property to Kal-Mor, which
4 was recorded in the Official Records on April 13, 2015 as instrument number 20150413-
5 0002987.

6 51. First 100 did not disclose to Kal-Mor at any time prior to the sale that First 100
7 had previously purported to pledge the 4921 Indian River Property as collateral for the Omni
8 Loan under the June 2014 Deed of Trust.

9 52. To the contrary, at the time of the sale First 100 represented to Kal-Mor that it
10 was transferring to Kal-Mor the full rights, title, and interests First 100 acquired in the 4921
11 Indian River Property from the Bella Vita HOA under the Deed of Sale recorded on July 16,
12 2014.

13 53. At the time of the sale, Kal-Mor did not have actual notice of the June 2014 Deed
14 of Trust, that First 100 had purported to pledge the 4921 Indian River Property as collateral for
15 the Omni Loan, or that Omni claimed a security interest in the 4921 Indian River Property.

16 ***5009 Indian River Drive, #155, Las Vegas, Nevada 89103 (APN 163-24-612-639)***

17 54. The real property located at 5009 Indian River Drive, #155, Las Vegas, Nevada
18 89103 and described more particularly as APN 163-24-612-639 (the "5009 Indian River
19 Property") is located within a common interest community created pursuant to Chapter 116 of
20 Nevada Revised Statutes and is subject to certain covenants, conditions, and restrictions
21 associated therewith, including membership in the Bella Vita HOA.

22 55. The Bella Vita HOA foreclosed upon a lien for delinquent assessments levied
23 against the 5009 Indian River Property on or about January 21, 2014 and took title to the 5009
24 Indian River Property through a Foreclosure Deed recorded in the Official Records on January
25 23, 2014 as instrument number 20140123-0002773.

26 56. The Bella Vita HOA later sold the 5009 Indian River Property to First 100 for
27 good and valuable consideration on or about July 10, 2014. A Deed of Sale transferring title to
28

1 the 5009 Indian River Property to First 100 was recorded in the Official Records on July 16,
2 2014 as instrument number 20140716-0002750.

3 57. On or about April 10, 2015, First 100 agreed to sell the 5009 Indian River
4 Property to Kal-Mor for good and valuable consideration. In connection with this sale, First 100
5 executed a Deed of Sale conveying title to the 5009 Indian River Property to Kal-Mor, which
6 was recorded in the Official Records on April 13, 2015 as instrument number 20150413-
7 0002988.

8 58. First 100 did not disclose to Kal-Mor at any time prior to the sale that First 100
9 had previously purported to pledge the 5009 Indian River Property as collateral for the Omni
10 Loan under the June 2014 Deed of Trust.

11 59. To the contrary, at the time of the sale First 100 represented to Kal-Mor that it
12 was transferring to Kal-Mor the full rights, title, and interests First 100 acquired in the 5009
13 Indian River Property from the Bella Vita HOA under the Deed of Sale recorded on July 16,
14 2014.

15 60. At the time of the sale, Kal-Mor did not have actual notice of the June 2014 Deed
16 of Trust, that First 100 had purported to pledge the 5009 Indian River Property as collateral for
17 the Omni Loan, or that Omni claimed a security interest in the 5009 Indian River Property.

18 ***5295 Indian River Drive, #314, Las Vegas, Nevada 89103 (APN 163-24-612-798)***

19 61. The real property located at 5295 Indian River Drive, #314, Las Vegas, Nevada
20 89103 and described more particularly as APN 163-24-612-798 (the "5295 Indian River
21 Property") is located within a common interest community created pursuant to Chapter 116 of
22 Nevada Revised Statutes and is subject to certain covenants, conditions, and restrictions
23 associated therewith, including membership in the Bella Vita HOA.

24 62. The Bella Vita HOA foreclosed upon a lien for delinquent assessments levied
25 against the 5295 Indian River Property on or about December 26, 2013 and took title to the 5295
26 Indian River Property through a Foreclosure Deed recorded in the Official Records on December
27 30, 2013 as instrument number 20131230-0000172.

63. The Bella Vita HOA later sold the 5295 Indian River Property to First 100 for good and valuable consideration on or about July 10, 2014. A Deed of Sale transferring title to the 5009 Indian River Property to First 100 was recorded in the Official Records on July 16, 2014 as instrument number 20140716-0002747.

64. On or about April 10, 2015, First 100 agreed to sell the 5295 Indian River Property to Kal-Mor for good and valuable consideration. In connection with this sale, First 100 executed a Deed of Sale conveying title to the 5295 Indian River Property to Kal-Mor, which was recorded in the Official Records on April 13, 2015 as instrument number 20150413-0002990.

65. First 100 did not disclose to Kal-Mor at any time prior to the sale that First 100 had previously purported to pledge the 5295 Indian River Property as collateral for the Omni Loan under the June 2014 Deed of Trust.

66. To the contrary, at the time of the sale First 100 represented to Kal-Mor that it was transferring to Kal-Mor the full rights, title, and interests First 100 acquired in the 5295 Indian River Property from the Bella Vita HOA under the Deed of Sale recorded on July 16, 2014.

67. At the time of the sale, Kal-Mor did not have actual notice of the June 2014 Deed of Trust, that First 100 had purported to pledge the 5295 Indian River Property as collateral for the Omni Loan, or that Omni claimed a security interest in the 5295 Indian River Property.

4400 Sandy River Drive, #16, Las Vegas, Nevada 89103 (APN 163-24-612-500)

68. The real property located at 4400 Sandy River Drive #16, Las Vegas, Nevada 89103 and described more particularly as APN 163-24-612-500 (the "Sandy River Property") is located within a common interest community created pursuant to Chapter 116 of Nevada Revised Statutes and is subject to certain covenants, conditions, and restrictions associated therewith, including membership in the Bella Vita HOA.

69. The Bella Vita HOA foreclosed upon a lien for delinquent assessments levied against the Sandy River Property on or about January 21, 2014 and took title to the Sandy River

1 Property through a Foreclosure Deed recorded in the Official Records on January 23, 2014 as
2 instrument number 20140123-0002775.

3 70. The Bella Vita HOA later sold the Sandy River Property to First 100 for good and
4 valuable consideration on or about July 10, 2014. A Deed of Sale transferring title to the Sandy
5 River Property to First 100 was recorded in the Official Records on July 16, 2014 as instrument
6 number 20140716-0002748.

7 71. On or about April 10, 2015, First 100 agreed to sell the Sandy River Property to
8 Kal-Mor for good and valuable consideration. In connection with this sale, First 100 executed a
9 Deed of Sale conveying title to the Sandy River Property to Kal-Mor, which was recorded in the
10 Official Records on April 13, 2015 as instrument number 20150413-0002988.

11 72. First 100 did not disclose to Kal-Mor at any time prior to the sale that First 100
12 had previously purported to pledge the Sandy River Property as collateral for the Omni Loan
13 under the June 2014 Deed of Trust.

14 73. To the contrary, at the time of the sale First 100 represented to Kal-Mor that it
15 was transferring to Kal-Mor the full rights, title, and interests First 100 acquired in the Sandy
16 River Property from the Bella Vita HOA under the Deed of Sale recorded on July 16, 2014.

17 74. At the time of the sale, Kal-Mor did not have actual notice of the June 2014 Deed
18 of Trust, that First 100 had purported to pledge the Sandy River Property as collateral for the
19 Omni Loan, or that Omni claimed a security interest in the Sandy River Property.

20 ***5782 Camino Ramon Avenue, Las Vegas, Nevada 89156 (APN 140-21-611-018)***

21 75. The real property located at 5782 Camino Ramon Avenue, Las Vegas, Nevada
22 89156 and described more particularly as APN 140-21-611-018 (the "Camino Ramon Property")
23 and together with the Neva Ranch Property, the East Flamingo Property, the West Gary
24 Property, the Shining Sand Property, the 4921 Indian River Property, the 5009 Indian River
25 Property, the 5295 Indian River Property, and the Sandy River Property, the "Kal-Mor
26 Properties") is located within a common interest community created pursuant to Chapter 116 of
27 Nevada Revised Statutes and is subject to certain covenants, conditions, and restrictions
28

1 associated therewith, including membership in the unit-owners' association commonly known as
2 the Tierra Mesa Homeowners Association (the "Tierra Mesa HOA").

3 76. The Tierra Mesa HOA foreclosed upon a lien for delinquent assessments levied
4 against the Camino Ramon Property on or about October 27, 2010 and took title to the Camino
5 Ramon Property through a Trustee's Deed upon Sale recorded in the Official Records on
6 December 3, 2010 as instrument number 20101203-0002111.

7 77. The Tierra Mesa HOA later sold the Camino Ramon Property to First 100 for
8 good and valuable consideration on or about August 8, 2014. A Quitclaim Deed transferring title
9 to the Camino Ramon Property to First 100 was recorded in the Official Records on August 11,
10 2014 as instrument number 20140811-0000974.

11 78. On or about April 6, 2015, First 100 agreed to sell the Camino Ramon Property to
12 Kal-Mor for good and valuable consideration. In connection with this sale, First 100 executed a
13 Deed of Sale conveying title to the Camino Ramon Property to Kal-Mor, which was recorded in
14 the Official Records on April 9, 2015 as instrument number 20150409-0000741.

15 79. First 100 did not disclose to Kal-Mor at any time prior to the sale that First 100
16 had previously purported to pledge the Camino Ramon Property as collateral for the Omni Loan
17 under the August 2014 Deed of Trust.

18 80. To the contrary, at the time of the sale First 100 represented to Kal-Mor that it
19 was transferring to Kal-Mor the full rights, title, and interests First 100 acquired in the Camino
20 Ramon Property from the Tierra Mesa HOA under the Quitclaim Deed recorded on August 11,
21 2014

22 81. At the time of the sale, Kal-Mor did not have actual notice of the August 2014
23 Deed of Trust, that First 100 had purported to pledge the Camino Ramon Property as collateral
24 for the Omni Loan, or that Omni claimed a security interest in the Camino Ramon Property.

25 THE FIRST 100 ACTION

26 82. In 2015, First 100 fell delinquent in its payment obligations under Omni Loan.
27 As a result, on January 8, 2016, Omni issued a Notification of Disposition of Collateral in which
28 it identified the personal property Omni believed to be subject to its security interest and

1 scheduled a sale of the collateral to take in accordance with NRS Chapter 104 on January 21,
2 2016 (the "UCC Sale").

3 83. On January 15, 2016, First 100 filed a complaint in the Eighth Judicial District
4 Court in Clark County, Nevada (Case No. A-16-730374-C) (the "First 100 Action") in which it
5 asserted various claims against Omni and sought an injunction to prevent Omni from proceeding
6 with the UCC Sale.

7 84. On January 18, 2016, Omni removed the First 100 Action to the United States
8 District Court for the District of Nevada (the "District Court") (Case No. 2:16-cv-00099).

9 85. After several months of litigation in the First 100 Action, Omni completed the
10 UCC Sale on May 25, 2016 and purchased certain First 100 personal property that had been
11 pledged as collateral for the Omni Loan through a successful credit bid.

12 86. The value of the First 100 personal property purchased by Omni through the UCC
13 Sale far exceeded the outstanding balance of the Omni Loan claimed due and owing at that time.

14 87. However, the amount of Omni's successful credit bid at the UCC Sale was
15 substantially less than the outstanding balance of the Omni Loan claimed due and owing at that
16 time.

17 88. Various disputes subsequently arose between First 100 and Omni as to, among
18 other things, the outstanding balance of the Omni Loan, the reasonableness of the UCC Sale, the
19 value of the personal property purchase by Omni through the UCC Sale, and First 100's liability
20 for the remaining balance of the Omni Loan.

21 89. On June 15, 2016, Omni filed its Answer to First 100, LLC's Complaint and
22 Counterclaim and Third-Party Claim (the "Omni Counterclaim") in the First 100 Action.

23 90. Among other things, the Omni Counterclaim alleged the following:

- 24 a. The outstanding balance of the Omni Loan was "approximately \$4.1 million"
25 "(including principal interest, and fees)" as of the day the Omni Counterclaim
26 was filed;

b. The Omni Loan is “secured by deeds of trust and mortgages executed by First 100 (as trustor or mortgagor) in favor of Omni (as beneficiary or mortgagee), encumbering various parcels in Nevada and other states”; and

c. First 100 had “defaulted on its obligations under the [Omni] Loan and [had] failed to repay the [Omni] Loan as agreed”.

91. The Omni Counterclaim asserted claims for breach of contract and declaratory relief and sought an award of damages based upon First 100’s breach of its obligations under the Omni Loan.

92. After several additional months of litigation in the First 100 Action, Omni and First 100 reached an agreement to resolve their various disputes and entered into a written settlement agreement (the “First 100 Settlement”).

93. Under the First 100 Settlement, First 100 and Omni released all claims related to the First 100 Action and First 100’s default and breach of its obligations under the Omni loan, reserving only the rights of the parties to enforce the First 100 Settlement.

94. In connection with the First 100 Settlement, the District Court entered a Stipulated Judgment on February 16, 2017 in the First 100 Action through which it entered final judgment in favor of Omni and against First 100 in the amount of \$4.8 million for the remaining balance of the Omni Loan (the “First 100 Judgment”) and dismissed all claims, counterclaims, and third-party claims asserted in the First 100 Action with prejudice, reserving only the rights of the parties to enforce the First 100 Settlement.

95. The First 100 Judgment is a personal judgment against First 100.

96. The First 100 Judgment is a final judgment for purposes of appeal under Nevada Law.

OMNI EFFORTS TO ENFORCE THE DEEDS OF TRUST

97. Kal-Mor holds legal title to and ownership interests in the Kal-Mor Properties free and clear of any ownership interest, security interest, or other claim by the Defendants.

98. Kal-Mor maintains and operates the Kal-Mor Properties as residential rental properties.

4 100. Notwithstanding the subsequent entry of the First 100 Judgment, Omni continues
5 to make demands upon tenants occupying the Kal-Mor Properties for payment of rent Omni
6 claims to be entitled to collect pursuant to various assignments of rents contained within the
7 Deeds of Trust.

101. Upon information and belief, Omni has collected in excess of \$5,000 in rent rightfully owed to Kal-Mor from tenants occupying the Kal-Mor Properties.

10 102. On May 15, 2017, Omni caused a Notice of Breach and Election to Sell under
11 Deeds of Trust (the “Notice of Default”) to be recorded in the Official Records against the Kal-
12 Mor Properties as instrument number 20140515-0000474.

13 103. Under the Notice of Default, Omni claims to be legally entitled to cause the Kal-
14 Mor Properties to be sold through non-judicial foreclosure pursuant to the Deeds of Trust to
15 satisfy the outstanding balance of the Omni Loan.

16 104. Upon information and belief, Omni intends to cause the Kal-Mor Properties to be
17 sold through non-judicial foreclosure sales pursuant to the Deeds of Trust and to retain the
18 proceeds and benefits of such sales.

FIRST CAUSE OF ACTION

(Breach of Contract – Against First 100)

105. Plaintiff repeats and realleges the allegations contained in the foregoing paragraphs and incorporates the same herein by this reference as though set forth in full.

106. Valid and enforceable contracts existed between Kal-Mor and First 100 as to the sales of the various Kal-Mor Properties.

107. The parties' contracts required that First 100 transfer to Kal-Mor the full rights, title, and interests First 100 acquired in the Kal-Mor Properties from the various unit-owners' associations from whom First 100 had previously purchased the Kal-Mor Properties.

1 108. First 100 materially breached the parties' various contracts by, among other
2 things, failing to disclose the existence of the Deeds of Trust to Kal-Mor prior to the sales of the
3 Kal-Mor Properties.

4 109. As a result of First 100's material breaches of the parties' various contracts, Kal-
5 Mor has suffered damages in an amount in excess of \$10,000 to be proven at trial.

6 110. Kal-Mor has incurred attorney fees and costs in bringing this action and is entitled
7 to recover such attorney fees and costs from the Defendants.

8 **SECOND CAUSE OF ACTION**

9 **(Breach of Implied Covenant of Good Faith and Fair Dealing – Against First 100)**

10 111. Plaintiff repeats and realleges the allegations contained in the foregoing
11 paragraphs and incorporates the same herein by this reference as though set forth in full.

12 112. Valid and enforceable contracts existed between Kal-Mor and First 100 as to the
13 sales of the various Kal-Mor Properties.

14 113. Under Nevada law, First 100 was required to act in good faith and deal fairly with
15 Kal-Mor in the course of performing its obligations under the parties' various contracts.

16 114. First 100 breached its duty of good faith and fair dealing by, among other things,
17 failing to disclose the existence of the Deeds of Trust to Kal-Mor prior to the sales of the Kal-
18 Mor Properties.

19 115. As a result of First 100's material breaches of the parties' various contracts, Kal-
20 Mor has suffered damages in an amount in excess of \$10,000 to be proven at trial.

21 116. Kal-Mor has incurred attorney fees and costs in bringing this action and is entitled
22 to recover such attorney fees and costs from the Defendants.

23 **THIRD CAUSE OF ACTION**

24 **(Negligent Misrepresentation – Against First 100)**

25 117. Plaintiff repeats and realleges the allegations contained in the foregoing
26 paragraphs and incorporates the same herein by this reference as though set forth in full.

27 118. In connection with the sales of the Kal-Mor Properties, First 100 represented that
28 it was able to and would, in fact, convey to Kal-Mor the full rights, title, and interests First 100

1 acquired in the Kal-Mor Properties from the various unit-owners' associations from whom First
2 100 had previously purchased the Kal-Mor Properties.

3 119. Kal-Mor relied upon First 100's representations concerning its rights, title, and
4 interests in the Kal-Mor Properties in making the decision to purchase the Kal-Mor Properties
5 from First 100.

6 120. First 100 did not disclose to Kal-Mor at any time prior to the sale of any of the
7 Kal-Mor Properties that First 100 had previously purported to pledge the Kal-Mor Properties as
8 collateral for the Omni Loan under the Deeds of Trust.

9 121. Had Kal-Mor known that First 100 had previously purported to pledge the Kal-
10 Mor Properties as collateral from the Omni Loan under the Deeds of Trust, Kal-Mor would not
11 have purchased the Kal-Mor Properties.

12 122. As a result of the wrongful conduct of First 100, Kal-Mor has suffered damages in
13 an amount in excess of \$10,000 to be proven at trial.

14 123. Kal-Mor has incurred attorney fees and costs in bringing this action and is entitled
15 to recover such attorney fees and costs from First 100.

16 **FOURTH CAUSE OF ACTION**

17 **(Declaratory Relief – All Defendants)**

18 124. Plaintiff repeats and realleges the allegations contained in the foregoing
19 paragraphs and incorporates the same herein by this reference as though set forth in full.

20 125. An actual, justiciable controversy that is ripe for adjudication exists between the
21 parties concerning the existence and priority of the parties' respective claimed interests in the
22 Kal-Mor Properties.

23 126. Accordingly, Kal-Mor is entitled to and seeks a legal determination from this
24 Court concerning the existence and priority of the parties' respective claimed interests in the Kal-
25 Mor Properties.

26 127. Specifically, Kal-Mor seeks the entry of declaratory judgment against the
27 Defendants determining as follows:
28

- 1 a. The Omni Loan was satisfied in full through the UCC Sale, the First 100
- 2 Settlement, and/or the First 100 Judgment;
- 3 b. Having already received a final judgment against First 100 for the balance of
- 4 the Omni Loan, Omni is barred from taking action to enforce the Deeds of
- 5 Trust pursuant to Nev. Rev. Stat. §§ 40.430 and/or 40.435;
- 6 c. The Deeds of Trust and any assignment of rents contained therein are void
- 7 and unenforceable pursuant to Nev. Rev. Stat. §§ 40.430 and/or 40.435;
- 8 d. The incomplete and incorrect legal descriptions of the Kal-Mor Properties set
- 9 forth in the Deeds of Trust are insufficient to provide actual or constructive
- 10 notice of Omni's claimed security interests in the Kal-Mor Properties;
- 11 e. Kal-Mor is a bona fide purchaser for value of the Kal-Mor Properties and took
- 12 title to the Kal-Mor Properties without actual or constructive notice of the
- 13 Deeds of Trust; and
- 14 f. Kal-Mor holds legal title to and ownership interests in the Kal-Mor Properties
- 15 free and clear of any ownership interest, security interest, or other claim of the
- 16 Defendants.

17 128. Kal-Mor has incurred attorney fees and costs in bringing this action and is entitled
18 to recover such attorney fees and costs from the Defendants.

19 **FIFTH CAUSE OF ACTION**

20 **(Quiet Title – Against All Defendants)**

21 129. Plaintiff repeats and realleges the allegations contained in the foregoing
22 paragraphs and incorporates the same herein by this reference as though set forth in full.

23 130. Under NRS § 40.010, “[a]n action may be brought by any person against another
24 who claims an estate or interest in real property, adverse to the person bringing the action, for the
25 purpose of determining such adverse claim.”

26 131. Kal-Mor holds legal title to and ownership interests in the Kal-Mor Properties free
27 and clear of any ownership interest, security interest, or other claim by the Defendants.

28

132. The security interests in the Kal-Mor Properties claimed by Omni under the Deeds of Trust are adverse to Kal-Mor's rights, title, and interests in the Kal-Mor Properties.

133. Kal-Mor is entitled to and seeks the entry of judgment against Omni determining that Kal-Mor rights, title, and interests in the Kal-Mor Properties are superior to any claim or interest Omni may assert under the Deeds of Trust.

134. Kal-Mor has incurred attorney fees and costs in bringing this action and is entitled to recover such attorney fees and costs from the Defendants.

SIXTH CAUSE OF ACTION

(Unjust Enrichment – Against Omni)

135. Plaintiff repeats and realleges the allegations contained in the foregoing paragraphs and incorporates the same herein by this reference as though set forth in full.

136. Kal-Mor holds legal title to and ownership interests in the Kal-Mor Properties free and clear of any ownership interest, security interest, or other claim by the Defendants.

137. Beginning on or about September 29, 2016, Omni began making demands upon tenants occupying the Kal-Mor Properties for payment of rent Omni claimed to be entitled to collect pursuant to various assignments of rents contained within the Deeds of Trust.

138. Notwithstanding the subsequent entry of the First 100 Judgment, Omni continues to make demands upon tenants occupying the Kal-Mor Properties for payment of rent Omni claims to be entitled to collect pursuant to various assignments of rents contained within the Deeds of Trust.

139. Upon information and belief, Omni has collected in excess of \$5,000 in rent owed to Kal-Mor from tenants occupying the Kal-Mor Properties, which Omni has unjustly retained against fundamental principles of justice, equity, and good conscience.

140. Kal-Mor is entitled to recover from Omni all rents collected by Omni from tenants occupying the Kal-Mor Properties.

141. Kal-Mor has incurred attorney fees and costs in bringing this action and is entitled to recover such attorney fees and costs from the Defendants.

SEVENTH CAUSE OF ACTION

(Conversion – Against Omni)

142. Plaintiff repeats and realleges the allegations contained in the foregoing paragraphs and incorporates the same herein by this reference as though set forth in full.

143. Kal-Mor holds legal title to and ownership interests in the Kal-Mor Properties free and clear of any ownership interest, security interest, or other claim by the Defendants.

144. Beginning on or about September 29, 2016, Omni began making demands upon tenants occupying the Kal-Mor Properties for payment of rent Omni claimed to be entitled to collect pursuant to various assignments of rents contained within the Deeds of Trust.

145. Notwithstanding the subsequent entry of the First 100 Judgment, Omni continues to make demands upon tenants occupying the Kal-Mor Properties for payment of rent Omni claims to be entitled to collect pursuant to various assignments of rents contained within the Deeds of Trust.

146. In doing so, Omni has wrongfully exercised control over and retained rents rightfully owed to Kal-Mor in defiance and derogation of Kal-Mor rights, title, and interest in such rents.

147. Kal-Mor has incurred attorney fees and costs in bringing this action and is entitled to recover such attorney fees and costs from the Defendants.

EIGHTH CAUSE OF ACTION

(Slander of Title – Against Omni)

148. Plaintiff repeats and realleges the allegations contained in the foregoing paragraphs and incorporates the same herein by this reference as though set forth in full.

149. Kal-Mor holds legal title to and ownership interests in the Kal-Mor Properties free and clear of any ownership interest, security interest, or other claim by the Defendants.

150. Yet, Omni continues to falsely and maliciously claim various security interests in the Kal-Mor Properties that are disparaging to and have created a cloud upon Kal-Mor's legal title to and ownership interests in the Kal-Mor Properties.

151. Among other things, Omni caused the Notice of Default to be recorded against the Kal-Mor Properties on May 15, 2017 stating its intent to cause the Kal-Mor Properties to be sold at foreclosure pursuant to the Deeds of Trust.

152. As a result of Omni's wrongful conduct, Kal-Mor has sustained general and special damages, including attorney fees and other costs of removing the cloud upon Kal-Mor's legal title to and ownership interests in the Kal-Mor Properties.

153. As a result of Omni's wrongful conduct, Kal-Mor has suffered damages in an amount in excess of \$10,000 to be proven at trial.

154. Kal-Mor has incurred attorney fees and costs in bringing this action and is entitled to recover such attorney fees and costs from Omni.

NINTH CAUSE OF ACTION

(Intentional Interference with Contractual Relations – Against Omni)

155. Plaintiff repeats and realleges the allegations contained in the foregoing paragraphs and incorporates the same herein by this reference as though set forth in full.

156. Kal-Mor is a party to various leases with the third-party tenants that occupy the Kal-Mor Properties.

157. Omni is aware of the leases that have been entered into between Kal-Mor and the third-party tenants that occupy the Kal-Mor Properties.

158. Omni had intentionally and maliciously disrupted the contractual relationships between Kal-Mor and the third-party tenants that occupy the Kal-Mor Properties by, among other things, claiming various security interests in the Kal-Mor Properties and rents thereof, demanding that such tenants pay rent to Omni, interception rents rightfully payable to Kal-Mor from such tenants, and continually harassing such tenants that refuse to pay rent to Omni.

159. As a result of Omni's wrongful conduct, the contractual relationships between Kal-Mor and the third-party tenants that occupy the Kal-Mor Properties have been disrupted.

160. As a result of Omni's wrongful conduct, Kal-Mor has suffered damages in an amount in excess of \$10,000 to be proven at trial.

1 161. Kal-Mor has incurred attorney fees and costs in bringing this action and is entitled
2 to recover such attorney fees and costs from Omni.

3 **TENTH CAUSE OF ACTION**

4 **(Injunctive Relief – Against Omni)**

5 162. Plaintiff repeats and realleges the allegations contained in the foregoing
6 paragraphs and incorporates the same herein by this reference as though set forth in full.

7 163. Kal-Mor holds legal title to and ownership interests in the Kal-Mor Properties free
8 and clear of any ownership interest, security interest, or other claim by the Defendants.

9 164. Kal-Mor is informed and believes that Omni (i) intends to continue making
10 demands for rents upon the tenants occupying the Kal-Mor Properties that are contractually
11 required to pay rent to Kal-Mor and (ii) intends to attempt to cause the Kal-Mor Properties to be
12 sold through non-judicial foreclosure as set forth in the Notice of Default.

13 165. Kal-Mor is entitled to and seeks the entry of an order granting preliminary and
14 permanent injunctive relief and precluding Omni from taking any action to enforce any interest
15 Omni claims in the Kal-Mor Properties under the Deeds of Trust.

16 166. Kal-Mor has incurred attorney fees and costs in bringing this action and is entitled
17 to recover such attorney fees and costs from the Defendants.

18 **PRAYER FOR RELIEF**

19 **WHEREFORE**, Plaintiff prays for relief and judgment as follows:

20 1. For an award of actual and consequential damages in an amount in excess of
21 \$10,000 to be proven at trial;

22 2. For equitable, declaratory, and injunctive relief as requested herein;

23 3. For an award of pre and post-judgment interest and costs of suit;

24 ///

25 ///

26 ///

27 ///

28 ///

- 1 4. For special damages, including an award of attorney fees; and
2 5. For such other relief as the Court deems reasonable and proper.

3 DATED this 19th day of June, 2017.

4 KOLESAR & LEATHAM

5
6 By 

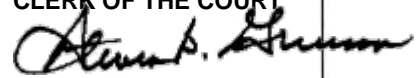
BART K. LARSEN, ESQ.
Nevada Bar No. 08538
ERIC D. WALTHER, ESQ.
Nevada Bar No. 13611
400 South Rampart Boulevard, Suite 400
Las Vegas, Nevada 89145

7
8
9
10 *Attorneys for Kal-Mor-USA, LLC*

EXHIBIT “3”

FIRST AMENDED CROSSCLAIM

EXHIBIT “3”



Robert W. Hernquist; Nevada Bar No. 10616
Brian J. Pezzillo; Nevada Bar No. 7136
HOWARD & HOWARD ATTORNEYS PLLC
3800 Howard Hughes Parkway, Suite 1000
Las Vegas, Nevada 89169
Telephone: (702) 257-1483
Facsimile: (702) 567-1568
Email: rwh@h2law.com; bjp@h2law.com

Attorneys for Defendant Omni Financial, LLC

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY NEVADA

KAL-MOR-USA, LLC, a Nevada limited
liability company,

Plaintiffs,

vs.

OMNI FINANCIAL, LLC, a foreign limited
liability company; FIRST 100, LLC, a
Nevada limited liability company; DOES I
through X and ROE ENTITIES I through X;

Defendants.

OMNI FINANCIAL, LLC a foreign limited
liability company,

Counter-claimant,

vs.

KAL-MOR-USA, LLC, a Nevada limited
liability company; DOES 1 – 10; ROE
ENTITIES 1 – 10.

Counter-defendants.

OMNI FINANCIAL, LLC, a foreign limited
liability company,

Cross-Claimant,

Case No.: A-17-757061-C

Dept. 2

**FIRST AMENDED CROSS CLAIM OF
OMNI FINANCIAL, LLC**

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Cross-Claimant,
vs.

FIRST 100, LLC, a Nevada limited liability company; DOES 11 – 20, ROE ENTITIES 11 – 20.

Cross-Defendants.

Defendant Omni Financial, LLC (“Omni”) submits the following First Amended Cross-Claim against First 100, LLC. Nothing herein should be deemed to affect the Answer or Counterclaim filed by Omni on August 12, 2019 in response to the Complaint filed by Kal-Mor-USA the contents of which are incorporated herein as if set forth in full. Omni states as follows with regard to its Cross-claim against First 100, LLC:

1. Omni is a California limited liability company.
2. Cross-Defendant, First 100, LLC is a Nevada limited liability company which at all times relevant to the facts set forth in this Cross-claim was doing business in Clark County, Nevada.
3. Defendants DOES 11 – 20, and ROE ENTITIES 11 – 20, are unknown to Omni at the present time and therefore named by fictitious names. Omni will seek leave of Court to amend its Cross-claim to show the true names of the parties when they have been identified. Upon information and belief, it is alleged that each fictitious party is in some manner responsible for the damages incurred by Omni.
4. Defendants DOES 1 – 10, and ROE ENTITIES 1 – 10, are unknown to Omni at the present time and therefore named by fictitious names. Omni will seek leave of Court to amend its Counterclaim to show the true names of the parties when they have been identified. Upon information and belief, it is alleged that each fictitious party is in some manner responsible for the damages incurred by Omni.
5. In 2014, Omni agreed to loan up to \$5 million to First 100, LLC (“First 100”) to

1 finance the purchase and enforcement of homeowner association receivables (the "Loan").

2 6. On May 27, 2014, (i) Omni and First 100 entered into a Loan Agreement; (ii)
3 First 100 executed a Promissory Note and Security Agreement in Omni's favor; and (iii) certain
4 First 100 principals issued Payment Guarantees in Omni's favor.

5 7. The Security Agreement granted Omni a security interest in all of First 100's
6 present and future-acquired personal property, ranging from HOA Receivables to accounts to
7 equipment and so forth, as further evidenced by first-in-time UCC-1 filings made with the
8 Secretary of State of Nevada and Florida.

9 8. On or about May 27, 2014, First 100 also executed multiple deeds of trust in
10 Omni's favor (the "Omni Deeds of Trust").

11 9. The Omni Deeds of Trust encumbered, as security for the Loan, approximately
12 thirty properties in the State of Nevada.

13 10. The Omni Deeds of Trust were recorded on May 27, 2014 (the "May 2014 Deed
14 of Trust"), June 17, 2014 (the "June 2014 Deed of Trust") and August 21, 2014 (the "August
15 2014 Deed of Trust").

16 11. The May 2014 Deed of Trust was recorded in the official records of the Clark
17 County, Nevada Recorder as instrument number 20140529-0001342 and re-recorded as
18 instrument number 20170424-0000178.

19 12. Pursuant to the May 2014 Deed of Trust the following properties were secured:

- 20 a. 1217 Neva Ranch Avenue, North Las Vegas, NV 89081 (APN 124-26-
21 311-029);
- 22 b. 230 East Flamingo Road #330, Las Vegas, NV 89169 (APN 162-16-810-
23 355);
- 24 c. 2615 West Gary Avenue #1065, Las Vegas, NV 89123 (APN 177-20-
25 813-127);
- 26 d. 6575 Shining Sand Avenue, Las Vegas, NV 89142 (APN 161-10-511-
27 072).

13. The June 2014 Deed of Trust secured the following properties in favor of Omni:

- a. 4921 Indian River Drive, #112, Las Vegas, NV 89103 (APN 163-24-612-588);
- b. 5009 Indian River Drive #155, Las Vegas, NV 89103 (APN 163-24-612-639);
- c. 5295 Indian River Drive, #314, Las Vegas, NV 89103 (APN 163-24-612-798);
- d. 4400 Sandy River Drive #16, Las Vegas, NV 89103 (APN 163-24-612-500).

14. The August 2014 Deed of Trust secured the following property:

- a. 5782 Camino Ramon Avenue, Las Vegas, NV 89156 (APN 140-21-611-018).

15. Kal-Mor contends it subsequently purchased and owns nine of those thirty parcels (the “Kal-Mor Properties”).

16. In 2013, 2014 and 2015, Kal-Mor purchased several properties from First 100, including the Kal-Mor Properties at issue here.

17. First 100 represented to Omni that it “in transferring the Real Properties...to third parties, [First 100] provided all of those third parties, prior to closing the transfer transaction, with actual notice of the existence of Omni’s first-priority security interest in those Real Properties.”

18. Upon information and belief, and unbeknownst to Omni when it extended the Loan, First 100 and Kal-Mor were *not* independent parties. Greg Darroch—Kal-Mor’s principal, owned equity in First 100.

19. Upon information and belief it is alleged that Mr. Darroch still owns equity in First 100.

20. Under Nevada law, a deed of trust automatically “creates an assignment of rents arising from the real property described in the security instrument, unless the security instrument

provides otherwise.” NRS 107A.230(1).

21. Prior to Kal-Mor’s purchases First 100 breached the Loan.

22. Among other things, it failed to: (i) pay principal and interest when due; (ii) cure the defects in Omni’s Deeds of Trust; (iii) properly prosecute and enforce the HOA receivables; and (iv) provide Omni with required monthly, quarterly, and annual financial statements.

23. Omni issued a notice of default on April 8, 2015.

24. First 100 failed to respond, forcing Omni to hire legal counsel.

25. On November 2, 2015, Omni sent First 100 a second notice of default, categorizing First 100’s breaches in more detail. That notice accelerated the Loan and demanded payment in full.

26. Throughout November 2015, First 100 and Kal-Mor repeatedly promised Omni that Kal-Mor would buy out the Omni Loan at full face value.

27. At times, First 100 and Kal-Mor promised Omni that a \$4 million pay-off would be wired within hours.

28. Kal-Mor’s counsel delivered a draft loan assignment agreement to Omni on November 20, 2015, and Omni responded with a revised draft a few days later.

29. Negotiations continued into early December, until Kal-Mor’s counsel simply “went dark”— declining to respond to any email or phone messages.

30. Upon information and belief it is alleged that Kal-Mor’s entire loan payoff proposals were a ruse to buy First 100 more time.

31. Omni and First 100 entered into a Forbearance Agreement dated December 18, 2015, and a related Addendum three days later.

32. Omni agreed to forego foreclosure over First 100’s personalty in exchange for various First 100 promises, including (i) delivery of financial statements by December 18th and (ii) a \$270,500 payment by December 28th.

33. Both deadlines came and went with no performance: First 100 eventually violated virtually every single forbearance term.

1 34. Given those immediate defaults, Omni suspected the forbearance was another
2 delay tactic, the aim of First 100 and Kal-Mor—acting in concert—being to delay foreclosure and
3 further stifle Omni.

4 35. Given First 100's then year-old payment default, Omni noticed a UCC sale
5 pursuant to NRS Chapter 104, by issuing a "Notification of Disposition of Collateral" in January
6 2016 (the "1st UCC Notice").

7 36. In response, First 100 filed suit and sought an emergency, *ex parte* TRO to stop
8 the sale.

9 37. Kal-Mor filed a virtually identical suit and emergency, *ex parte* TRO request (Case
10 No. A-16-730447-C).

11 38. Over the course of the next year of proceedings, First 100 and Kal-Mor's positions
12 were virtually 100% in alignment as Kal-Mor, on many occasions, filed one- to two-paragraph
13 joinders to lengthy First 100 filings. (*See, e.g.* Case No. 2:16-cv-00099, ECF 20, 65, 91).

14 39. Omni removed the two cases to federal court, and they were consolidated into one
15 case.

16 40. Giving First 100 and Kal-Mor the benefit of the doubt, the U.S. District Court
17 granted a TRO and postponed Omni's foreclosure sale. (Case No. 2:16-cv-00099, ECF 21).

18 41. Several months later, after three days of evidentiary hearings and extensive
19 briefings and oral arguments, the U.S. District Court held that: (i) the original TRO was wholly
20 unwarranted; (ii) Omni could proceed with the foreclosure sale; and (iii) Omni was entitled to
21 Kal-Mor's TRO bond.

22 42. Not only was Kal-Mor a party to the federal proceedings, but its disputes with
23 Omni were resolved in an agreement specifically addressing the Kal-Mor Real Properties and
24 anticipating Omni's future real-property foreclosure actions.

25 43. In documents dated November 23, 2016, Omni and Kal-Mor agreed to a (i)
26 "Settlement and Mutual General Release Agreement" (the "Kal-Mor Settlement"); and (ii)
27 "Stipulation and Order for Entry of Final Judgment" (the "Kal-Mor SAO"). Critically, the former
28

1 states:

2 W. The Parties now desire to resolve all differences, disputes and
3 disagreements between them relating to the 2014-2015 Receivables and the ACR
4 Receivables. ***This Agreement, however, is not intended to address or resolve any
dispute between the Parties as to the Kal-Mor Real Properties.***

5 Notwithstanding the terms provided herein, ***Omni reserves all rights to
assert claims and conduct Enforcement Actions relating to any asset or property***
6 other than the 2013 Receivables, 2014-2015 Receivables, and/or ACR Receivables,
7 whether owned (previously, currently, or in the future) by GFY or a third party,
including but not limited to the Kal-Mor Real Properties, associated proceeds, rents,
and/or other assets.

8 44. The Kal-Mor SAO states:

9 The entry final judgment by the Court pursuant to this Stipulation shall not preclude
10 or otherwise impair any claim or defense that may exist between the Parties other than those
expressly stated in the Complaint or the Counterclaim.

11 45. Several weeks later, Omni and First 100 entered into a similar agreement ("First
12 100 Settlement").

13 46. First 100 and Omni each understood that the First 100 Settlement entered into
14 between the parties would not preclude Omni's ability and right to foreclose on the properties
15 which are subject of its Deeds of Trust and First 100 actively assisted Omni with the foreclosure
16 of its Deeds of Trust.

17 47. Omni was in constant discussions with First 100 and Kal-Mor during that time,
18 and Omni consistently and unequivocally told both of them it would be foreclosing on the Kal-
19 Mor Properties.

20 48. While negotiating the First 100 Settlement, Jay Bloom of First 100 repeatedly told
21 Martin Boone of Omni that Omni was still secured by the Deeds of Trust.

22 49. The First 100 Settlement specifically stated no third parties were being granted any
23 rights by virtue of the Settlement Agreement.

24 50. Kal-Mor was specifically identified as not being afforded any rights and under the
25 First 100 Settlement Agreement.

26 51. Confirming the representations leading up to the execution of the Settlement
27
28

1 Agreement between Omni and First 100, First 100 made affirmative representations within the
2 Settlement Agreement confirming the fact that Omni was entitled to foreclose upon the relevant
3 Deeds of Trust.

4 52. In the Settlement Agreement [p. 11 of 22] with an effective date of January 16th,
5 2017 First 100 represented through Jay Bloom:

6 Representation. First 100 (for itself, Holdings, Guarantors, and its and their Affiliates)
7 hereby represents and warrants to Omni that in transferring the Real Properties (other than
8 the four Real Properties to which it still retains title) to third parties, Omni [should read
9 First 100] provided all of those third parties, prior to closing the transfer transaction, with
10 actual notice of the existence of Omni's first-priority security interest in those Real
11 Properties. This representation and warranty is true and may not be or become false or
12 misleading in whole or in part without that constituting a material breach hereof. This
13 representation and warranty shall survive the termination or expiration of this Agreement.

14 53. Upon information and belief it is alleged that this statement false and that First 100
15 failed to make the required representation as it affirmatively represented it would.

16 54. Additionally, First 100, acting through Jay Bloom, affirmatively represented in the
17 aforementioned Settlement Agreement [p. 11 of 22] that:

18 Omni shall have the right, but not the obligation, to advance additional funds
19 that may be required to:

20 Retain attorneys, *initiate foreclosure*, bid at foreclosure sales, manage and repair
21 properties to which Omni has taken title, satisfy rival liens, collect rents, enforce
22 settlements, and/or to otherwise pursue such collections . . .

23 55. Upon information and belief and as alleged in its Motion to Dismiss filed on
24 September 3, 2019 and in the Reply in support therefore filed on October 7, 2019, it is alleged
25 that First 100's statement at the time of execution of the Settlement Agreement was false and First
26 100 actually believed that Omni did not have the right to foreclose upon various properties at
27 issue and made the above statement with fully knowledge of its falsity in order to induce Omni to
28 enter into the Settlement Agreement.

56. Shortly after settling, Omni's counsel notified First 100 that Omni would be
foreclosing on the encumbered real property, but could not locate the original 2014 Promissory

Note, which its trustees (under the Deeds of Trust) were requesting.

57. In lieu of the original, Omni's title company requested that First 100 provide a "Lost Note Affidavit."

58. First 100 signed and returned a Lost Note Affidavit on January 30, 2017 and provided the original to the title company.

59. On January 27, 2017 at 10:29 a.m., Martin Boone of Omni contacted Jay Bloom of First 100 regarding the need to acquire a Lost Note Affidavit.

60. On January 30, 2017 Jay Bloom of First 100 executed a Lost Note Affidavit, under oath, which stated in part:

a. The Omni Loan was governed and evidenced by various contracts, addenda and amendments (collectively, the "Loan Documents"), including without limitation that certain:

i. Loan Agreement dated May 27, 2014, by First 100, as borrower, and Omni as the lead participating lender;

ii. Promissory Note dated May 27, 2014 by First 100, as obligor, and Omni as payee (the "Note");

iii. Security Agreement dated May 27, 2014 between First 100, as pledger, and Omni as pledgee, supported by UCC-1 filings by Omni against First 100 in Nevada and Florida; and

b. numerous deeds of trust and mortgages granted (or to have been granted) by First 100, as trustor or mortgagor, in favor of Omni, as beneficiary or mortgagee, over real property located in the State of Nevada and elsewhere.

61. On April 6, 2017 in email communications between Jay Bloom of First 100 and Kimberlee Kay and Martin Boone of Omni, Jay Bloom inquired as to what properties were being foreclosed upon by Omni.

62. Several hours after the email of April 6, 2017, Martin Boone of Omni phoned Jay

1 Bloom of First 100 and explained which properties were being foreclosed upon. Jay Bloom
2 agreed to execute necessary documents to assist with Omni's planned action of foreclosure and
3 did not dispute the fact that Omni had the ability to foreclose on various properties.

4 63. On April 14, 2017 at 4:25 p.m., Kimberlee Kay of Omni emailed Jay Bloom of
5 First 100 and enclosed a copy of the Lost Note Affidavit which Omni was in need of in order to
6 proceed with the foreclosure of the Properties.

7 64. Jay Bloom executed the requested Lost Note Affidavit, under oath on April 21,
8 2017 which stated in part:

9 a. The Omni Loan was governed and evidenced by various contracts,
10 addenda and amendments (collectively, the "Loan Documents"),
11 including without limitation that certain:

12 i. Loan Agreement dated May 27, 2014, by First 100, as borrower,
13 and Omni as the lead participating lender;

14 ii. Promissory Note dated May 27, 2014 by First 100, as obligor, and
15 Omni as payee (the "Note");

16 iii. Security Agreement dated May 27, 2014 between First 100, as
17 pledger, and Omni as pledgee, supported by UCC-1 filings by
18 Omni against First 100 in Nevada and Florida; and

19 iv. numerous deeds of trust and mortgages granted (or to have been
20 granted) by First 100, as trustor or mortgagor, in favor of Omni,
21 as beneficiary or mortgagee, over real property located in the
22 State of Nevada and elsewhere.

23 65. In neither instance did First 100 challenge Omni's course of action or claim that
24 the parties had intended in their settlement that Omni forfeit its real property liens.

25 66. Following settlement of the federal case regarding First 100's *personalty*, Omni
26 turned to foreclosing on the 24 real properties liened in its Deeds of Trust.

27 67. On May 15, 2017, Omni caused a Notice of Breach and Election to Sell under
28

1 Deeds of Trust (the "Notice of Default") to be recorded with the Clark County Recorder's Office.

2 68. After the mandatory three-month waiting period required by statute, Omni caused
3 the Trustee to record a "Notice of Sale."

4 69. The Notice of Sale scheduled the foreclosure sale for September 12, 2017.

5 70. The sales were voluntarily postponed pursuant to negotiations with Kal-Mor.

6 71. In late September and early October of 2016, Omni sent letters to all 24
7 properties, including the properties in which Plaintiff claims an interest (the "Properties in
8 Dispute"), directing tenants to pay rents not to their property owners and/or managers, but
9 directly to Omni.

10 72. Upon information and belief, the Plaintiff has directed the tenants occupying the
11 Properties in Dispute to ignore Omni's demand for payment of rents, thereby depriving Omni of
12 its right to those rents as provided by NRS 107A.230.

13 73. Plaintiff contends that the Omni Deeds of Trust are not legally enforceable and
14 thus that Omni has no valid interest in any of the Properties in Dispute.

15 74. Pursuant to Nevada law, the Plaintiff had notice of the Omni Deeds of Trust at
16 the time it purportedly took an interest in the Properties in Dispute.

17 75. Plaintiff contends that Omni has waived its rights in the Properties in Dispute as
18 well as the rents from said properties.

19 76. In May 2017, Omni caused a Notice of Breach and Election to Sell Under
20 Deeds of Trust to be recorded against the Properties in Dispute.

21 77. In August of 2017, Omni caused to be recorded a Notice of Trustee's Sale
22 scheduling a non-judicial foreclosure sale of each of the Properties in Dispute.

23 78. Each of the Plaintiffs has challenged Omni's efforts to foreclose upon the
24 Properties in Dispute and contends that the Omni Deeds of Trust are void and of no effect.

25 79. In light of this dispute, Omni voluntarily agreed to continue the scheduled
26 foreclosure sales.

27 80. This action was filed by Plaintiff in 2017.

1 81. Plaintiff has filed a Motion for Partial Summary Judgment which sought, in part,
2 a ruling that Omni's claims are barred by the doctrine of novation.

3 82. The Court granted, in part, Plaintiff's Motion for Partial Summary Judgment on
4 the issue of novation on or about October 3, 2018.

5 83. Implicit in the Court's ruling was that both Omni and First 100 intended their
6 settlement agreement to constitute a novation.

7 84. Neither Omni, nor First 100, intended the First 100 Settlement Agreement to
8 constitute a novation or affect Omni's rights under the Deeds of Trust.

9 85. When Omni and First 100 entered into the Settlement Agreement, it was with the
10 express understanding that Omni's rights to foreclose pursuant to its Deeds of Trust would be
11 preserved.

12 86. First 100, acting through its principal, Jay Bloom, expressly stated in connection
13 with the execution of the Settlement Agreement that Omni's Deeds of Trust would remain intact.

14 87. The Court's Order granting the Motion for Partial Summary Judgment finding that
15 the intent of Omni and First 100 to effectuate a novation of contract by entering into the Settlement
16 Agreement does not accurately reflect the intent of either party.

17 **FIRST CLAIM FOR RELIEF**

18 **(Intentional Misrepresentation)**

19 88. Omni incorporates the preceding paragraph of the Cross-claim and the Counter-
20 claim as if expressly set forth herein.

21 89. To the extent that the Court's order granting the Motion for Partial Summary is
22 accurate and First 100 did not have an intent to allow Omni to pursue foreclosure of the real
23 properties subject of its Deeds of Trust, then First 100's representations were false and were made
24 with full knowledge of their falsity.

25 90. Omni relied upon the representations of First 100 as made by Jay Bloom in
26 agreeing to enter into the Settlement Agreement.

27 91. If not for the wanton and malicious representations of First 100 relating to Omni's
28

ability to foreclose upon the real properties at issue, Omni would not have entered into the First 100 Settlement Agreement.

92. Omni has expended extensive time and money seeking to foreclose upon the properties subject of the First 100 Settlement Agreement and otherwise complying with the First 100 Settlement Agreement.

93. Omni has suffered damages in an amount in excess of \$15,000 as a result of the conduct of First 100 if the Court's prior ruling is accurate.

94. To the extent the Court's prior ruling regarding the issue of novation is accurate, the misrepresentations were made intentionally, were wanton and malicious and therefore entitle Omni to punitive damages.

95. Omni is entitled to an award of special damages including attorneys' fees, costs and interest in an amount in excess of \$15,000.

WHEREFORE, Omni prays for relief as follows:

- A. For monetary damages in excess of \$15,000 on all claims;
- B. For costs and attorneys' fees incurred in pursuing this action;
- C. For punitive damages; and,
- D. For such other and further relief as the Court deems proper.

HOWARD & HOWARD ATTORNEYS PLLC

Dated: October 31, 2019

By: /s/ Brian J. Pezzillo
Robert Hernquist, Nevada Bar No. 10616
Brian J. Pezzillo; Nevada Bar No. 7136

Attorneys for Defendant Omni Financial, LLC

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Howard & Howard Attorneys PLLC, and that on the 31st day of October 2019, I caused to be served a copy of the foregoing First Amended Cross Claim of Omni Financial, LLC in the following manner:

(ELECTRONIC SERVICE). The above-referenced document was electronically filed and served upon the parties listed below through the Court's Case Management and Electronic Case Filing system:

Bart K. Larsen
KOLESAR & LEATHAM
400 South Rampart Boulevard, Suite 400
Las Vegas, Nevada 89145

Joseph A. Gutierrez, Esq.
MAIER GUTIERREZ & ASSOC.
8816 Spanish Ridge Ave.
Las Vegas, NV 89148

*Attorney for Plaintiff Kal-Mor-USA,
LLC*

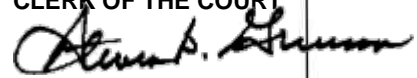
Attorney for First 100, LLC


An employee of Howard & Howard Attorneys PLLC

EXHIBIT “4”

Omni Financial Answer and Counterclaim

EXHIBIT “4”



ANS

Robert W. Hernquist; Nevada Bar No. 10616
Brian J. Pezzillo; Nevada Bar No. 7136
HOWARD & HOWARD ATTORNEYS PLLC
3800 Howard Hughes Parkway, Suite 1000
Las Vegas, Nevada 89169
Telephone: (702) 257-1483
Facsimile: (702) 567-1568
Email: rwh@h2law.com; bjp@h2law.com

Attorneys for Defendant Omni Financial, LLC

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY NEVADA

KAL-MOR-USA, LLC, a Nevada limited
liability company,

Plaintiffs,

vs.

OMNI FINANCIAL, LLC, a foreign limited
liability company; FIRST 100, LLC, a
Nevada limited liability company; DOES I
through X and ROE ENTITIES I through X;

Defendants.

OMNI FINANCIAL, LLC a foreign limited
liability company,

Counter-claimant,

vs.

KAL-MOR-USA, LLC, a Nevada limited
liability company; DOES 1 – 10; ROE
ENTITIES 1 – 10.

Counter-defendants.

OMNI FINANCIAL, LLC, a foreign limited
liability company,

Case No.: A-17-757061-C

Dept. 2

**ANSWER TO COMPLAINT,
COUNTERCLAIM AND CROSS
CLAIM OF OMNI FINANCIAL, LLC**

Cross-Claimant,
vs.

FIRST 100, LLC, a Nevada limited liability
company; DOES 11 – 20, ROE ENTITIES
11 – 20.

Cross-Defendants.

Defendant Omni Financial, LLC (“Omni”) submits the following Answer, Counter-Claim and Cross-Claim to the Complaint filed by Kal-Mor-USA, LLC (“Kal-Mor”) on June 19, 2017:

1. Omni is without sufficient information to either admit or deny the allegations contained in Paragraph 1 of the Complaint and therefore denies same.

2. Omni admits the allegations contained in paragraph 2 of the Complaint to the extent it is alleged that Omni is a California limited liability company. Omni is without sufficient information to either admit or deny the remaining allegations and therefore denies same.

3. Omni is without sufficient information to either admit or deny the allegations contained in Paragraph 3 of the Complaint and therefore denies same..

4. Omni is without sufficient information to either admit or deny the allegations contained in Paragraph 4 of the Complaint and therefore denies same.

5. Omni is without sufficient information to either admit or deny the allegations contained in Paragraph 5 of the Complaint and therefore denies same.

6. Omni admits the allegations contained in paragraph 6 of the Complaint.

7. Omni admits the allegations contained in paragraph 7 of the Complaint.

8. Omni admits the allegations contained in paragraph 8 of the Complaint to the extent it is a partial recitation of the document referenced, and states that the document referenced speaks for itself and Omni denies any allegation implied which is contrary to the underlying documents.

9. Omni admits the allegations contained in paragraph 9 of the Complaint.

1 10. Omni admits the allegations contained in paragraph 10 of the Complaint to the
2 extent it is alleged that First 100 pledged the listed properties. Omni is without sufficient
3 information and belief to either admit or deny any remaining allegations contained in paragraph
4 10 of the Complaint and therefore denies same.

5 11. Omni is without sufficient information to either admit or deny the allegations
6 contained in Paragraph 11 of the Complaint and therefore denies same.

7 12. Omni admits the allegations contained in paragraph 12 of the Complaint.

8 13. Omni admits the allegations contained in paragraph 13 of the Complaint to the
9 extent it is alleged that First 100 pledged the listed properties. Omni is without sufficient
10 information and belief to either admit or deny any remaining allegations contained in paragraph
11 13 of the Complaint and therefore denies same.

12 14. Omni is without sufficient information to either admit or deny the allegations
13 contained in Paragraph 14 of the Complaint.

14 15. Omni admits the allegations contained in paragraph 15 of the Complaint.

15 16. Omni admits the allegations contained in paragraph 16 of the Complaint to the
16 extent that it is alleged that First 100 pledged the property listed therein. Omni is without
17 sufficient information to either admit or deny any remaining allegations contained in paragraph
18 16 of the Complaint and therefore denies same.

19 17. Omni is without sufficient information to either admit or deny the allegations
20 contained in Paragraph 17 of the Complaint and therefore denies same.

21 18. Omni admits the allegations contained in paragraph 18 of the Complaint.

22 19. Omni admits the allegations contained in paragraph 19 of the Complaint.

23 20. Omni admits the allegations contained in paragraph 20 of the Complaint.

24 21. Omni admits the allegations contained in paragraph 21 of the Complaint.

25 22. Omni is without sufficient information to either admit or deny the allegations
26 contained in Paragraph 22 of the Complaint and therefore denies same.

56. Omni admits the allegations contained in paragraph 56 of the Complaint.

57. Omni is without sufficient information to either admit or deny the allegations contained in Paragraph 57 of the Complaint and therefore denies same.

58. Omni is without sufficient information to either admit or deny the allegations contained in Paragraph 58 of the Complaint and therefore denies same.

59. Omni is without sufficient information to either admit or deny the allegations contained in Paragraph 59 of the Complaint and therefore denies same.

60. Omni is without sufficient information to either admit or deny the allegations contained in Paragraph 60 of the Complaint and therefore denies same.

61. Omni admits the allegations contained in paragraph 61 of the Complaint.

62. Omni admits the allegations contained in paragraph 62 of the Complaint.

63. Omni admits the allegations contained in paragraph 63 of the Complaint.

64. Omni is without sufficient information to either admit or deny the allegations contained in Paragraph 64 of the Complaint and therefore denies same.

65. Omni is without sufficient information to either admit or deny the allegations contained in Paragraph 65 of the Complaint and therefore denies same.

66. Omni is without sufficient information to either admit or deny the allegations contained in Paragraph 66 of the Complaint and therefore denies same.

67. Omni is without sufficient information to either admit or deny the allegations contained in Paragraph 67 of the Complaint and therefore denies same.

68. Omni admits the allegations contained in paragraph 68 of the Complaint.

69. Omni admits the allegations contained in paragraph 69 of the Complaint.

70. Omni admits the allegations contained in paragraph 70 of the Complaint.

71. Omni is without sufficient information to either admit or deny the allegations contained in Paragraph 71 of the Complaint and therefore denies same.

72. Omni is without sufficient information to either admit or deny the allegations contained in Paragraph 72 of the Complaint and therefore denies same.

1 73. Omni is without sufficient information to either admit or deny the allegations
2 contained in Paragraph 73 of the Complaint and therefore denies same.

3 74. Omni is without sufficient information to either admit or deny the allegations
4 contained in Paragraph 74 of the Complaint and therefore denies same.

5 75. Omni admits the allegations contained in paragraph 75 of the Complaint.

6 76. Omni admits the allegations contained in paragraph 76 of the Complaint.

7 77. Omni admits the allegations contained in paragraph 77 of the Complaint.

8 78. Omni is without sufficient information to either admit or deny the allegations
9 contained in Paragraph 78 of the Complaint and therefore denies same.

10 79. Omni is without sufficient information to either admit or deny the allegations
11 contained in Paragraph 79 of the Complaint and therefore denies same.

12 80. Omni is without sufficient information to either admit or deny the allegations
13 contained in Paragraph 80 of the Complaint and therefore denies same.

14 81. Omni is without sufficient information to either admit or deny the allegations
15 contained in Paragraph 81 of the Complaint and therefore denies same.

16 82. Omni admits the allegations contained in paragraph 82 of the Complaint.

17 83. Omni admits the allegations contained in paragraph 83 to the extent is states a
18 generalization of what was contained in the Complaint filed by First 100 in Case No. A-16-
19 730374-C. The Complaint speaks for itself and to the extent anything in the Complaint is
20 inconsistent with the allegations in the Complaint the allegations in the Complaint are denied.

21 84. Omni admits the allegations contained in paragraph 84 of the Complaint.

22 85. Omni admits the allegations contained in paragraph 85 to the extent is provides a
23 general overview of the factual assertions. Any other allegations are denied.

24 86. Omni denies the allegations contained in paragraph 86 of the Complaint.

25 87. Omni admits the allegations contained in paragraph 87 of the Complaint to the
26 extent that Omni's credit bid was less than the amount due and owing by First 100. To the extent
27 any other allegations are being made, such allegations are denied.

1 88. Omni admits the allegations contained in paragraph 88 of the Complaint to the
2 extent it is alleged that various disputes existed between Omni and First 100. All other allegations
3 are denied.

4 89. Omni admits the allegations contained in paragraph 89 of the Complaint.

5 90. Omni admits the allegations contained in paragraph 90 of the Complaint to the
6 extent they accurately quote the Counterclaim referenced. Omni further states that the previously
7 filed Counterclaim speaks for itself.

8 91. Omni admits the allegations contained in paragraph 91 of the Complaint to the
9 extent is represents a generalization. Omni states that the Counterclaim referenced speaks for
10 itself and denies the allegations of paragraph 91 to the extent they are inconsistent with the
11 Counterclaim.

12 92. Omni admits the allegations contained in paragraph 92 of the Complaint to the
13 extent that a settlement agreement was entered into between Omni and First 100. Omni is without
14 sufficient information to either admit or deny any remaining allegations contained in Paragraph
15 92 of the Complaint and therefore denies same.

16 93. Omni denies the allegations contained in paragraph 93 of the Complaint and
17 further states that the Settlement Agreement referenced speaks for itself.

18 94. Omni admits that a Stipulated Judgment was entered on or about February 16,
19 2017. Omni denies the remaining allegations contained in paragraph 94 of the Complaint.

20 95. Omni denies the allegations contained in paragraph 95 of the Complaint and
21 further states that the Stipulated Judgment speaks for itself. Further, this paragraph contains a
22 legal conclusion and not a factual allegation and therefore no response is required.

23 96. Omni denies the allegations contained in paragraph 96 of the Complaint.

24 97. Omni denies the allegations contained in paragraph 97 of the Complaint.

25 98. Omni is without sufficient information to either admit or deny the allegations
26 contained in Paragraph 98 of the Complaint and therefore denies same.

1 99. Omni admits to collecting rents from tenants of certain properties. Omni is without
2 sufficient information to either admit or deny the allegations contained in Paragraph 99 of the
3 Complaint and therefore denies same.

4 100. Omni is without sufficient information to either admit or deny the allegations
5 contained in Paragraph 100 of the Complaint and therefore denies same.

6 101. Omni denies the allegations contained in paragraph 101 of the Complaint.

7 102. Omni admits the allegations contained in paragraph 102 of the Complaint.

8 103. Omni admits that it is the rightful owner of the properties subject of this dispute
9 and is entitled to foreclose upon those properties. All other allegations are denied.

10 104. Omni admits the allegations contained in paragraph 104 of the Complaint to the
11 extent that it is alleged that Omni is entitled to foreclose upon the properties at issue in this action.
12 Omni denies that it is currently engaged in non-judicial foreclosure sales. All other allegations
13 are denied.

14 105. Paragraph 105 of the Complaint does not require an admission or denial on behalf
15 of Omni. To the extent a response may be required, Omni denies the allegations contained in
16 paragraph 105 of the Complaint.

17 106. Omni is without sufficient information to either admit or deny the allegations
18 contained in Paragraph 106 of the Complaint and therefore denies same.

19 107. Omni is without sufficient information to either admit or deny the allegations
20 contained in Paragraph 107 of the Complaint and therefore denies same.

21 108. Omni is without sufficient information to either admit or deny the allegations
22 contained in Paragraph 108 of the Complaint and therefore denies same.

23 109. Omni is without sufficient information to either admit or deny the allegations
24 contained in Paragraph 109 of the Complaint and therefore denies same.

25 110. Omni is without sufficient information to either admit or deny the allegations
26 contained in Paragraph 110 of the Complaint and therefore denies same.

1 111. Paragraph 111 of the Complaint does not require an admission or denial on behalf
2 of Omni. To the extent a response may be required, Omni denies the allegations contained in
3 paragraph 111 of the Complaint.

4 112. Omni is without sufficient information to either admit or deny the allegations
5 contained in Paragraph 112 of the Complaint and therefore denies same.

6 113. Omni is without sufficient information to either admit or deny the allegations
7 contained in Paragraph 113 of the Complaint and therefore denies same.

8 114. Omni is without sufficient information to either admit or deny the allegations
9 contained in Paragraph 114 of the Complaint and therefore denies same.

10 115. Omni is without sufficient information to either admit or deny the allegations
11 contained in Paragraph 116 of the Complaint and therefore denies same.

12 116. Omni is without sufficient information to either admit or deny the allegations
13 contained in Paragraph 116 of the Complaint and therefore denies same.

14 117. Paragraph 117 of the Complaint does not require an admission or denial on behalf
15 of Omni. To the extent a response may be required, Omni denies the allegations contained in
16 paragraph 117 of the Complaint.

17 118. Omni is without sufficient information to either admit or deny the allegations
18 contained in Paragraph 118 of the Complaint and therefore denies same.

19 119. Omni is without sufficient information to either admit or deny the allegations
20 contained in Paragraph 119 of the Complaint and therefore denies same.

21 120. Omni is without sufficient information to either admit or deny the allegations
22 contained in Paragraph 120 of the Complaint and therefore denies same.

23 121. Omni is without sufficient information to either admit or deny the allegations
24 contained in Paragraph 121 of the Complaint and therefore denies same.

25 122. Omni is without sufficient information to either admit or deny the allegations
26 contained in Paragraph 122 of the Complaint and therefore denies same.

123. Omni is without sufficient information to either admit or deny the allegations contained in Paragraph 123 of the Complaint and therefore denies same.

124. Paragraph 124 of the Complaint does not require an admission or denial on behalf of Omni. To the extent a response may be required Omni denies the allegations contained in paragraph 124 of the Complaint.

125. Omni admits the allegations contained in paragraph 125 of the Complaint.

126. Omni is without sufficient information to either admit or deny the allegations contained in Paragraph 126 of the Complaint and therefore denies same.

127. Omni denies that Kal-Mor is entitled to any of the relief requested in paragraph 127 of the Complaint.

128. Omni denies the allegations contained in paragraph 128 of the Complaint.

129. Paragraph 129 of the Complaint does not require an admission or denial on behalf of Omni. To the extent a response may be required Omni denies the allegations contained in paragraph 129 of the Complaint.

130. The allegations contained in paragraph 130 do not require an admission or denial on behalf of Omni as they constitute legal conclusions and not factual assertions. To the extent a response is required Omni is without sufficient information to either admit or deny the allegations contained in Paragraph 130 of the Complaint and therefore denies same.

131. Omni denies the allegations contained in paragraph 131 of the Complaint.

132. Omni admits the allegations in paragraph 132 of the Complaint to the extent that it alleges that a dispute exists regarding the properties subject of the action. Omni denies any remaining allegations.

133. Omni denies the allegations contained in paragraph 133 of the Complaint.

134. Omni denies the allegations contained in paragraph 134 of the Complaint.

135. Paragraph 135 of the Complaint does not require an admission or denial on behalf of Omni. To the extent a response may be required, Omni denies the allegations contained in paragraph 135 of the Complaint.

136. Omni denies the allegations contained in paragraph 136 of the Complaint.

137. Omni admits the allegations of paragraph 137 of the Complaint to the extent that it is alleged that Omni has previously made claim for rents for the properties subject of the action. All other allegations are denied.

138. Omni admits the allegations in paragraph 138 of the Complaint to the extent it is alleged that Omni is claiming it is entitled to collect rent for the subject properties. All other allegations are denied.

139. Omni denies the allegations contained in paragraph 139 of the Complaint.

140. Omni denies the allegations contained in paragraph 140 of the Complaint.

141. Omni denies the allegations contained in paragraph 141 of the Complaint.

142. Paragraph 142 of the Complaint does not require an admission or denial on behalf of Omni. To the extent a response may be required, Omni denies the allegations contained in paragraph 142 of the Complaint.

143. Omni denies the allegations contained in paragraph 143 of the Complaint.

144. Omni admits the allegations contained in paragraph 144 of the Complaint to the extent it alleges that Omni has made claim to certain rents. All other allegations are denied.

145. Omni denies the allegations contained in paragraph 145 of the Complaint.

146. Omni denies the allegations contained in paragraph 146 of the Complaint.

147. Omni denies the allegations contained in paragraph 147 of the Complaint.

148. Paragraph 148 of the Complaint does not require an admission or denial on behalf of Omni. To the extent a response may be required, Omni denies the allegations contained in paragraph 148 of the Complaint.

149. Omni denies the allegations contained in paragraph 149 of the Complaint.

150. Omni denies the allegations contained in paragraph 150 of the Complaint.

151. Omni admits that it has recorded a notice of default to be recorded previously and was entitled to do so. All other allegations contained in paragraph 151 of the Complaint are denied.

1 152. Omni denies the allegations contained in paragraph 152 of the Complaint.

2 153. Omni denies the allegations contained in paragraph 153 of the Complaint.

3 154. Omni denies the allegations contained in paragraph 154 of the Complaint.

4 155. Paragraph 155 of the Complaint does not require an admission or denial on behalf
5 of Omni. To the extent a response may be required, Omni denies the allegations contained in
6 paragraph 155 of the Complaint.

7 156. Omni is without sufficient information to either admit or deny the allegations
8 contained in Paragraph 156 of the Complaint and therefore denies same.

9 157. Omni denies the allegations contained in paragraph 157 of the Complaint.

10 158. Omni denies the allegations contained in paragraph 158 of the Complaint.

11 159. Omni denies the allegations contained in paragraph 159 of the Complaint.

12 160. Omni denies the allegations contained in paragraph 160 of the Complaint.

13 161. Omni denies the allegations contained in paragraph 161 of the Complaint.

14 162. Paragraph 162 of the Complaint does not require an admission or denial on behalf
15 of Omni. To the extent a response may be required, Omni denies the allegations contained in
16 paragraph 162 of the Complaint.

17 163. Omni denies the allegations contained in paragraph 163 of the Complaint.

18 164. Omni is without sufficient information to either admit or deny the allegations
19 contained in Paragraph 164 of the Complaint and therefore denies same. Omni admits the
20 allegations of paragraph 164 to the extent it is alleged that Omni is entitled to collect rents from
21 the subject properties.

22 165. Omni denies the allegations contained in paragraph 165 of the Complaint.

23 166. Omni denies the allegations contained in paragraph 166 of the Complaint.

24 167. Omni denies that Kal-Mor-USA is entitled to any relief requested in the Prayer for
25 Relief.

26 168. If any allegation in the Complaint has not been expressly responded to, Omni
27 denies such allegation.

28

1 169. Omni should be awarded its fees and costs incurred in being forced to respond to
2 the pending Complaint.

3 **AFFIRMATIVE DEFENSES**

- 4 1. The Complaint fails to state valid causes of action against Omni.
- 5 2. The claims asserted by Kal-Mor are barred by waiver, laches, estoppel and/or
6 unclean hands.
- 7 3. KAL-MOR's claims are barred by the applicable statute of limitations or statute of
8 repose.
- 9 4. KAL-MOR's claims are barred by the statute of frauds.
- 10 5. KAL-MOR, and its predecessor in interest, were on notice that Omni's Deed of Trust
11 was a valid encumbrance upon the properties at issue.
- 12 6. KAL-MOR is not entitled to declaratory relief, as KAL-MOR is seeking an improper
13 and impermissible advisory opinion from the Court.
- 14 7. Whatever damages were sustained by KAL-MOR, if any, were caused in whole or
15 in part or were contributed to by KAL-MOR's own actions.
- 16 8. KAL-MOR failed to mitigate its damages, if any.
- 17 9. Omni has been forced to retain the services of an attorney to defend this action and
18 are therefore entitled to an award of reasonable attorneys' fees and costs.
- 19 10. KAL-MOR's claims are barred by its own misfeasance and/or malfeasance.
- 20 11. KAL-MOR's claims are barred by its own bad faith.
- 21 12. KAL-MOR's claims are barred by its own breach of contract.
- 22 13. Pursuant to NRCP Rules 8 and 11, as amended, all possible affirmative defenses
23 may not have been alleged herein insofar as sufficient facts were not available after reasonable
24 inquiry upon the filing of this Answer, and therefore, Omni and Orbis reserve the right to amend
25 their Answer to allege additional affirmative defenses if subsequent investigation so warrants.

26 **WHEREFORE**, Omni prays for relief as follows:

- 27 1. Plaintiff take nothing by way of its Complaint;
- 28 2. Omni be awarded reasonable attorneys' fees and costs incurred herein; and

1 3. For such other and further relief as the Court deems proper.

2

3

COUNTERCLAIM

4 As for its Counterclaim, Omni claims and alleges as follows:

5 1. Omni is a California limited liability company.

6 2. Plaintiff/Counter-Defendant Kal-Mor-USA ("Kal-Mor") is a Nevada limited
7 liability company which, at all relevant times hereto, was conducting business in Clark County,
8 NV.

9 3. Defendants, DOES 1 – 10, and ROE ENTITIES 1 – 10, are unknown to Omni at
10 the present time and therefore named by fictitious names. Omni will seek leave of Court to
11 amend its Counterclaim to show the true names of the parties when they have been identified.
12 Upon information and belief it is alleged that each fictitious party is in some manner responsible
13 for the damages incurred by Omni.

14 4. In 2014, Omni agreed to loan up to \$5 million to First 100, LLC ("First 100") to
15 finance the purchase and enforcement of homeowner association receivables (the "Loan").

16 5. On May 27, 2014, (i) Omni and First 100 entered into a Loan Agreement; (ii)
17 First 100 executed a Promissory Note and Security Agreement in Omni's favor; and (iii) certain
18 First 100 principals issued Payment Guarantees in Omni's favor.

19 6. The Security Agreement granted Omni a security interest in all of First 100's
20 present and future-acquired personal property, ranging from HOA Receivables to accounts to
21 equipment and so forth, as further evidenced by first-in-time UCC-1 filings made with the
22 Secretary of State of Nevada and Florida.

23 7. On or about May 27, 2014, First 100 also executed multiple deeds of trust in
24 Omni's favor (the "Omni Deeds of Trust").

25 8. The Omni Deeds of Trust encumbered, as security for the Loan, approximately
26 thirty properties in the State of Nevada.

27 9. The Omni Deeds of Trust were recorded on May 27, 2014 (the "May 2014 Deed
28

1 of Trust”), June 17, 2014 (the “June 2014 Deed of Trust”) and August 21, 2014 (the “August
2 2014 Deed of Trust”).

3 10. The May 2014 Deed of Trust was recorded in the official records of the Clark
4 County, Nevada Recorder as instrument number 20140529-0001342 and re-recorded as
5 instrument number 20170424-0000178.

6 11. Pursuant to the May 2014 Deed of Trust the following properties were secured:

- 7 a. 1217 Neva Ranch Avenue, North Las Vegas, NV 89081 (APN 124-26-
8 311-029);
9 b. 230 East Flamingo Road #330, Las Vegas, NV 89169 (APN 162-16-810-
10 355);
11 c. 2615 West Gary Avenue #1065, Las Vegas, NV 89123 (APN 177-20-
12 813-127);
13 d. 6575 Shining Sand Avenue, Las Vegas, NV 89142 (APN 161-10-511-
14 072).

15 12. The June 2014 Deed of Trust secured the following properties in favor of Omni:

- 16 a. 4921 Indian River Drive, #112, Las Vegas, NV 89103 (APN 163-24-612-
17 588);
18 b. 5009 Indian River Drive #155, Las Vegas, NV 89103 (APN 163-24-612-
19 639);
20 c. 5295 Indian River Drive, #314, Las Vegas, NV 89103 (APN 163-24-612-
21 798);
22 d. 4400 Sandy River Drive #16, Las Vegas, NV 89103 (APN 163-24-612-
23 500).

24 13. The August 2014 Deed of Trust secured the following property:

- 25 a. 5782 Camino Ramon Avenue, Las Vegas, NV 89156 (APN 140-21-
26 611-018).

27 14. Kal-Mor contends it subsequently purchased and owns nine of those thirty
28

1 parcels (the “Kal-Mor Properties”).

2 15. In 2013, 2014 and 2015, Kal-Mor purchased several properties from First 100,
3 including the Kal-Mor Properties at issue here.

4 16. First 100 represented to Omni that it “in transferring the Real Properties...to third
5 parties, [First 100] provided all of those third parties, prior to closing the transfer transaction,
6 with actual notice of the existence of Omni’s first-priority security interest in those Real
7 Properties.”

8 17. Upon information and belief, and unbeknownst to Omni when it extended the
9 Loan, First 100 and Kal-Mor were *not* independent parties. Greg Darroch—Kal-Mor’s principal,
10 owned equity in First 100.

11 18. Upon information and belief it is alleged that Mr. Darroch still owns equity in
12 First 100.

13 19. Under Nevada law, a deed of trust automatically “creates an assignment of rents
14 arising from the real property described in the security instrument, unless the security instrument
15 provides otherwise.” NRS 107A.230(1).

16 20. Prior to Kal-Mor’s purchases First 100 breached the Loan.

17 21. Among other things, it failed to: (i) pay principal and interest when due; (ii) cure
18 the defects in Omni’s Deeds of Trust; (iii) properly prosecute and enforce the HOA receivables;
19 and (iv) provide Omni with required monthly, quarterly, and annual financial statements.

20 22. Omni issued a notice of default on April 8, 2015.

21 23. First 100 failed to respond, forcing Omni to hire legal counsel.

22 24. On November 2, 2015, Omni sent First 100 a second notice of default, categorizing
23 First 100’s breaches in more detail. That notice accelerated the Loan and demanded payment in
24 full.

25 25. Throughout November 2015, First 100 and Kal-Mor repeatedly promised Omni
26 that Kal-Mor would buy out the Omni Loan at full face value.

27 26. At times, First 100 and Kal-Mor promised Omni that a \$4 million pay-off would
28

1 be wired within hours.

2 27. Kal-Mor's counsel delivered a draft loan assignment agreement to Omni on
3 November 20, 2015, and Omni responded with a revised draft a few days later.

4 28. Negotiations continued into early December, until Kal-Mor's counsel simply
5 "went dark"—declining to respond to any email or phone messages.

6 29. Upon information and belief it is alleged that Kal-Mor's entire loan payoff
7 proposals were a ruse to buy First 100 more time.

8 30. Omni and First 100 entered into a Forbearance Agreement dated December 18,
9 2015, and a related Addendum three days later.

10 31. Omni agreed to forego foreclosure over First 100's personalty in exchange for
11 various First 100 promises, including (i) delivery of financial statements by December 18th and
12 (ii) a \$270,500 payment by December 28th.

13 32. Both deadlines came and went with no performance: First 100 eventually violated
14 virtually every single forbearance term.

15 33. Given those immediate defaults, Omni suspected the forbearance was another
16 delay tactic, the aim of First 100 and Kal-Mor—acting in concert—being to delay foreclosure and
17 further stifle Omni.

18 34. Given First 100's then year-old payment default, Omni noticed a UCC sale
19 pursuant to NRS Chapter 104, by issuing a "Notification of Disposition of Collateral" in January
20 2016 (the "1st UCC Notice").

21 35. In response, First 100 filed suit and sought an emergency, *ex parte* TRO to stop
22 the sale.

23 36. Kal-Mor filed a virtually identical suit and emergency, *ex parte* TRO request (Case
24 No. A-16-730447-C).

25 37. Over the course of the next year of proceedings, First 100 and Kal-Mor's positions
26 were virtually 100% in alignment as Kal-Mor, on many occasions, filed one- to two-paragraph
27 joinders to lengthy First 100 filings. (*See, e.g.* Case No. 2:16-cv-00099, ECF 20, 65, 91).

38. Omni removed the two cases to federal court, and they were consolidated into one case.

39. Giving First 100 and Kal-Mor the benefit of the doubt, the U.S. District Court granted a TRO and postponed Omni's foreclosure sale. (Case No. 2:16-cv-00099, ECF 21).

40. Several months later, after three days of evidentiary hearings and extensive briefings and oral arguments, the U.S. District Court held that: (i) the original TRO was wholly unwarranted; (ii) Omni could proceed with the foreclosure sale; and (iii) Omni was entitled to Kal-Mor's TRO bond.

41. Not only was Kal-Mor a party to the federal proceedings, but its disputes with Omni were resolved in an agreement specifically addressing the Kal-Mor Real Properties and anticipating Omni's future real-property foreclosure actions.

42. In documents dated November 23, 2016, Omni and Kal-Mor agreed to a (i) "Settlement and Mutual General Release Agreement" (the "Kal-Mor Settlement"); and (ii) "Stipulation and Order for Entry of Final Judgment" (the "Kal-Mor SAO"). Critically, the former states:

W. The Parties now desire to resolve all differences, disputes and disagreements between them relating to the 2014-2015 Receivables and the ACR Receivables. ***This Agreement, however, is not intended to address or resolve any dispute between the Parties as to the Kal-Mor Real Properties.***

Notwithstanding the terms provided herein, ***Omni reserves all rights to assert claims and conduct Enforcement Actions relating to any asset or property*** other than the 2013 Receivables, 2014-2015 Receivables, and/or ACR Receivables, whether owned (previously, currently, or in the future) by GFY or a third party, including but not limited to the Kal-Mor Real Properties, associated proceeds, rents, and/or other assets.

43. The Kal-Mor SAO states:

The entry final judgment by the Court pursuant to this Stipulation shall not preclude or otherwise impair any claim or defense that may exist between the Parties other than those expressly stated in the Complaint or the Counterclaim.

44. Several weeks later, Omni and First 100 entered into a similar agreement ("First 100 Settlement").

1 45. First 100 and Omni each understood that the First 100 Settlement entered into
2 between the parties would not preclude Omni's ability and right to foreclose on the properties
3 which are subject of its Deeds of Trust and First 100 actively assisted Omni with the foreclosure
4 of its Deeds of Trust.

5 46. Omni was in constant discussions with First 100 and Kal-Mor during that time,
6 and Omni consistently and unequivocally told both of them it would be foreclosing on the Kal-
7 Mor Properties.

8 47. While negotiating the First 100 Settlement, Jay Bloom of First 100 repeatedly told
9 Martin Boone of Omni that Omni was still secured by the Deeds of Trust.

10 48. The First 100 Settlement specifically stated no third parties were being granted any
11 rights by virtue of the Settlement Agreement.

12 49. Kal-Mor was specifically identified as not being afforded any rights and under the
13 First 100 Settlement Agreement.

14 50. Shortly after settling, Omni's counsel notified First 100 that Omni would be
15 foreclosing on the encumbered real property, but could not locate the original 2014 Promissory
16 Note, which its trustees (under the Deeds of Trust) were requesting.

17 51. In lieu of the original, Omni's title company requested that First 100 provide a
18 "Lost Note Affidavit."

19 52. First 100 signed and returned a Lost Note Affidavit on January 30, 2017, and
20 signed and returned another version on April 21, 2017.

21 53. In neither instance did First 100 challenge Omni's course of action or claim that
22 the parties had intended in their settlement that Omni forfeited its real property liens.

23 54. Following settlement of the federal case regarding First 100's *personalty*, Omni
24 turned to foreclosing on the 24 real properties lien in its Deeds of Trust.

25 55. On May 15, 2017, Omni caused a Notice of Breach and Election to Sell under
26 Deeds of Trust (the "Notice of Default") to be recorded with the Clark County Recorder's Office.

27 56. After the mandatory three-month waiting period required by statute, Omni caused
28

1 the Trustee to record a "Notice of Sale."

2 57. The Notice of Sale scheduled the foreclosure sale for September 12, 2017.

3 58. The sales were voluntarily postponed.

4 59. In late September and early October of 2016, Omni sent letters to all 24
5 properties, including the properties in which Plaintiff claims an interest (the "Properties in
6 Dispute"), directing tenants to pay rents not to their property owners and/or managers, but
7 directly to Omni.

8 60. Upon information and belief, the Plaintiff has directed the tenants occupying the
9 Properties in Dispute to ignore Omni's demand for payment of rents, thereby depriving Omni of
10 its right to those rents as provided by NRS 107A.230.

11 61. Plaintiff contends that the Omni Deeds of Trust are not legally enforceable and
12 thus that Omni has no valid interest in any of the Properties in Dispute.

13 62. Pursuant to Nevada law, the Plaintiff had notice of the Omni Deeds of Trust at
14 the time it purportedly took an interest in the Properties in Dispute.

15 63. Plaintiff contends that Omni has waived its rights in the Properties in Dispute as
16 well as the rents from said properties.

17 64. In May 2017, Omni caused a Notice of Breach and Election to Sell Under
18 Deeds of Trust to be recorded against the Properties in Dispute.

19 65. In August of 2017, Omni caused to be recorded a Notice of Trustee's Sale
20 scheduling a non-judicial foreclosure sale of each of the Properties in Dispute.

21 66. Each of the Plaintiffs has challenged Omni's efforts to foreclose upon the
22 Properties in Dispute, and contends that the Omni Deeds of Trust are void and of no effect.

23 67. In light of this dispute, Omni voluntarily agreed to continue the scheduled
24 foreclosure sales.

25 68. This action was filed by Plaintiff in 2017.

26 69. Plaintiff has filed a Motion for Partial Summary Judgment which sought, in part,
27 a ruling that Omni's claims are barred by the doctrine of novation.

1 70. The Court granted, in part, Plaintiff's Motion for Partial Summary Judgment on
2 the issue of novation on or about October 3, 2018.

3 71. Implicit in the Court's ruling was that both Omni and First 100 intended their
4 settlement agreement to constitute a novation.

5 72. Neither Omni, nor First 100, intended the First 100 Settlement Agreement to
6 constitute a novation or affect Omni's rights under the Deeds of Trust.

7 **FIRST CLAIM FOR RELIEF**

8 **(Declaratory Judgment)**

9 73. Omni realleges and incorporates by reference the allegations of the preceding
10 paragraphs of the Counterclaim as if fully set forth herein.

11 74. A justifiable controversy now exists between Omni, on the one hand, and
12 Plaintiff, on the other hand, pursuant to NRS 30.010 *et seq.* Such controversy exists where a
13 claim of right is asserted against one who has an interest in contesting a claim of right.

14 75. Omni has a legally protectable interest in prosecuting this claim, and Omni's
15 interest is adverse to the interests of Plaintiff.

16 76. The issues involved in this controversy are ripe for judicial determination.

17 77. The Court has the power to declare the rights, status and other legal relationships
18 between Omni, on the one hand, and Plaintiffs, on the other hand, relating to the Properties in
19 Dispute.

20 78. Omni seeks a declaratory judgment pursuant to NRS 30.010 *et seq.* that the Omni
21 Deeds of Trust are valid and enforceable encumbrances against the Properties in Dispute.

22 79. Omni seeks a declaratory judgment pursuant to d NRS 30.010 *et seq.* that
23 Plaintiff had constructive, if not actual, notice of the Omni Deeds of Trust and that any interest
24 Plaintiff may have in the Properties in Dispute are subordinate to Omni's rights against those
25 same properties.

26 80. Omni seeks a declaration that it rights have not been barred by any prior
27 litigation or settlement, including, but not limited to the application of Nevada's "One-action
28

1 Rule” or the doctrine of novation.

2 81. Omni seeks a declaratory judgment pursuant to NRS 30.010 *et seq.* that it is
3 entitled to foreclose upon each of the Properties in Dispute.

4 82. It has been necessary for Omni to obtain the services of an attorney in order to
5 seek relief in this matter, and it is entitled to recover reasonable attorneys’ fees and costs
6 incurred.

7 **SECOND CLAIM FOR RELIEF**
(Unjust Enrichment)

8 83. Omni realleges and incorporates by reference the allegations of the preceding
9 Paragraphs of the Counterclaim as if fully set forth herein.

10 84. Following service of Omni’s demand for rents pursuant to NRS 107A.230(1),
11 Plaintiff has unjustly and profitably retained those rents and has refused to return those funds to
12 Omni.

13 85. As a result of its failure to return Omni’s funds, Plaintiff has unjustly retained a
14 benefit in an amount in excess of \$15,000.

15 86. An accounting should be ordered so that the value of the benefits Plaintiffs have
16 unjustly retained may be accurately determined.

17 87. It has been necessary for Omni to retain the services of attorneys to pursue this
18 claim and it is entitled to recover its reasonable attorneys’ fees.

19
20 **THIRD CLAIM FOR RELIEF**
(Conversion)

21 88. Omni realleges and incorporates by reference the foregoing allegations of the
22 Counterclaim as if fully set forth herein.

23 89. By retaining tenant rents following service of Omni’s demand for rents pursuant
24 to NRS 107A.230(1), Plaintiff has improperly exercised dominion over Omni’s assets without
25 the consent of Omni and has denied, defied and wrongfully interfered with Omni’s right to
26 exercise complete and exclusive dominion over such assets.

1 90. Plaintiffs' conduct constitutes a conversion of Omni's property and has damaged
2 Omni in an amount to be proven at trial, but in excess of \$15,000.

3 91. The actions of Plaintiffs were intentional, willful and malicious, and Omni is
4 entitled to punitive and exemplary damages.

5 92. It has been necessary for Omni to retain the services of attorneys to pursue this
6 claim and it is entitled to recover its reasonable attorneys' fees.

7
8 **FOURTH CLAIM FOR RELIEF**
 (Constructive Trust against all Defendants)

9 93. Omni realleges and incorporates by reference the allegations of the preceding
10 Paragraphs of the Counterclaim as if fully set forth herein.

11 94. As a proximate result of Plaintiffs' wrongful conduct as alleged herein, Omni has
12 been damaged in an amount to be proven at trial but which is in excess of \$15,000.

13 95. By reason of the wrongful manner in which Plaintiff obtained its alleged right,
14 claim or interest in rents, they have no legal or equitable right, claim or interest therein, but,
15 instead, Plaintiffs are involuntary trustees holding said property and profits therefrom in
16 constructive trust for Omni with the duty to convey the same to Omni.

17
18 **FIFTH CLAIM FOR RELIEF**
 (Accounting)

19 96. Omni realleges and incorporates by reference the allegations of the preceding
20 Paragraphs of the Counterclaim as if fully set forth herein.

21 97. Omni is entitled to a full and complete accounting of all rents received by
22 Plaintiffs from the tenants of the Properties in Dispute from the date of service of Omni's
23 demand for rents through the present.

24 98. It has been necessary for Omni to retain the services of attorneys to pursue this
25 claim and it is entitled to recover its reasonable attorneys' fees.

1 **WHEREFORE**, Omni prays for relief as follows:

- 2 A. For monetary damages in excess of \$15,000 on all claims;
- 3 B. For costs and attorneys' fees incurred in pursuing this action;
- 4 C. For an accounting;
- 5 D. For a declaratory judgment that the Omni Deeds of Trust and valid and
- 6 enforceable encumbrances against the Properties in Dispute;
- 7 E. For a declaratory judgment that the Plaintiff had constructive and/or actual notice
- 8 of the Omni Deeds of Trust and that any interest Plaintiff may have in the Properties in Dispute
- 9 are subordinate to Omni's rights against those same properties;
- 10 F. For a declaratory judgment that Omni is entitled to foreclose upon each of the
- 11 Properties in Dispute;
- 12 G. For a declaratory judgment that Omni's claims are not barred by Nevada's "one
- 13 action rule" or the doctrine of novation;
- 14 H. Omni be awarded reasonable attorneys' fees and costs incurred herein; and,
- 15 I. For such other and further relief as the Court deems proper.
- 16

17 **CROSSCLAIM**

18 As for its Cross-claim Omni states as follows:

- 19 1. Omni incorporates the factual allegations set forth in its Counter-claim as if set
- 20 forth in the Cross-claim in full.
- 21 2. Cross-Defendant, First 100, LLC is a Nevada limited liability company which at
- 22 all times relevant to the facts set forth in this Cross-claim was doing business in Clark County,
- 23 Nevada.
- 24 3. Defendants, DOES 11 – 20, and ROE ENTITIES 11 – 20, are unknown to Omni
- 25 at the present time and therefore named by fictitious names. Omni will seek leave of Court to
- 26 amend its Cross-claim to show the true names of the parties when they have been identified. Upon
- 27 information and belief it is alleged that each fictitious party is in some manner responsible for the
- 28

damages incurred by Omni.

4. When Omni and First 100 entered into the Settlement Agreement, it was with the express understanding that Omni's rights to foreclose pursuant to its Deeds of Trust would be preserved.

5. First 100, acting through its principal, Jay Bloom, expressly stated in connection with the execution of the Settlement Agreement that Omni's Deeds of Trust would remain intact.

6. The Court's Order granting the Motion for Partial Summary Judgment finding that the intent of Omni and First 100 to effectuate a novation of contract by entering into the Settlement Agreement does not accurately reflect the intent of either party.

FIRST CLAIM FOR RELIEF

(Intentional Misrepresentation)

7. Omni incorporates the preceding paragraph of the Cross-claim and the Counter-claim as if expressly set forth herein.

8. To the extent that the Court's order granting the Motion for Partial Summary is accurate and First 100 did not have an intent to allow Omni to pursue foreclosure of the real properties subject of its Deeds of Trust, then First 100's representations were false and were made with full knowledge of their falsity.

9. Omni relied upon the representations of First 100 as made by Jay Bloom in agreeing to enter into the Settlement Agreement.

10. If not for the representations of First 100 relating to Omni's ability to foreclose upon the real properties at issue, Omni would not have entered into the First 100 Settlement Agreement.

11. Omni has expended extensive time and money seeking to foreclose upon the properties subject of the First 100 Settlement Agreement and otherwise complying with the First 100 Settlement Agreement.

12. Omni has suffered damages in an amount in excess of \$15,000 as a result of the conduct of First 100 if the Court's prior ruling is accurate.

13. To the extent the Court's prior ruling regarding the issue of novation is accurate, the misrepresentations were made intentionally, were wanton and malicious and therefore entitle Omni to punitive damages.

14. Omni is entitled to an award of special damages including attorneys fees, costs and interest in an amount in excess of \$15,000.

WHEREFORE, Omni prays for relief as follows:

- A. For monetary damages in excess of \$15,000 on all claims;
- B. For costs and attorneys' fees incurred in pursuing this action;
- C. For punitive damages; and,
- D. For such other and further relief as the Court deems proper.

HOWARD & HOWARD ATTORNEYS PLLC

Dated: August 12, 2019

By: /s/ Brian J. Pezzillo
 Robert Hernquist, Nevada Bar No. 10616
 Brian J. Pezzillo; Nevada Bar No. 7136

Attorneys for Defendant Omni Financial, LLC

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Howard & Howard Attorneys PLLC, and that on the 12th day of August 2019, I caused to be served a copy of the foregoing Answer, Counterclaim and Cross-claim in the following manner:

(ELECTRONIC SERVICE). The above-referenced document was electronically filed and served upon the parties listed below through the Court's Case Management and Electronic Case Filing system:

Bart K. Larsen
KOLESAR & LEATHAM
400 South Rampart Boulevard, Suite 400
Las Vegas, Nevada 89145

*Attorney for Plaintiff Kal-Mor-USA,
LLC*

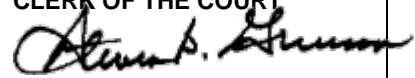


An employee of Howard & Howard Attorneys PLLC

EXHIBIT “5”

First 100, LLC’s Answer to First Amended Cross-claim of Omni
Financial

EXHIBIT “5”



CCAN
BART K. LARSEN, ESQ.
Nevada Bar No. 8538
KOLESAR & LEATHAM
400 South Rampart Boulevard, Suite 400
Las Vegas, Nevada 89145
Telephone: (702) 362-7800
Facsimile: (702) 362-9472
E-Mail: blarsen@knevada.com

Attorneys for Plaintiff/Counter-defendant,
KAL-MOR-USA, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

KAL-MOR-USA, LLC, a Nevada limited
liability company,

Plaintiff,

vs.

OMNI FINANCIAL, LLC, a foreign limited
liability company; FIRST 100, LLC, a Nevada
limited liability company; DOES I through X;
and ROE ENTITIES I through X,

Defendants.

OMNI FINANCIAL, LLC, a foreign limited
liability company,

Counter-claimant,

Vs.

KAL-MOR-USA, LLC, a Nevada limited
liability company; DOES 1-10; ROE
ENTITIES 1-10,

Counter-defendants.

OMNI FINANCIAL, LLC, a foreign limited
liability company,

Cross-claimants,

Vs.

FIRST 100, LLC, a Nevada limited liability
company; DOES 11-20; ROE ENTITIES 11-
20,

Cross-defendants.

Case No. A-17-757061-C

Dept. No. 2

**KAL-MOR-USA, LLC'S ANSWER
TO OMNI FINANCIAL, LLC'S
COUNTERCLAIM**

KOLESAR & LEATHAM
400 S. Rampart Boulevard, Suite 400
Las Vegas, Nevada 89145
Tel: (702) 362-7800 / Fax: (702) 362-9472

KAL-MOR-USA, LLC'S ANSWER TO OMNI FINANCIAL, LLC'S COUNTERCLAIM

Counter-defendant KAL-MOR-USA, LLC ("Counter-defendant" or "KAL-MOR"), by and through its counsel, Kolesar & Leatham, for its Answer to the Counterclaim ("Counterclaim") asserted by Omni Financial, LLC ("Counter-claimant" or "Omni") through its Answer to Complaint, Counterclaim and Cross Claim, respectfully responds as follows:

1. In answering Paragraph 1 of the Counterclaim, KAL-MOR admits the allegations set forth therein.

2. In answering Paragraph 2 of the Counterclaim, KAL-MOR admits the allegations set forth therein.

3. In answering Paragraph 3 of the Counterclaim, KAL-MOR is without sufficient knowledge or information to either admit or deny the allegations contained in this Paragraph and, on this basis, denies each and every allegation set forth therein.

4. In answering Paragraph 4 of the Counterclaim, KAL-MOR admits that Omni entered into a loan agreement with First 100 in 2014. KAL-MOR is without sufficient knowledge or information to either admit or deny the remaining allegations contained in this Paragraph and, on this basis, denies each and every such allegation.

5. In answering Paragraph 5 of the Counterclaim, KAL-MOR admits that Omni entered into a loan agreement with First 100 in 2014. KAL-MOR is without sufficient knowledge or information to either admit or deny the remaining allegations contained in this Paragraph and, on this basis, denies each and every such allegation.

6. In answering Paragraph 6 of the Counterclaim, KAL-MOR admits that Omni entered into a loan agreement with First 100 in 2014. KAL-MOR is without sufficient knowledge or information to either admit or deny the remaining allegations contained in this Paragraph and, on this basis, denies each and every such allegation.

7. In answering Paragraph 7 of the Counterclaim, KAL-MOR admits that Omni entered into a loan agreement with First 100 in 2014. KAL-MOR is without sufficient knowledge or information to either admit or deny the remaining allegations contained in this Paragraph and, on this basis, denies each and every such allegation.

1 8. In answering Paragraph 8 of the Counterclaim, KAL-MOR is without sufficient
2 knowledge or information to either admit or deny the allegations contained in this Paragraph and,
3 on this basis, denies each and every allegation set forth therein.

4 9. In answering Paragraph 9 of the Counterclaim, KAL-MOR admits the allegations
5 set forth therein.

6 10. In answering Paragraph 10 of the Counterclaim, KAL-MOR admits the allegations
7 set forth therein.

8 11. In answering Paragraph 11 of the Counterclaim, KAL-MOR denies the allegations
9 set forth therein.

10 12. In answering Paragraph 12 of the Counterclaim, KAL-MOR denies the allegations
11 set forth therein.

12 13. In answering Paragraph 13 of the Counterclaim, KAL-MOR denies the allegations
13 set forth therein.

14 14. In answering Paragraph 14 of the Counterclaim, KAL-MOR admits that it
15 purchased the nine “Kal-Mor Properties” that are identified in Kal-Mor’s Complaint. KAL-MOR
16 is without sufficient knowledge or information to either admit or deny the allegations contained in
17 this Paragraph and, on this basis, denies each and every allegation set forth therein.

18 15. In answering Paragraph 15 of the Counterclaim, KAL-MOR admits the allegations
19 set forth therein.

20 16. In answering Paragraph 16 of the Counterclaim, KAL-MOR denies the allegations
21 set forth therein.

22 17. In answering Paragraph 17 of the Counterclaim, KAL-MOR denies the allegations
23 set forth therein.

24 18. In answering Paragraph 18 of the Counterclaim, KAL-MOR denies the allegations
25 set forth therein.

26 19. In answering Paragraph 19 of the Counterclaim, KAL-MOR denies the allegations
27 set forth therein.

20. In answering Paragraph 20 of the Counterclaim, KAL-MOR is without sufficient knowledge or information to either admit or deny the allegations contained in this Paragraph and, on this basis, denies each and every allegation set forth therein.

21. In answering Paragraph 21 of the Counterclaim, KAL-MOR is without sufficient knowledge or information to either admit or deny the allegations contained in this Paragraph and, on this basis, denies each and every allegation set forth therein.

22. In answering Paragraph 22 of the Counterclaim, KAL-MOR is without sufficient knowledge or information to either admit or deny the allegations contained in this Paragraph and, on this basis, denies each and every allegation set forth therein.

23. In answering Paragraph 23 of the Counterclaim, KAL-MOR is without sufficient knowledge or information to either admit or deny the allegations contained in this Paragraph and, on this basis, denies each and every allegation set forth therein.

24. In answering Paragraph 24 of the Counterclaim, KAL-MOR is without sufficient knowledge or information to either admit or deny the allegations contained in this Paragraph and, on this basis, denies each and every allegation set forth therein.

25. In answering Paragraph 25 of the Counterclaim, KAL-MOR denies the allegations set forth therein.

26. In answering Paragraph 26 of the Counterclaim, KAL-MOR denies the allegations set forth therein.

27. In answering Paragraph 27 of the Counterclaim, KAL-MOR denies the allegations set forth therein.

28. In answering Paragraph 28 of the Counterclaim, KAL-MOR denies the allegations set forth therein.

29. In answering Paragraph 29 of the Counterclaim, KAL-MOR denies the allegations set forth therein.

30. In answering Paragraph 30 of the Counterclaim, KAL-MOR admits that Omni and First 100 entered into a forbearance agreement in 2015. KAL-MOR is without sufficient

1 knowledge or information to either admit or deny the allegations contained in this Paragraph and,
2 on this basis, denies each and every allegation set forth therein.

3 31. In answering Paragraph 31 of the Counterclaim, KAL-MOR is without sufficient
4 knowledge or information to either admit or deny the allegations contained in this Paragraph and,
5 on this basis, denies each and every allegation set forth therein.

6 32. In answering Paragraph 32 of the Counterclaim, KAL-MOR is without sufficient
7 knowledge or information to either admit or deny the allegations contained in this Paragraph and,
8 on this basis, denies each and every allegation set forth therein.

9 33. In answering Paragraph 33 of the Counterclaim, KAL-MOR denies the allegations
10 set forth therein.

11 34. In answering Paragraph 34 of the Counterclaim, KAL-MOR admits that Omni
12 noticed a UCC sale in or around January 2016. KAL-MOR is without sufficient knowledge or
13 information to either admit or deny the allegations contained in this Paragraph and, on this basis,
14 denies each and every allegation set forth therein.

15 35. In answering Paragraph 35 of the Counterclaim, KAL-MOR admits the allegations
16 set forth therein.

17 36. In answering Paragraph 36 of the Counterclaim, KAL-MOR admits that it filed a
18 lawsuit against Omni in January 2016 and that it requested a temporary restraining order to prevent
19 Omni from completing a UCC sale as to certain personal property of First 100 in which KAL-
20 MOR also held a security interest. KAL-MOR otherwise denies the allegations set forth in this
21 paragraph.

22 37. In answering Paragraph 37 of the Counterclaim, KAL-MOR denies the allegations
23 set forth therein.

24 38. In answering Paragraph 38 of the Counterclaim, KAL-MOR admits that Omni
25 removed the lawsuits filed by First 100 and KAL-MOR to federal court. KAL-MOR otherwise
26 denies the allegations set forth in this paragraph.

1 39. In answering Paragraph 39 of the Counterclaim, KAL-MOR admits that a
2 temporary restraining order was entered to prevent Omni from completing a UCC sale. KAL-
3 MOR otherwise denies the allegations set forth in this paragraph.

4 40. In answering Paragraph 40 of the Counterclaim, KAL-MOR admits that the
5 temporary restraining order entered to prevent Omni from completing a UCC sale was later
6 vacated. KAL-MOR otherwise denies the allegations set forth in this paragraph.

7 41. In answering Paragraph 41 of the Counterclaim, KAL-MOR denies the allegations
8 set forth therein.

9 42. In answering Paragraph 42 of the Counterclaim, KAL-MOR admits the allegations
10 set forth therein to the extent such allegations accurately quote the “Kal-Mor Settlement.” KAL-
11 MOR otherwise denies the allegations set forth in this paragraph.

12 43. In answering Paragraph 43 of the Counterclaim, KAL-MOR admits the allegations
13 set forth therein to the extent such allegations accurately quote the “Kal-Mor Settlement.” KAL-
14 MOR otherwise denies the allegations set forth in this paragraph.

15 44. In answering Paragraph 44 of the Counterclaim, KAL-MOR admits that Omni and
16 First 100 entered into a settlement agreement in or around January 2017. KAL-MOR otherwise
17 denies the allegations set forth in this paragraph.

18 45. In answering Paragraph 45 of the Counterclaim, KAL-MOR is without sufficient
19 knowledge or information to either admit or deny the allegations contained in this Paragraph and,
20 on this basis, denies each and every allegation set forth therein.

21 46. In answering Paragraph 46 of the Counterclaim, KAL-MOR denies the allegations
22 set forth therein.

23 47. In answering Paragraph 47 of the Counterclaim, KAL-MOR is without sufficient
24 knowledge or information to either admit or deny the allegations contained in this Paragraph and,
25 on this basis, denies each and every allegation set forth therein.

26 48. In answering Paragraph 48 of the Counterclaim, KAL-MOR denies the allegations
27 set forth therein.
28

1 49. In answering Paragraph 49 of the Counterclaim, KAL-MOR denies the allegations
2 set forth therein.

3 50. In answering Paragraph 50 of the Counterclaim, KAL-MOR is without sufficient
4 knowledge or information to either admit or deny the allegations contained in this Paragraph and,
5 on this basis, denies each and every allegation set forth therein.

6 51. In answering Paragraph 51 of the Counterclaim, KAL-MOR is without sufficient
7 knowledge or information to either admit or deny the allegations contained in this Paragraph and,
8 on this basis, denies each and every allegation set forth therein.

9 52. In answering Paragraph 52 of the Counterclaim, KAL-MOR is without sufficient
10 knowledge or information to either admit or deny the allegations contained in this Paragraph and,
11 on this basis, denies each and every allegation set forth therein.

12 53. In answering Paragraph 53 of the Counterclaim, KAL-MOR is without sufficient
13 knowledge or information to either admit or deny the allegations contained in this Paragraph and,
14 on this basis, denies each and every allegation set forth therein.

15 54. In answering Paragraph 54 of the Counterclaim, KAL-MOR is without sufficient
16 knowledge or information to either admit or deny the allegations contained in this Paragraph and,
17 on this basis, denies each and every allegation set forth therein.

18 55. In answering Paragraph 55 of the Counterclaim, KAL-MOR admits the allegations
19 set forth therein.

20 56. In answering Paragraph 56 of the Counterclaim, KAL-MOR admits the allegations
21 set forth therein.

22 57. In answering Paragraph 57 of the Counterclaim, KAL-MOR admits the allegations
23 set forth therein.

24 58. In answering Paragraph 58 of the Counterclaim, KAL-MOR admits the allegations
25 set forth therein.

26 59. In answering Paragraph 59 of the Counterclaim, KAL-MOR admits that Omni sent
27 demand letters to at least some of the Kal-Mor Properties in 2016 demanding that the occupants
28 of such Kal-Mor Properties remit rents to Omni. KAL-MOR is without sufficient knowledge or

1 information to either admit or deny the remaining allegations contained in this Paragraph and, on
2 this basis, denies each and every such allegation.

3 60. In answering Paragraph 60 of the Counterclaim, KAL-MOR denies the allegations
4 set forth therein.

5 61. In answering Paragraph 61 of the Counterclaim, KAL-MOR admits that it disputes
6 Omni's claimed interests in the Kal-Mor Properties. KAL-MOR is without sufficient knowledge
7 or information to either admit or deny the remaining allegations contained in this Paragraph and,
8 on this basis, denies each and every such allegation.

9 62. In answering Paragraph 62 of the Counterclaim, KAL-MOR denies the allegations
10 set forth therein.

11 63. In answering Paragraph 63 of the Counterclaim, KAL-MOR admits that it disputes
12 Omni's claimed interests in the Kal-Mor Properties. KAL-MOR is without sufficient knowledge
13 or information to either admit or deny the remaining allegations contained in this Paragraph and,
14 on this basis, denies each and every such allegation.

15 64. In answering Paragraph 64 of the Counterclaim, KAL-MOR admits that Omni
16 caused a Notice of Breach and Election to Sell Under Deeds of Trust to be recorded against the
17 Kal-Mor Properties in or around May 2017. KAL-MOR is without sufficient knowledge or
18 information to either admit or deny the remaining allegations contained in this Paragraph and, on
19 this basis, denies each and every such allegation.

20 65. In answering Paragraph 65 of the Counterclaim, KAL-MOR admits that Omni
21 caused a Notice of Trustee's Sale to be recorded against the Kal-Mor Properties in or around
22 August 2017. KAL-MOR is without sufficient knowledge or information to either admit or deny
23 the remaining allegations contained in this Paragraph and, on this basis, denies each and every
24 such allegation.

25 66. In answering Paragraph 66 of the Counterclaim, KAL-MOR admits that it disputes
26 Omni's claimed interests in the Kal-Mor Properties. KAL-MOR is without sufficient knowledge
27 or information to either admit or deny the remaining allegations contained in this Paragraph and,
28 on this basis, denies each and every such allegation.

1 67. In answering Paragraph 67 of the Counterclaim, KAL-MOR admits the allegations
2 set forth therein.

3 68. In answering Paragraph 68 of the Counterclaim, KAL-MOR admits the allegations
4 set forth therein.

5 69. In answering Paragraph 69 of the Counterclaim, KAL-MOR admits the allegations
6 set forth therein.

7 70. In answering Paragraph 70 of the Counterclaim, KAL-MOR admits the allegations
8 set forth therein.

9 71. In answering Paragraph 71 of the Counterclaim, KAL-MOR denies the allegations
10 set forth therein.

11 72. In answering Paragraph 72 of the Counterclaim, KAL-MOR denies the allegations
12 set forth therein.

13 **FIRST CLAIM FOR RELIEF**

14 **(Declaratory Judgment)**

15 73. In response to Paragraph 73 of the Counterclaim, KAL-MOR restates its answers
16 to the foregoing Paragraphs 1 through 72 of the Counterclaim as if set forth fully herein.

17 74. In answering Paragraph 74 of the Counterclaim, KAL-MOR denies the allegations
18 set forth therein.

19 75. In answering Paragraph 75 of the Counterclaim, KAL-MOR denies the allegations
20 set forth therein.

21 76. In answering Paragraph 76 of the Counterclaim, KAL-MOR denies the allegations
22 set forth therein.

23 77. In answering Paragraph 77 of the Counterclaim, KAL-MOR denies the allegations
24 set forth therein.

25 78. In answering Paragraph 78 of the Counterclaim, KAL-MOR denies the allegations
26 set forth therein.

27 79. In answering Paragraph 79 of the Counterclaim, KAL-MOR denies the allegations
28 set forth therein.

1 80. In answering Paragraph 80 of the Counterclaim, KAL-MOR denies the allegations
2 set forth therein.

3 81. In answering Paragraph 81 of the Counterclaim, KAL-MOR denies the allegations
4 set forth therein.

5 82. In answering Paragraph 82 of the Counterclaim, KAL-MOR denies the allegations
6 set forth therein.

7 **SECOND CLAIM FOR RELIEF**

8 **(Unjust Enrichment)**

9 83. In response to Paragraph 83 of the Counterclaim, KAL-MOR restates its answers
10 to the foregoing Paragraphs 1 through 82 of the Counterclaim as if set forth fully herein.

11 84. In answering Paragraph 84 of the Counterclaim, KAL-MOR denies the allegations
12 set forth therein.

13 85. In answering Paragraph 85 of the Counterclaim, KAL-MOR denies the allegations
14 set forth therein.

15 86. In answering Paragraph 86 of the Counterclaim, KAL-MOR denies the allegations
16 set forth therein.

17 87. In answering Paragraph 87 of the Counterclaim, KAL-MOR denies the allegations
18 set forth therein.

19 **THIRD CLAIM FOR RELIEF**

20 **(Conversion)**

21 88. In response to Paragraph 88 of the Counterclaim, KAL-MOR restates its answers
22 to the foregoing Paragraphs 1 through 87 of the Counterclaim as if set forth fully herein.

23 89. In answering Paragraph 89 of the Counterclaim, KAL-MOR denies the allegations
24 set forth therein.

25 90. In answering Paragraph 90 of the Counterclaim, KAL-MOR denies the allegations
26 set forth therein.

27 91. In answering Paragraph 91 of the Counterclaim, KAL-MOR denies the allegations
28 set forth therein.

1 92. In answering Paragraph 92 of the Counterclaim, KAL-MOR denies the allegations
2 set forth therein.

FOURTH CLAIM FOR RELIEF

(Constructive Trust against all Defendants)

93. In response to Paragraph 93 of the Counterclaim, KAL-MOR restates its answers to the foregoing Paragraphs 1 through 92 of the Counterclaim as if set forth fully herein.

7 94. In answering Paragraph 94 of the Counterclaim, KAL-MOR denies the allegations
8 set forth therein.

9 95. In answering Paragraph 95 of the Counterclaim, KAL-MOR denies the allegations
10 set forth therein.

FIFTH CLAIM FOR RELIEF

(Accounting)

96. In response to Paragraph 96 of the Counterclaim, KAL-MOR restates its answers to the foregoing Paragraphs 1 through 95 of the Counterclaim as if set forth fully herein.

15 97. In answering Paragraph 97 of the Counterclaim, KAL-MOR denies the allegations
16 set forth therein.

98. In answering Paragraph 98 of the Counterclaim, KAL-MOR denies the allegations
set forth therein.

AFFIRMATIVE DEFENSES

1. The Counterclaim, in whole or in part, fails to state any claim against KAL-MOR upon which relief can be granted.

22 2. At all material times, KAL-MOR acted in good faith and exercised its lawful rights
23 in dealing with Counter-claimant.

24 3. Counter-claimant's claims are barred by its own failure to act in good faith and deal
25 fairly with KAL-MOR.

26 4. Counter-claimant is barred from maintaining this action by virtue of its own
27 unclean hands and inequitable conduct.

28 5. Counter-claimant's claims are barred by the doctrine of estoppel.

6. Counter-claimant materially breached the parties' agreements thereby excusing KAL-MOR from performance.

7. Counter-claimant's claims are barred by a lack of consideration.

8. Counter-claimant's claims are barred by Counter-claimant's own intentional misrepresentations to KAL-MOR.

9. Counter-claimant has waived any claims it may have held against KAL-MOR.

10. KAL-MOR hereby incorporates by reference those affirmative defenses enumerated in NRCP 8 as though fully set forth herein. Such defenses are herein incorporated by reference for the specific purpose of not waiving the same.

11. Pursuant to NRCP 11, as amended, all possible affirmative defenses may not have been alleged herein insofar as sufficient facts were not available after reasonable inquiry upon the filing of this answer to the Counterclaim, therefore, KAL-MOR reserves the right to amend this answer to allege additional affirmative defenses if subsequent investigation so warrants.

WHEREFORE, KAL-MOR prays for relief as follows:

1. Dismissal of Counter-claimant's Counterclaim with prejudice as to KAL-MOR;
2. An award of reasonable attorney's fees and costs to KAL-MOR for the defense of this matter; and
3. For such other relief as the Court deems reasonable and proper.

DATED this 3rd day of September, 2019.

KOLESAR & LEATHAM

By /s/ Bart K. Larsen, Esq.

BART K. LARSEN, ESQ.

Nevada Bar No. 8538

400 South Rampart Boulevard, Suite 400

Las Vegas, Nevada 89145

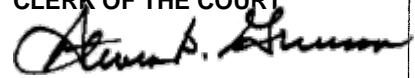
Attorneys for Plaintiff

KAL-MOR-USA, LLC

EXHIBIT “6”

Findings of Fact and Conclusions of Law Granting Motion for
Partial Summary Judgment

EXHIBIT “6”



BART K. LARSEN, ESQ.
Nevada Bar No. 8538
ERIC D. WALTHER, ESQ.
Nevada Bar No. 13611
KOLESAR & LEATHAM
400 South Rampart Boulevard, Suite 400
Las Vegas, Nevada 89145
Telephone: (702) 362-7800
Facsimile: (702) 362-9472
E-Mail: blarsen@klnevada.com
ewalther@klnevada.com

Attorneys for Plaintiff
Kal-Mor-USA, LLC

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

* * *

KAL-MOR-USA, LLC, a Nevada limited
liability company,

Plaintiff,

vs.

OMNI FINANCIAL, LLC, a foreign limited
liability company; FIRST 100, LLC, a Nevada
limited liability company; DOES I through X;
and ROE ENTITIES I through X, inclusive,

Defendants.

CASE NO. A-17-757061-C

DEPT. NO. 2

**FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
ORDER GRANTING PLAINTIFF'S
MOTION FOR PARTIAL
SUMMARY JUDGMENT**

Date: August 27, 2018

Time: 10:30 a.m.

Plaintiff Kal-Mor-USA, LLC's ("Kal-Mor") Motion for Partial Summary Judgment (the "Motion") against Defendant Omni Financial, LLC ("Omni") as to Kal-Mor's fourth cause of action for declaratory relief and Kal-Mor's fifth cause of action for quiet title came on for hearing before the Court on August 27, 2018 (the "Hearing"). Kal-Mor appeared through its counsel of record, Bart K. Larsen, Esq. of the law firm of Kolesar & Leatham. Omni appeared through its counsel of record, Robert W. Hernquist, Esq. and Brian J. Pezzillo, Esq. of the law firm of Howard & Howard.

KOLESAR & LEATHAM
400 S. Rampart Boulevard, Suite 400
Las Vegas, Nevada 89145
Tel: (702) 362-7800 / Fax: (702) 362-9472

1 Having duly considered all arguments and evidence presented by both Kal-Mor and
2 Omni, including the arguments made by counsel at the Hearing, and finding good cause for the
3 relief requested in the Motion, the Court makes the following Findings of Fact and Conclusions
4 of Law:

5 **FINDINGS OF FACT**

6 **A. The Omni Loan Transaction**

7 1. On May 27, 2014, First 100 and Omni entered into a Loan Agreement under
8 which Omni agreed to loan up to \$5,000,000 to First 100 (the "Omni Loan Agreement"). In
9 connection therewith, First 100 executed a Promissory Note dated May 27, 2014 in favor of
10 Omni (the "Omni Note"). First 100 and Omni also entered into a Security Agreement dated May
11 27, 2014 (the "Security Agreement" and together with the Omni Loan Agreement, the Omni
12 Note, and other loan documents, the "Omni Loan") under which First 100 pledged certain real
13 and personal property as collateral for the Omni Note.

14 2. Among other things, the collateral purportedly pledged pursuant to the Security
15 Agreement was evidenced by (i) a Deed of Trust dated May 27, 2014 (the "May 2014 Deed of
16 Trust"), (ii) a Deed of Trust dated June 17, 2014 (the "June 2014 Deed of Trust"), and a Deed of
17 Trust dated August 21, 2014 (the "August 2014 Deed of Trust" and together with the May 2014
18 Deed of Trust and June 2014 Deed of Trust, including any subsequent amendments thereto, the
19 "Omni Deeds of Trust").

20 3. The May 2014 Deed of Trust was recorded in the official records of the Clark
21 County, Nevada Recorder (the "Official Records") as instrument number 20140529-0001342 on
22 May 29, 2014. Under the May 2014 Deed of Trust, First 100 purported to pledge various real
23 properties as collateral for the Omni Note, including, but not limited to:

24 a. The property commonly known as 1217 Neva Ranch Avenue, North Las
25 Vegas, Nevada 89081, also designated as Clark County Assessor Parcel
26 Number ("APN") 124-26-311-029 (the "Neva Ranch Property");

27 b. The property commonly known as 230 East Flamingo Road #330, Las Vegas,
28 Nevada 89169, also designated as APN 162-16-810-355 (the "East Flamingo");

Property”);

c. The property commonly known as 2615 West Gary Avenue #1065, Las Vegas, Nevada 89123, also designated as APN 177-20-813-127 (the “West Gary Property”); and

d. The property commonly known as 6575 Shining Sand Avenue, Las Vegas, Nevada 89142, also designated as APN 161-10-511-072 (the “Shining Sand Property”).

4. The June 2014 Deed of Trust was recorded in the Official Records as instrument number 20140718-0001253 on July 18, 2014. Under the June 2014 Deed of Trust, First 100 purported to pledge certain additional real properties as collateral for the Omni Note, including, but not limited to:

a. The property commonly known as 4921 Indian River Drive #112, Las Vegas, Nevada 89103, also designated as APN 163-24-612-588 (the (“4921 Indian River Property”);

b. The property commonly known as 5009 Indian River Drive #155, Las Vegas, Nevada 89103, also designated as APN 163-24-612-639 (the “5009 Indian River Property”);

c. The property commonly known as 5295 Indian River Drive #314, Las Vegas, Nevada 89103, also designated as APN 163-24-612-798 (the “5295 Indian River Property”); and

d. The property commonly known as 4400 Sandy River Drive #16, Las Vegas, Nevada 89103, also designated as APN 163-24-612-500 (the “Sandy River Property”).

5. The August 2014 Deed of Trust was recorded in the Official Records as instrument number 20140826-0001916 on August 26, 2014. Under the August 2014 Deed of Trust, First 100 purported to pledge as collateral for the Omni No the real property commonly known as 5782 Camino Ramon Avenue, Las Vegas, Nevada 89156, also designated as APN 140-21-611-018 (the “Camino Ramon Property” and together with the Neva Ranch Property, the

1 East Flamingo Property, the West Gary Property, the Shining Sand Property, the 4921 Indian
2 River Property, the 5009 Indian River Property, the 5295 Indian River Property, and the Sandy
3 River Property, the "Kal-Mor Properties").

4 6. On October 5, 2016, Omni re-recorded the August 2014 Deed of Trust in the
5 Official Records as instrument number 20161005-0002287.

6 7. On April 24, 2017, Omni re-recorded the May 2014 Deed of Trust in the Official
7 Records as instrument number 20170424-0000178.

8 8. On April 24, 2017, Omni re-recorded the June 2014 Deed of Trust in the Official
9 Records as instrument number 20170424-0000179.

10 **B. The PrenPoinciana Transactions**

11 9. On or around February 2, 2015 and with Omni's consent, First 100 entered into a
12 Proceeds Purchase Sharing Agreement ("PPSA") with PrenPoinciana, LLC ("PrenPoinciana")
13 under which PrenPoinciana purchased certain rights to share in the proceeds of certain
14 receivables, and First 100 granted PrenPoinciana a junior security interest in such receivables,
15 which had previously been pledged as collateral for the Omni Note.

16 10. On or around April 20, 2015, PrenPoinciana affiliate, Prentice Lending II, LLC
17 ("Prentice"), loaned \$150,000 (the "Prentice Loan") to First 100 and also received a junior
18 security interest in certain receivables that had previously been pledged as collateral for the
19 Omni Note.

20 **C. Kal-Mor's Purchase of the Kal-Mor Properties**

21 11. First 100's business operations include, among other things, the purchase and sale
22 of residential real properties in Clark County, Nevada that are acquired by First 100 as a result of
23 homeowner association ("HOA") assessment lien foreclosure sales conducted pursuant to the
24 provisions of Chapter 116 of Nevada Revised Statutes. During 2014 and 2015, Kal-Mor
25 purchased several such real properties from First 100, including the nine (9) Kal-Mor Properties
26 that First 100 had previously pledged as collateral for the Omni Note under the Omni Deeds of
27 Trust.

D. The First 100 Action

12. During 2015, First 100 failed to pay amounts due and owing under the Omni Note and failed to perform other obligations required of it in connection with the Omni Loan. First 100 similarly failed to perform as agreed in connection with the PPSA. As a result, Omni and PrenPoinciana issued a joint Notification of Disposition of Collateral on January 8, 2016 in which they identified certain personal property subject to their security interests and scheduled a sale of such collateral to take place in accordance with NRS Chapter 104 on January 21, 2016 (the "UCC Sale").

13. On January 15, 2016, First 100 filed a complaint in the Eighth Judicial District Court in Clark County, Nevada (Case No. A-16-730374-C) (the "First 100 Action") in which it asserted various claims against Omni and PrenPoinciana, and sought an injunction to prevent Omni and PrenPoinciana from proceeding with the UCC Sale. On January 18, 2016, Omni removed the First 100 Action to the United States District Court for the District of Nevada (the "District Court") (Case No. 2:16-cv-00099).

14. After several months of litigation in the First 100 Action, Omni completed the UCC Sale on May 25, 2016 and purchased certain First 100 personal property that had been pledged as collateral for the Omni Note under the Security Agreement through a successful credit bid.

15. On or about May 31, 2016, Omni paid \$800,000 to PrenPoinciana and Prentice to purchase their respective interests under the PPSA and the Prentice Loan.

16. Various disputes subsequently arose between First 100 and Omni as to, among other things, the outstanding balance of the Omni Note, the reasonableness of the UCC Sale, the value of the personal property purchase by Omni through the UCC Sale, possession and control of the personal property purchase by Omni through the UCC Sale, First 100's liability for the remaining balance of the Omni Note, First 100's liability to Omni for amounts owed in connection with the PPSA and the Prentice Loan, and Omni's rights and interests under the Omni Deeds of Trust.

1 17. Omni filed a counterclaim against First 100 and others in the First 100 Action in
2 which it alleged, among other things, that the unpaid balance of the Omni Note was \$4.1 million
3 as of June 15, 2016.

4 **E. The First 100 Settlement**

5 18. After several additional months of litigation in the First 100 Action, Omni and
6 First 100 reached an agreement to resolve their various disputes and entered into a written
7 settlement agreement (the “First 100 Settlement”) on January 16, 2017.¹

8 19. Section 15(a) of the First 100 Settlement provides in part:

9 Omni Release. Except for the rights and obligations of the Parties under this
10 Agreement, and effective immediately upon the exchange of fully executed
11 counterparts of this Agreement ... Omni hereby unconditionally relieves, releases,
12 acquits and forever discharges First 100 ... of and from any and all Liabilities²
13 and Claims³ arising out of, concerning, or in any manner relating to ... the
14 Parties’ prior settlement efforts and negotiations, and Enforcement Actions⁴
15 undertaken by Omni with respect to the Omni Loan (including without limitation
16 the UCC Sale and exercise of the assignment of rents).

17 20. At the time the First 100 Settlement was executed, First 100 held no legal or
18 equitable interest of any kind in any of the Kal-Mor Properties.

19 21. Pursuant to § 15(e) the First 100 Settlement, the District Court entered a
20 Stipulated Judgment on February 16, 2017 (the “First 100 Judgment”) in the First 100 Action
21 through which it entered judgment in favor of Omni and against First 100 in the amount of \$4.8

22 ¹ A copy of the First 100 Settlement is attached to Omni’s Opposition to Plaintiff’s Motion for Partial Summary
23 Judgment as “Exhibit A-4.”

24 ² Section 14(a) of the First 100 Settlement defines “Liabilities” as “any and all liabilities, losses, promises,
25 obligations, agreements, compensation, damages, accounts, liens, fines, assessments, indebtedness, costs, charges, or
26 other expenses, including, but not limited to, reasonable attorney fees and costs, including but not limited to any
27 claims that may be brought by Prentice Lending or PrenPoinciana or their respective positions, and whether of any
28 kind or nature, liquidated or unliquidated, suspected or unsuspected, or fixed or contingent.”

³ Section 14(a) of the First 100 Settlement defines and defines “Claims” as “claims, controversies, causes of action,
 lawsuits, choses in action, arbitrations, administrative actions or proceedings, judgments, order, and remedies.”

⁴ Section 1(b) of the First 100 Settlement defines “Enforcement Actions” as “Omni letters dated April 8, 2015 and
 November 2, 2015 claiming First 100 to be in default of the Omni Loan; Omni asserting that it had accelerated that
 Loan; Omni commencing foreclosure actions which are the subject of this dispute; and Omni’s response to the filing
 of lawsuits related to its claims.”

1 million, but which amount could increase by a specific sum if certain conditions subsequent are
2 not met.⁵

3 22. Among other things, the First 100 Judgment provides that the First 100 Action
4 “and any and all Disputes, Claims, Counterclaims, and Third-Party Claims are hereby dismissed
5 with prejudice. This judgment shall not preclude or otherwise impair any claim or defense that
6 may exist or arise between or among the Parties with respect to a breach of the Settlement
7 Agreement.”⁶

8 23. The term “Disputes” as used in the First 100 Judgment is defined in the recitals to
9 the First 100 Judgment to include “numerous disputes ... between Plaintiffs, Defendants, and
10 Guarantors⁷” regarding, among other things: “(a) First 100’s default on a line of credit loan
11 extended by Omni pursuant to a loan agreement and other transaction documents dated May 27,
12 2014; ... and (f) Omni’s first-priority security interest, as beneficiary, under deeds of trust in
13 various real properties previously or currently owned by First 100.”

14 CONCLUSIONS OF LAW

15 1. Summary judgment is proper under Nev. R. Civ. P. 56(c) when there is no
16 genuine issue of material fact and the moving party is entitled to judgment as to all or some part
17 of its claims as a matter of law. *See Cuzze v. Univ. and Comm. College Sys. of Nev.*, 123 Nev.
18 598, 172 P.3d 131, 134 (2007). To defeat a motion for summary judgment, the non-moving
19 party must introduce specific evidence, through affidavit or otherwise, that demonstrates the
20 existence of a genuine issue of material fact. *Id.*

21 2. “The substantive law controls which factual disputes are material and will
22 preclude summary judgment; other factual disputes are irrelevant. A factual dispute is genuine
23 when the evidence is such that a rational trier of fact could return a verdict for the nonmoving
24 party.” *Wood v. Safeway, Inc.*, 121 Nev. 724, 731, 121 P.3d 1026, 1031 (2005).

25
26 ⁵ A copy of the First 100 Judgment is attached to Omni’s Opposition to Plaintiff’s Motion for Partial Summary
Judgment as “Exhibit D.”

27 ⁶ First 100 Judgment, ¶¶ 5 and 6.

28 ⁷ Kal-Mor is not identified as either a Plaintiff, a Guarantor, or a Defendant in the First 100 Judgment.

3. In considering a motion for summary judgment, the court must view the evidence presented in a light most favorable to the non-moving party. *Fire Ins. Exchange v. Cornwell*, 120 Nev. 303, 305 (2004).

4. “A novation, or substituted contract, ‘is a contract that is itself accepted ... in satisfaction of [an] existing duty’ which ‘discharges the original duty.’” *Granite Construction Company v. Remote Energy Solutions, LLC*, 2017 WL 2334516 (Nev. May 25, 2017) (citing Restatement (Second) of Contracts § 279 (Am. Law Inst. 1981)).

5. “A novation consists of four elements: (1) there must be an existing valid contract; (2) all parties must agree to a new contract; (3) the new contract must extinguish the old contract; and (4) the new contract must be valid.” *United Fire Ins. Co. v. McClelland*, 105 Nev. 504, 508, 780 P.2d 193, 195 (1989). “If all four elements exist, a novation occurred.” *Id.*

6. A novation must be established by clear and convincing evidence. *Id.* at 509.

7. “Whether a novation occurred is a question of fact if the evidence is such that reasonable persons can draw more than one conclusion.” *Id.* at 508.

8. Novation can be determined as a matter of law “when the agreement and consent of the parties are unequivocal.” *Lazovich & Lazovich v. Harding*, 86 Nev. 434, 470 P.2d 125 (1970).

9. The proper interpretation of a contract is a question of law. *Dickenson v. State, Dept. of Wildlife*, 110 Nev. 934, 877 P.2d 1059 (1994). If no ambiguity exists, the words of the contract must be taken in their usual and ordinary significance. *Parsons Drilling, Inc. v Polar Resources*, 98 Nev. 374, 376, 649 P.2d 1360, 1362 (1982).

10. It is undisputed that the Omni Note constituted a valid contract between First 100 and Omni. Likewise, it is undisputed that the First 100 Settlement constitutes a valid, new contract between First 100 and Omni. Accordingly, to determine whether a novation occurred, the Court must determine whether the First 100 Settlement extinguished the Omni Note.

11. The undisputed facts set forth in the record unequivocally demonstrate that the First 100 Settlement expressly and unambiguously extinguished and discharged the Omni Note and substituted in place of the Omni Note the new and materially different obligations owed by

1 First 100 under the First 100 Settlement. As a matter of law, the substitution of one agreement
2 for another constitutes a novation. *United Fire Ins. Co. v. McClelland*, 105 Nev. 504, 780 P.2d
3 193 (1989).

4 12. The extinguishment and discharge of the Omni Note logically extinguished and
5 discharged the Omni Deeds of Trust, which stood as the security for the Omni Note. *See, e.g.,*
6 *Walker v. Shrake*, 75 Nev. 241, 247 (1959) (holding that the satisfaction of a judgment destroyed
7 the security incidental to the judgment obligation).

8 13. Furthermore, the plain and unambiguous language of sections 1(b), 14(a), and
9 15(a) of the First 100 Settlement clearly provides that, upon execution of the First 100
10 Settlement, Omni unconditionally waived, released, and discharged all liabilities, claims, and
11 remedies arising out of, concerning, or in any manner relating to First 100's default under the
12 Omni Loan. Thus, the claims and remedies expressly discharged and released under the First
13 100 Settlement included Omni's rights to enforce payment of the Omni Note through foreclose
14 under the Omni Deeds of Trust.

15 14. The terms of the First 100 Settlement are clear and unambiguous. The subjective
16 intent of Omni and First 100 and their prior dealings are irrelevant. The Court cannot consider
17 extrinsic evidence to construe the unambiguous terms of a contract. "[W]hen a contract is clear
18 on its face, it will be construed from the written language and enforced as written." *Canfora v.*
19 *Coast Hotels & Casinos, Inc.*, 121 Nev. 771, 776 (2005) (internal quotation marks and citation
20 omitted).

21 15. Furthermore, § 20(b) of the First 100 Settlement contains a standard merger
22 clause that provides that the First 100 Settlement is the entire agreement of the parties and
23 replaces all prior agreements. The parol evidence rule precludes the admission of extrinsic
24 "evidence that would change the contract terms when the terms of a written agreement are clear,
25 definite, and unambiguous." *Ringle v. Bruton*, 120 Nev. 82, 91, 86 P.3d 1032, 1037 (2004).

26 16. Through its Motion and the evidence and arguments presented in support thereof,
27 Kal-Mor has demonstrated by clear and convincing evidence that the First 100 Settlement was a
28 novation of the Omni Loan. As such, Kal-Mor is entitled, as a matter of law, to the relief

1 requested in connection with its fourth cause of action for declaratory relief and fifth cause of
2 action for quiet title.

3 17. Omni has failed to demonstrate the existence of any genuine issue of material fact
4 that would prevent this Court from granting partial summary judgment in favor of Kal-Mor as to
5 Kal-Mor's fourth cause of action for declaratory relief and fifth cause of action for quiet title.

6 18. The Court makes no determination concerning Kal-Mor's alternative argument
7 that the Omni Deeds of Trust were discharged and released under Nevada's one action rule⁸ as a
8 result of the entry of the First 100 Judgment.

9 19. If any Conclusion of Law set forth herein is determined to properly constitute a
10 Finding of Fact (or vice versa), such shall be treated as if appropriately identified and designated.

11 **ORDER**

12 Based on the foregoing Findings of Fact and Conclusions of Law, THE COURT
13 HEREBY ORDERS AS FOLLOWS:

14 1. Kal-Mor's Motion for Partial Summary Judgment against Omni as to Kal-Mor's
15 fourth cause of action for declaratory relief and Kal-Mor's fifth cause of action for quiet title is
16 GRANTED;

17 2. Omni's request for relief pursuant to Nev. R. Civ. P. 56(f) is DENIED as Omni
18 has failed to demonstrate the existence of or need for discovery concerning any genuine issue of
19 material fact that would prevent this Court from granting partial summary judgment as requested
20 in Kal-Mor's Motion;

21 3. The execution of the First 100 Settlement on or about January 16, 2017 satisfied
22 and discharged the Omni Note;

23 4. The satisfaction and discharge of the Omni Note pursuant to the First 100
24 Settlement satisfied and discharged the Omni Deeds of Trust as to the Kal-Mor Properties;

25
26
27
28 ⁸ Nev. Rev. Stat. §§ 40.430 and 435.

5. Kal-Mor's rights, title, and interests in each of the Kal-Mor Properties exist free and clear of any lien, mortgage, security interest, or other encumbrance that might be claimed under the Omni Deeds of Trust; and

6. A certified copy of this Order may be recorded in the Official Records as proof and confirmation that any lien, mortgage, security interest, or other encumbrance that might be claimed against any of the Kal-Mor Properties under any of the Omni Deeds of Trust has been fully released and discharged.


IT IS SO ORDERED.

DATED this 26 day of September, 2018.


DISTRICT JUDGE

Submitted by:


KOLESAR & LEATHAM


Bart K. Larsen, Esq.
Nevada Bar No. 8538
400 South Rampart Boulevard, Suite 400
Las Vegas, Nevada 89145

*Attorneys for Plaintiff
Kal-Mor-USA, LLC*

Approved as to form by:

HOWARD & HOWARD ATTORNEYS PLLC

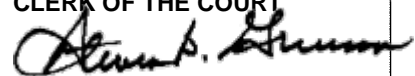

Robert Hernquist
Nevada Bar No. 10616
Brian J. Pezzillo
Nevada Bar No. 7136
3800 Howard Hughes Parkway, Suite 1000
Las Vegas, Nevada 89169

Attorneys for Defendant Omni Financial, LLC

EXHIBIT “7”

Notice of Entry of Findings of Fact and Conclusions of Law
Granting Motion for Partial Summary Judgment

EXHIBIT “7”



1 **NEO**
2 BART K. LARSEN, ESQ.
3 Nevada Bar No. 008538
4 **KOLESAR & LEATHAM**
5 400 South Rampart Boulevard, Suite 400
6 Las Vegas, Nevada 89145
7 Telephone: (702) 362-7800
8 Facsimile: (702) 362-9472
9 E-Mail: blarsen@klnevada.com

10 *Attorneys for Plaintiff*
11 *Kal-Mor-USA, LLC*

12 **DISTRICT COURT**
13 **CLARK COUNTY, NEVADA**

14 * * *

15 KAL-MOR-USA, LLC, a Nevada limited
16 liability company,

17 Plaintiff,

18 vs.

19 OMNI FINANCIAL, LLC, a foreign limited
20 liability company; FIRST 100, LLC, a Nevada
21 limited liability company; DOES I through X;
22 and ROE ENTITIES I through X,

23 Defendants.

CASE NO. A-17-757061-C

DEPT NO. 2

**NOTICE OF ENTRY OF FINDINGS
OF FACT, CONCLUSIONS OF LAW,
AND ORDER GRANTING
PLAINTIFF'S MOTION FOR
PARTIAL SUMMARY JUDGMENT**

24 Please take notice that Findings of Fact, Conclusions of Law, and Order Granting
25 Plaintiff's Motion for Partial Summary Judgment was entered with the above court on the 2nd
26 day of October, 2018, a copy of which is attached hereto.

27 DATED this 3rd day of October, 2018.

28 **KOLESAR & LEATHAM**

By 

BART K. LARSEN, ESQ.
Nevada Bar No. 008538
400 South Rampart Boulevard, Suite 400
Las Vegas, Nevada 89145

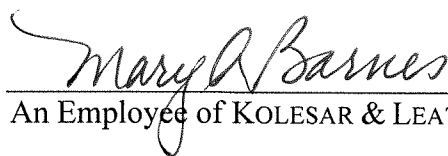
Attorneys for Plaintiff
Kal-Mor-USA, LLC

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Kolesar & Leatham, and that on the 3rd day of October, 2018, I caused to be served a true and correct copy of foregoing NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER GRANTING PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT in the following manner:

(ELECTRONIC SERVICE) Pursuant to Administrative Order 14-2, the above-referenced document was electronically filed on the date hereof and served through the Notice of Electronic Filing automatically generated by that Court's facilities to those parties listed on the Court's Master Service List.


An Employee of KOLESAR & LEATHAM

KOLESAR & LEATHAM
400 S. Rampart Boulevard, Suite 400
Las Vegas, Nevada 89145
TEL: (702) 362-7800 / FAX: (702) 362-9472



BART K. LARSEN, ESQ.
Nevada Bar No. 8538
ERIC D. WALTHER, ESQ.
Nevada Bar No. 13611
KOLESAR & LEATHAM
400 South Rampart Boulevard, Suite 400
Las Vegas, Nevada 89145
Telephone: (702) 362-7800
Facsimile: (702) 362-9472
E-Mail: blarsen@klnevada.com
ewalther@klnevada.com

Attorneys for Plaintiff
Kal-Mor-USA, LLC

EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

* * *

KAL-MOR-USA, LLC, a Nevada limited
liability company,

Plaintiff,

vs.

OMNI FINANCIAL, LLC, a foreign limited
liability company; FIRST 100, LLC, a Nevada
limited liability company; DOES I through X;
and ROE ENTITIES I through X, inclusive,

Defendants.

CASE NO. A-17-757061-C

DEPT. NO. 2

**FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
ORDER GRANTING PLAINTIFF'S
MOTION FOR PARTIAL
SUMMARY JUDGMENT**

Date: August 27, 2018

Time: 10:30 a.m.

Plaintiff Kal-Mor-USA, LLC's ("Kal-Mor") Motion for Partial Summary Judgment (the "Motion") against Defendant Omni Financial, LLC ("Omni") as to Kal-Mor's fourth cause of action for declaratory relief and Kal-Mor's fifth cause of action for quiet title came on for hearing before the Court on August 27, 2018 (the "Hearing"). Kal-Mor appeared through its counsel of record, Bart K. Larsen, Esq. of the law firm of Kolesar & Leatham. Omni appeared through its counsel of record, Robert W. Hernquist, Esq. and Brian J. Pezzillo, Esq. of the law firm of Howard & Howard.

1 Having duly considered all arguments and evidence presented by both Kal-Mor and
2 Omni, including the arguments made by counsel at the Hearing, and finding good cause for the
3 relief requested in the Motion, the Court makes the following Findings of Fact and Conclusions
4 of Law:

5 **FINDINGS OF FACT**

6 **A. The Omni Loan Transaction**

7 1. On May 27, 2014, First 100 and Omni entered into a Loan Agreement under
8 which Omni agreed to loan up to \$5,000,000 to First 100 (the "Omni Loan Agreement"). In
9 connection therewith, First 100 executed a Promissory Note dated May 27, 2014 in favor of
10 Omni (the "Omni Note"). First 100 and Omni also entered into a Security Agreement dated May
11 27, 2014 (the "Security Agreement") and together with the Omni Loan Agreement, the Omni
12 Note, and other loan documents, the "Omni Loan") under which First 100 pledged certain real
13 and personal property as collateral for the Omni Note.

14 2. Among other things, the collateral purportedly pledged pursuant to the Security
15 Agreement was evidenced by (i) a Deed of Trust dated May 27, 2014 (the "May 2014 Deed of
16 Trust"), (ii) a Deed of Trust dated June 17, 2014 (the "June 2014 Deed of Trust"), and a Deed of
17 Trust dated August 21, 2014 (the "August 2014 Deed of Trust") and together with the May 2014
18 Deed of Trust and June 2014 Deed of Trust, including any subsequent amendments thereto, the
19 "Omni Deeds of Trust").

20 3. The May 2014 Deed of Trust was recorded in the official records of the Clark
21 County, Nevada Recorder (the "Official Records") as instrument number 20140529-0001342 on
22 May 29, 2014. Under the May 2014 Deed of Trust, First 100 purported to pledge various real
23 properties as collateral for the Omni Note, including, but not limited to:

- 24 a. The property commonly known as 1217 Neva Ranch Avenue, North Las
25 Vegas, Nevada 89081, also designated as Clark County Assessor Parcel
26 Number ("APN") 124-26-311-029 (the "Neva Ranch Property");
27 b. The property commonly known as 230 East Flamingo Road #330, Las Vegas,
28 Nevada 89169, also designated as APN 162-16-810-355 (the "East Flamingo");

1 Property”);

2 c. The property commonly known as 2615 West Gary Avenue #1065, Las
3 Vegas, Nevada 89123, also designated as APN 177-20-813-127 (the “West
4 Gary Property”); and

5 d. The property commonly known as 6575 Shining Sand Avenue, Las Vegas,
6 Nevada 89142, also designated as APN 161-10-511-072 (the “Shining Sand
7 Property”).

8 4. The June 2014 Deed of Trust was recorded in the Official Records as instrument
9 number 20140718-0001253 on July 18, 2014. Under the June 2014 Deed of Trust, First 100
10 purported to pledge certain additional real properties as collateral for the Omni Note, including,
11 but not limited to:

12 a. The property commonly known as 4921 Indian River Drive #112, Las Vegas,
13 Nevada 89103, also designated as APN 163-24-612-588 (the (“4921 Indian
14 River Property”);

15 b. The property commonly known as 5009 Indian River Drive #155, Las Vegas,
16 Nevada 89103, also designated as APN 163-24-612-639 (the “5009 Indian
17 River Property”);

18 c. The property commonly known as 5295 Indian River Drive #314, Las Vegas,
19 Nevada 89103, also designated as APN 163-24-612-798 (the “5295 Indian
20 River Property”); and

21 d. The property commonly known as 4400 Sandy River Drive #16, Las Vegas,
22 Nevada 89103, also designated as APN 163-24-612-500 (the “Sandy River
23 Property”).

24 5. The August 2014 Deed of Trust was recorded in the Official Records as
25 instrument number 20140826-0001916 on August 26, 2014. Under the August 2014 Deed of
26 Trust, First 100 purported to pledge as collateral for the Omni No the real property commonly
27 known as 5782 Camino Ramon Avenue, Las Vegas, Nevada 89156, also designated as APN
28 140-21-611-018 (the “Camino Ramon Property” and together with the Neva Ranch Property, the

1 East Flamingo Property, the West Gary Property, the Shining Sand Property, the 4921 Indian
2 River Property, the 5009 Indian River Property, the 5295 Indian River Property, and the Sandy
3 River Property, the "Kal-Mor Properties").

4 6. On October 5, 2016, Omni re-recorded the August 2014 Deed of Trust in the
5 Official Records as instrument number 20161005-0002287.

6 7. On April 24, 2017, Omni re-recorded the May 2014 Deed of Trust in the Official
7 Records as instrument number 20170424-0000178.

8 8. On April 24, 2017, Omni re-recorded the June 2014 Deed of Trust in the Official
9 Records as instrument number 20170424-0000179.

10 **B. The PrenPoinciana Transactions**

11 9. On or around February 2, 2015 and with Omni's consent, First 100 entered into a
12 Proceeds Purchase Sharing Agreement ("PPSA") with PrenPoinciana, LLC ("PrenPoinciana")
13 under which PrenPoinciana purchased certain rights to share in the proceeds of certain
14 receivables, and First 100 granted PrenPoinciana a junior security interest in such receivables,
15 which had previously been pledged as collateral for the Omni Note.

16 10. On or around April 20, 2015, PrenPoinciana affiliate, Prentice Lending II, LLC
17 ("Prentice"), loaned \$150,000 (the "Prentice Loan") to First 100 and also received a junior
18 security interest in certain receivables that had previously been pledged as collateral for the
19 Omni Note.

20 **C. Kal-Mor's Purchase of the Kal-Mor Properties**

21 11. First 100's business operations include, among other things, the purchase and sale
22 of residential real properties in Clark County, Nevada that are acquired by First 100 as a result of
23 homeowner association ("HOA") assessment lien foreclosure sales conducted pursuant to the
24 provisions of Chapter 116 of Nevada Revised Statutes. During 2014 and 2015, Kal-Mor
25 purchased several such real properties from First 100, including the nine (9) Kal-Mor Properties
26 that First 100 had previously pledged as collateral for the Omni Note under the Omni Deeds of
27 Trust.

D. The First 100 Action

12. During 2015, First 100 failed to pay amounts due and owing under the Omni Note and failed to perform other obligations required of it in connection with the Omni Loan. First 100 similarly failed to perform as agreed in connection with the PPSA. As a result, Omni and PrenPoinciana issued a joint Notification of Disposition of Collateral on January 8, 2016 in which they identified certain personal property subject to their security interests and scheduled a sale of such collateral to take place in accordance with NRS Chapter 104 on January 21, 2016 (the "UCC Sale").

13. On January 15, 2016, First 100 filed a complaint in the Eighth Judicial District Court in Clark County, Nevada (Case No. A-16-730374-C) (the "First 100 Action") in which it asserted various claims against Omni and PrenPoinciana, and sought an injunction to prevent Omni and PrenPoinciana from proceeding with the UCC Sale. On January 18, 2016, Omni removed the First 100 Action to the United States District Court for the District of Nevada (the "District Court") (Case No. 2:16-cv-00099).

14. After several months of litigation in the First 100 Action, Omni completed the UCC Sale on May 25, 2016 and purchased certain First 100 personal property that had been pledged as collateral for the Omni Note under the Security Agreement through a successful credit bid.

15. On or about May 31, 2016, Omni paid \$800,000 to PrenPoinciana and Prentice to purchase their respective interests under the PPSA and the Prentice Loan.

16. Various disputes subsequently arose between First 100 and Omni as to, among other things, the outstanding balance of the Omni Note, the reasonableness of the UCC Sale, the value of the personal property purchase by Omni through the UCC Sale, possession and control of the personal property purchase by Omni through the UCC Sale, First 100's liability for the remaining balance of the Omni Note, First 100's liability to Omni for amounts owed in connection with the PPSA and the Prentice Loan, and Omni's rights and interests under the Omni Deeds of Trust.

1 17. Omni filed a counterclaim against First 100 and others in the First 100 Action in
2 which it alleged, among other things, that the unpaid balance of the Omni Note was \$4.1 million
3 as of June 15, 2016.

4 **E. The First 100 Settlement**

5 18. After several additional months of litigation in the First 100 Action, Omni and
6 First 100 reached an agreement to resolve their various disputes and entered into a written
7 settlement agreement (the "First 100 Settlement") on January 16, 2017.¹

8 19. Section 15(a) of the First 100 Settlement provides in part:

9 Omni Release. Except for the rights and obligations of the Parties under this
10 Agreement, and effective immediately upon the exchange of fully executed
11 counterparts of this Agreement ... Omni hereby unconditionally relieves, releases,
12 acquits and forever discharges First 100 ... of and from any and all Liabilities²
13 and Claims³ arising out of, concerning, or in any manner relating to ... the
14 Parties' prior settlement efforts and negotiations, and Enforcement Actions⁴
15 undertaken by Omni with respect to the Omni Loan (including without limitation
16 the UCC Sale and exercise of the assignment of rents).

17 20. At the time the First 100 Settlement was executed, First 100 held no legal or
18 equitable interest of any kind in any of the Kal-Mor Properties.

19 21. Pursuant to § 15(e) the First 100 Settlement, the District Court entered a
20 Stipulated Judgment on February 16, 2017 (the "First 100 Judgment") in the First 100 Action
21 through which it entered judgment in favor of Omni and against First 100 in the amount of \$4.8

22 ¹ A copy of the First 100 Settlement is attached to Omni's Opposition to Plaintiff's Motion for Partial Summary
23 Judgment as "Exhibit A-4."

24 ² Section 14(a) of the First 100 Settlement defines "Liabilities" as "any and all liabilities, losses, promises,
25 obligations, agreements, compensation, damages, accounts, liens, fines, assessments, indebtedness, costs, charges, or
26 other expenses, including, but not limited to, reasonable attorney fees and costs, including but not limited to any
27 claims that may be brought by Prentice Lending or PrenPoinciana or their respective positions, and whether of any
28 kind or nature, liquidated or unliquidated, suspected or unsuspected, or fixed or contingent."

³ Section 14(a) of the First 100 Settlement defines and defines "Claims" as "claims, controversies, causes of action,
lawsuits, choses in action, arbitrations, administrative actions or proceedings, judgments, order, and remedies."

⁴ Section 1(b) of the First 100 Settlement defines "Enforcement Actions" as "Omni letters dated April 8, 2015 and
November 2, 2015 claiming First 100 to be in default of the Omni Loan; Omni asserting that it had accelerated that
Loan; Omni commencing foreclosure actions which are the subject of this dispute; and Omni's response to the filing
of lawsuits related to its claims."

1 million, but which amount could increase by a specific sum if certain conditions subsequent are
2 not met.⁵

3 22. Among other things, the First 100 Judgment provides that the First 100 Action
4 “and any and all Disputes, Claims, Counterclaims, and Third-Party Claims are hereby dismissed
5 with prejudice. This judgment shall not preclude or otherwise impair any claim or defense that
6 may exist or arise between or among the Parties with respect to a breach of the Settlement
7 Agreement.”⁶

8 23. The term “Disputes” as used in the First 100 Judgment is defined in the recitals to
9 the First 100 Judgment to include “numerous disputes ... between Plaintiffs, Defendants, and
10 Guarantors⁷” regarding, among other things: “(a) First 100’s default on a line of credit loan
11 extended by Omni pursuant to a loan agreement and other transaction documents dated May 27,
12 2014; ... and (f) Omni’s first-priority security interest, as beneficiary, under deeds of trust in
13 various real properties previously or currently owned by First 100.”

14 CONCLUSIONS OF LAW

15 1. Summary judgment is proper under Nev. R. Civ. P. 56(c) when there is no
16 genuine issue of material fact and the moving party is entitled to judgment as to all or some part
17 of its claims as a matter of law. *See Cuzze v. Univ. and Comm. College Sys. of Nev.*, 123 Nev.
18 598, 172 P.3d 131, 134 (2007). To defeat a motion for summary judgment, the non-moving
19 party must introduce specific evidence, through affidavit or otherwise, that demonstrates the
20 existence of a genuine issue of material fact. *Id.*

21 2. “The substantive law controls which factual disputes are material and will
22 preclude summary judgment; other factual disputes are irrelevant. A factual dispute is genuine
23 when the evidence is such that a rational trier of fact could return a verdict for the nonmoving
24 party.” *Wood v. Safeway, Inc.*, 121 Nev. 724, 731, 121 P.3d 1026, 1031 (2005).

25
26 ⁵ A copy of the First 100 Judgment is attached to Omni’s Opposition to Plaintiff’s Motion for Partial Summary
Judgment as “Exhibit D.”

27 ⁶ First 100 Judgment, ¶¶ 5 and 6.

28 ⁷ Kal-Mor is not identified as either a Plaintiff, a Guarantor, or a Defendant in the First 100 Judgment.

3. In considering a motion for summary judgment, the court must view the evidence presented in a light most favorable to the non-moving party. *Fire Ins. Exchange v. Cornwell*, 120 Nev. 303, 305 (2004).

4. “A novation, or substituted contract, ‘is a contract that is itself accepted ... in satisfaction of [an] existing duty’ which ‘discharges the original duty.’” *Granite Construction Company v. Remote Energy Solutions, LLC*, 2017 WL 2334516 (Nev. May 25, 2017) (citing Restatement (Second) of Contracts § 279 (Am. Law Inst. 1981)).

5. “A novation consists of four elements: (1) there must be an existing valid contract; (2) all parties must agree to a new contract; (3) the new contract must extinguish the old contract; and (4) the new contract must be valid.” *United Fire Ins. Co. v. McClelland*, 105 Nev. 504, 508, 780 P.2d 193, 195 (1989). “If all four elements exist, a novation occurred.” *Id.*

6. A novation must be established by clear and convincing evidence. *Id.* at 509.

7. “Whether a novation occurred is a question of fact if the evidence is such that reasonable persons can draw more than one conclusion.” *Id.* at 508.

8. Novation can be determined as a matter of law “when the agreement and consent of the parties are unequivocal.” *Lazovich & Lazovich v. Harding*, 86 Nev. 434, 470 P.2d 125 (1970).

9. The proper interpretation of a contract is a question of law. *Dickenson v. State, Dept. of Wildlife*, 110 Nev. 934, 877 P.2d 1059 (1994). If no ambiguity exists, the words of the contract must be taken in their usual and ordinary significance. *Parsons Drilling, Inc. v Polar Resources*, 98 Nev. 374, 376, 649 P.2d 1360, 1362 (1982).

10. It is undisputed that the Omni Note constituted a valid contract between First 100 and Omni. Likewise, it is undisputed that the First 100 Settlement constitutes a valid, new contract between First 100 and Omni. Accordingly, to determine whether a novation occurred, the Court must determine whether the First 100 Settlement extinguished the Omni Note.

11. The undisputed facts set forth in the record unequivocally demonstrate that the First 100 Settlement expressly and unambiguously extinguished and discharged the Omni Note and substituted in place of the Omni Note the new and materially different obligations owed by

1 First 100 under the First 100 Settlement. As a matter of law, the substitution of one agreement
2 for another constitutes a novation. *United Fire Ins. Co. v. McClelland*, 105 Nev. 504, 780 P.2d
3 193 (1989).

4 12. The extinguishment and discharge of the Omni Note logically extinguished and
5 discharged the Omni Deeds of Trust, which stood as the security for the Omni Note. *See, e.g.,*
6 *Walker v. Shrake*, 75 Nev. 241, 247 (1959) (holding that the satisfaction of a judgment destroyed
7 the security incidental to the judgment obligation).

8 13. Furthermore, the plain and unambiguous language of sections 1(b), 14(a), and
9 15(a) of the First 100 Settlement clearly provides that, upon execution of the First 100
10 Settlement, Omni unconditionally waived, released, and discharged all liabilities, claims, and
11 remedies arising out of, concerning, or in any manner relating to First 100's default under the
12 Omni Loan. Thus, the claims and remedies expressly discharged and released under the First
13 100 Settlement included Omni's rights to enforce payment of the Omni Note through foreclose
14 under the Omni Deeds of Trust.

15 14. The terms of the First 100 Settlement are clear and unambiguous. The subjective
16 intent of Omni and First 100 and their prior dealings are irrelevant. The Court cannot consider
17 extrinsic evidence to construe the unambiguous terms of a contract. "[W]hen a contract is clear
18 on its face, it will be construed from the written language and enforced as written." *Canfora v.*
19 *Coast Hotels & Casinos, Inc.*, 121 Nev. 771, 776 (2005) (internal quotation marks and citation
20 omitted).

21 15. Furthermore, § 20(b) of the First 100 Settlement contains a standard merger
22 clause that provides that the First 100 Settlement is the entire agreement of the parties and
23 replaces all prior agreements. The parol evidence rule precludes the admission of extrinsic
24 "evidence that would change the contract terms when the terms of a written agreement are clear,
25 definite, and unambiguous." *Ringle v. Bruton*, 120 Nev. 82, 91, 86 P.3d 1032, 1037 (2004).

26 16. Through its Motion and the evidence and arguments presented in support thereof,
27 Kal-Mor has demonstrated by clear and convincing evidence that the First 100 Settlement was a
28 novation of the Omni Loan. As such, Kal-Mor is entitled, as a matter of law, to the relief

1 requested in connection with its fourth cause of action for declaratory relief and fifth cause of
2 action for quiet title.

3 17. Omni has failed to demonstrate the existence of any genuine issue of material fact
4 that would prevent this Court from granting partial summary judgment in favor of Kal-Mor as to
5 Kal-Mor's fourth cause of action for declaratory relief and fifth cause of action for quiet title.

6 18. The Court makes no determination concerning Kal-Mor's alternative argument
7 that the Omni Deeds of Trust were discharged and released under Nevada's one action rule⁸ as a
8 result of the entry of the First 100 Judgment.

9 19. If any Conclusion of Law set forth herein is determined to properly constitute a
10 Finding of Fact (or vice versa), such shall be treated as if appropriately identified and designated.

11 **ORDER**

12 Based on the foregoing Findings of Fact and Conclusions of Law, THE COURT
13 HEREBY ORDERS AS FOLLOWS:

14 1. Kal-Mor's Motion for Partial Summary Judgment against Omni as to Kal-Mor's
15 fourth cause of action for declaratory relief and Kal-Mor's fifth cause of action for quiet title is
16 GRANTED;

17 2. Omni's request for relief pursuant to Nev. R. Civ. P. 56(f) is DENIED as Omni
18 has failed to demonstrate the existence of or need for discovery concerning any genuine issue of
19 material fact that would prevent this Court from granting partial summary judgment as requested
20 in Kal-Mor's Motion;

21 3. The execution of the First 100 Settlement on or about January 16, 2017 satisfied
22 and discharged the Omni Note;

23 4. The satisfaction and discharge of the Omni Note pursuant to the First 100
24 Settlement satisfied and discharged the Omni Deeds of Trust as to the Kal-Mor Properties;

25
26
27
28 ⁸ Nev. Rev. Stat. §§ 40.430 and 435.


KOLESAR & LEATHAM
400 S. Rampart Boulevard, Suite 400
Las Vegas, Nevada 89145
Tel: (702) 362-7800 / Fax: (702) 362-9472

5. Kal-Mor's rights, title, and interests in each of the Kal-Mor Properties exist free and clear of any lien, mortgage, security interest, or other encumbrance that might be claimed under the Omni Deeds of Trust; and

6. A certified copy of this Order may be recorded in the Official Records as proof and confirmation that any lien, mortgage, security interest, or other encumbrance that might be claimed against any of the Kal-Mor Properties under any of the Omni Deeds of Trust has been fully released and discharged.

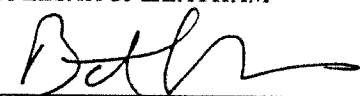
IT IS SO ORDERED.

DATED this 26 day of September, 2018.


DISTRICT JUDGE

Submitted by:

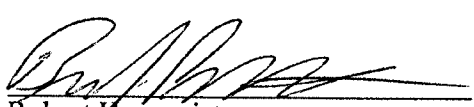
KOLESAR & LEATHAM


Bart K. Larsen, Esq.
Nevada Bar No. 8538
400 South Rampart Boulevard, Suite 400
Las Vegas, Nevada 89145

*Attorneys for Plaintiff
Kal-Mor-USA, LLC*

Approved as to form by:

HOWARD & HOWARD ATTORNEYS PLLC


Robert Hernquist
Nevada Bar No. 10616
Brian J. Pezzillo
Nevada Bar No. 7136
3800 Howard Hughes Parkway, Suite 1000
Las Vegas, Nevada 89169

Attorneys for Defendant Omni Financial, LLC

EXHIBIT “8”

Order Granting NRCP 54(b) Certification

EXHIBIT “8”

OGM

Robert W. Hernquist; Nevada Bar No. 10616
Brian J. Pezzillo; Nevada Bar No. 7136
HOWARD & HOWARD ATTORNEYS PLLC
3800 Howard Hughes Parkway, Suite 1000
Las Vegas, Nevada 89169
Telephone: (702) 257-1483
Facsimile: (702) 567-1568
Email: rwh@h2law.com; bjp@h2law.com

Attorneys for Defendant Omni Financial, LLC

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY NEVADA

KAL-MOR-USA, LLC, a Nevada limited
liability company,

Plaintiffs,

vs.

OMNI FINANCIAL, LLC, a foreign limited
liability company; FIRST 100, LLC, a
Nevada limited liability company; DOES I
through X and ROE ENTITIES I through X;

Defendants.

Case No.: A-17-757061-C

Dept. 2

**ORDER GRANTING RENEWED
MOTION TO CERTIFY ORDER
GRANTING PARTIAL SUMMARY
JUDGMENT AS FINAL PURSUANT
TO NRCP 54(B)**

This matter came before the Court upon Defendant Omni Financial, LLC's ("Omni") Renewed Motion to Certify as Final the Court's Order Granting Kal-Mor-USA, LLC ("Kal-Mor") Motion for Partial Summary Judgment ("Order") filed on October 2, 2018¹ as well as the Court's Order Denying Omni's Request for Reconsideration of the Order that was entered on April 19, 2019. The Court being fully advised and having reviewed the Renewed Motion finds as follows:

1. On June 19, 2017, Kal-Mor commenced this action.
2. The matter was initially removed to federal court on August 25, 2017.

¹ Notice of Entry of the Order was entered on October 3, 2018.

- 1 3. On July 12, 2018 the federal court remanded the matter to this Court.
- 2 4. Subsequently, on July 26, 2018, Kal-Mor filed a Motion for Partial Summary
- 3 Judgment (“Motion”).
- 4 5. The Court granted the Motion for Partial Summary Judgment on October 2, 2018.
- 5 6. Omni subsequently filed a motion for reconsideration of the Court’s Order on
- 6 October 22, 2018.
- 7 7. After briefing and oral argument, the Court issued an Order on April 19, 2019
- 8 denying the Motion for Reconsideration.
- 9 8. In response to the denial of the Motion for Reconsideration, Omni filed a motion
- 10 on May 29, 2019 seeking to certify the Court’s partial summary judgment order as final for
- 11 purposes of appeal pursuant to NRCP 54(b).
- 12 9. After briefing the Court denied Omni’s Rule 54(b) motion.
- 13 10. Omni filed a renewed Motion to Certify the Partial Summary Judgment as final for
- 14 purposes of appeal on June 30, 2020.
- 15 11. No party opposed the Renewed Motion.
- 16 12. There is no reason to delay certification of the Partial Summary Judgment Ruling
- 17 of October 2, 2018 as the issue decided is essentially dispositive of the underlying case and it
- 18 would serve judicial economy and conserve the resources of the party to have any potential appeal
- 19 decided at an early juncture.
- 20 13. Currently no trial date has been set.

21 Based upon the foregoing the Court finds as follows:

22 ///

23 ///

24 ///

25 ///

26 ///

27

28

1 It is hereby ORDERED, ADJUDGED and DECREED that Omni Financial, LLC's
2 Renewed Motion To Certify Order Granting Partial Summary Judgment As Final Pursuant To
3 NRCP 54(B) is **GRANTED**.
4

Dated this 30th day of September, 2020

5 Dated: _____


District Court Judge

6 RESPECTFULLY SUBMITTED:

CD8 F10 654A E8C2
Richard F. Scotti
District Court Judge

8 HOWARD & HOWARD ATTORNEYS PLLC

9 Dated: September 29, 2020

By: /s/ Brian J. Pezzillo

10 Robert Hernquist, Nevada Bar No. 10616

11 Brian J. Pezzillo; Nevada Bar No. 7136

12 3800 Howard Hughes Pkwy., Ste. 1000

13 Las Vegas, NV 89169

14 Attorneys for Defendant Omni Financial, LLC
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Kal-Mor-USA, Inc., Plaintiff(s) | CASE NO: A-17-757061-C
7 vs. | DEPT. NO. Department 2
8 Omni Financial, LLC,
9 Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

12 This automated certificate of service was generated by the Eighth Judicial District
13 Court. The foregoing Order Granting Motion was served via the court's electronic eFile
system to all recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 9/30/2020

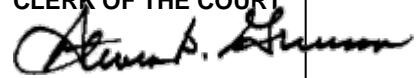
15 Mark Gardberg	mg@h2law.com
16 Robert Hernquist	rwh@h2law.com
17 MGA Docketing	docket@mgalaw.com
18 Angela Westlake	arw@h2law.com
19 Brian Pezzillo	bpezzillo@howardandhoward.com
20 Anya Ruiz	ar@h2law.com
21 Amber Clayton	amc@h2law.com
22 Bart Larsen	blarsen@shea.law

23
24
25
26
27
28

EXHIBIT “9”

Notice of Entry of Order Granting NRCP 54(b) Certification

EXHIBIT “9”



NOE

Robert W. Hernquist; Nevada Bar No. 10616
Brian J. Pezzillo; Nevada Bar No. 7136
HOWARD & HOWARD ATTORNEYS PLLC
3800 Howard Hughes Parkway, Suite 1000
Las Vegas, Nevada 89169
Telephone: (702) 257-1483
Facsimile: (702) 567-1568
Email: rwh@h2law.com; bjp@h2law.com

Attorneys for Defendant Omni Financial, LLC

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY NEVADA

KAL-MOR-USA, LLC, a Nevada limited
liability company,

Plaintiffs,

vs.

OMNI FINANCIAL, LLC, a foreign limited
liability company; FIRST 100, LLC, a
Nevada limited liability company; DOES I
through X and ROE ENTITIES I through X;

Defendants.

Case No.: A-17-757061-C

Dept. 2

NOTICE OF ENTRY OF ORDER

///

///

///

///

///

///

///

PLEASE TAKE NOTICE that an Order Granting Renewed Motion to Certify Order Granting Partial Summary Judgment as Final Pursuant to NRCP 54(B) was filed in the above-captioned matter on September 30, 2019. A true and correct copy of said order is attached hereto.

HOWARD & HOWARD ATTORNEYS PLLC

Dated: September 30, 2020

By: /s/ Brian J. Pezzillo

Robert Hernquist, Nevada Bar No. 10616

Brian J. Pezzillo; Nevada Bar No. 7136

3800 Howard Hughes Parkway, Suite 1000

Las Vegas, Nevada 89169

Telephone: (702) 257-1483

Facsimile: (702) 567-1568

Email: rwh@h2law.com; bjp@h2law.com

Attorneys for Defendant Omni Financial, LLC

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Howard & Howard Attorneys PLLC, and that on the 30th day of September 2020, I caused to be served a copy of foregoing Notice of Entry of Order in the following manner:

(ELECTRONIC SERVICE). The above-referenced document was electronically filed and served upon the parties listed below through the Court's Case Management and Electronic Case Filing system:

Joseph A. Gutierrez, Esq.
MAIER GUTIERREZ AYON
400 South Seventh Street, Suite 400
Las Vegas, NV 89101

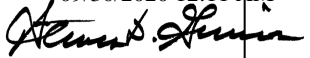
Attorneys for First 100 LLC

Bart K. Larsen, Esq.
SHEA & LARSEN
1731 Village Center Circle, Suite 150
Las Vegas, Nevada 89134

*Attorney for Plaintiff Kal-Mor-USA,
LLC*

/s/ Anya Ruiz
Howard & Howard Attorneys PLLC

4825-2938-7981, v. 1


CLERK OF THE COURT

OGM

Robert W. Hernquist; Nevada Bar No. 10616
Brian J. Pezzillo; Nevada Bar No. 7136
HOWARD & HOWARD ATTORNEYS PLLC
3800 Howard Hughes Parkway, Suite 1000
Las Vegas, Nevada 89169
Telephone: (702) 257-1483
Facsimile: (702) 567-1568
Email: rwh@h2law.com; bjp@h2law.com

Attorneys for Defendant Omni Financial, LLC

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY NEVADA

KAL-MOR-USA, LLC, a Nevada limited
liability company,

Plaintiffs,

vs.

OMNI FINANCIAL, LLC, a foreign limited
liability company; FIRST 100, LLC, a
Nevada limited liability company; DOES I
through X and ROE ENTITIES I through X;

Defendants.

Case No.: A-17-757061-C

Dept. 2

**ORDER GRANTING RENEWED
MOTION TO CERTIFY ORDER
GRANTING PARTIAL SUMMARY
JUDGMENT AS FINAL PURSUANT
TO NRCP 54(B)**

This matter came before the Court upon Defendant Omni Financial, LLC's ("Omni") Renewed Motion to Certify as Final the Court's Order Granting Kal-Mor-USA, LLC ("Kal-Mor") Motion for Partial Summary Judgment ("Order") filed on October 2, 2018¹ as well as the Court's Order Denying Omni's Request for Reconsideration of the Order that was entered on April 19, 2019. The Court being fully advised and having reviewed the Renewed Motion finds as follows:

1. On June 19, 2017, Kal-Mor commenced this action.
2. The matter was initially removed to federal court on August 25, 2017.

¹ Notice of Entry of the Order was entered on October 3, 2018.

- 1 3. On July 12, 2018 the federal court remanded the matter to this Court.
- 2 4. Subsequently, on July 26, 2018, Kal-Mor filed a Motion for Partial Summary
- 3 Judgment (“Motion”).
- 4 5. The Court granted the Motion for Partial Summary Judgment on October 2, 2018.
- 5 6. Omni subsequently filed a motion for reconsideration of the Court’s Order on
- 6 October 22, 2018.
- 7 7. After briefing and oral argument, the Court issued an Order on April 19, 2019
- 8 denying the Motion for Reconsideration.
- 9 8. In response to the denial of the Motion for Reconsideration, Omni filed a motion
- 10 on May 29, 2019 seeking to certify the Court’s partial summary judgment order as final for
- 11 purposes of appeal pursuant to NRCP 54(b).
- 12 9. After briefing the Court denied Omni’s Rule 54(b) motion.
- 13 10. Omni filed a renewed Motion to Certify the Partial Summary Judgment as final for
- 14 purposes of appeal on June 30, 2020.
- 15 11. No party opposed the Renewed Motion.
- 16 12. There is no reason to delay certification of the Partial Summary Judgment Ruling
- 17 of October 2, 2018 as the issue decided is essentially dispositive of the underlying case and it
- 18 would serve judicial economy and conserve the resources of the party to have any potential appeal
- 19 decided at an early juncture.
- 20 13. Currently no trial date has been set.

21 Based upon the foregoing the Court finds as follows:

22 ///

23 ///

24 ///

25 ///

26 ///

27

28

1 It is hereby ORDERED, ADJUDGED and DECREED that Omni Financial, LLC's
2 Renewed Motion To Certify Order Granting Partial Summary Judgment As Final Pursuant To
3 NRCP 54(B) is **GRANTED**.
4

Dated this 30th day of September, 2020

5 Dated: _____


District Court Judge

6 RESPECTFULLY SUBMITTED:

CD8 F10 654A E8C2
Richard F. Scotti
District Court Judge

8 HOWARD & HOWARD ATTORNEYS PLLC

9 Dated: September 29, 2020

By: /s/ Brian J. Pezzillo

10 Robert Hernquist, Nevada Bar No. 10616

11 Brian J. Pezzillo; Nevada Bar No. 7136

12 3800 Howard Hughes Pkwy., Ste. 1000

13 Las Vegas, NV 89169

14 Attorneys for Defendant Omni Financial, LLC
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Kal-Mor-USA, Inc., Plaintiff(s) CASE NO: A-17-757061-C
7 vs. DEPT. NO. Department 2
8 Omni Financial, LLC,
9 Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

12 This automated certificate of service was generated by the Eighth Judicial District
13 Court. The foregoing Order Granting Motion was served via the court's electronic eFile
system to all recipients registered for e-Service on the above entitled case as listed below:

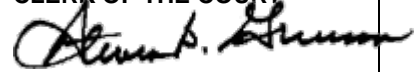
14 Service Date: 9/30/2020

15 Mark Gardberg mg@h2law.com
16 Robert Hernquist rwh@h2law.com
17 MGA Docketing docket@mgalaw.com
18 Angela Westlake arw@h2law.com
19 Brian Pezzillo bpezzillo@howardandhoward.com
20 Anya Ruiz ar@h2law.com
21 Amber Clayton amc@h2law.com
22 Bart Larsen blarsen@shea.law
23
24
25
26
27
28

EXHIBIT “10”

First 100, LLC’s Answer to Kal-Mor Complaint

EXHIBIT “10”



1 **ANSC**
JOSEPH A. GUTIERREZ, ESQ.
2 Nevada Bar No. 9046
DANIELLE J. BARRAZA, ESQ.
3 Nevada Bar No. 13822
MAIER GUTIERREZ & ASSOCIATES
4 8816 Spanish Ridge Avenue
Las Vegas, Nevada 89148
5 Telephone: (702) 629-7900
Facsimile: (702) 629-7925
6 E-mail: jag@mgalaw.com
djb@mgalaw.com

7 *Attorneys for Defendant First 100, LLC*

8
9 **DISTRICT COURT**
10 **CLARK COUNTY, NEVADA**

11 KAL-MOR-USA, LLC, a Nevada limited
12 liability company,

13 Plaintiff,

14 vs.

15 OMNI FINANCIAL, LLC, a foreign limited
16 liability company; FIRST 100, LLC, a Nevada
limited liability company; DOES I through X; and
17 ROE ENTITIES I through X, inclusive,

18 Defendants.

19 OMNI FINANCIAL, LLC, a foreign limited
liability company,

20 Counter-claimant,

21 vs.

22 KAL-MOR-USA, LLC, a Nevada limited
liability company; DOES 1 – 10; ROE
23 ENTITIES 1 – 10,

24 Counter-defendants.

Case No.: A-17-757061-C
Dept. No.: XVIII

**FIRST 100, LLC'S ANSWER TO
PLAINTIFF'S COMPLAINT**

25 Defendant First 100, LLC ("Defendant" or "First 100"), by and through its attorneys of
26 record, the law firm MAIER GUTIERREZ & ASSOCIATES, hereby answers the complaint of plaintiff
27 Kal-Mor-USA, LLC ("Plaintiff" or "Kal-Mor"), as follows:

28 Defendant denies each and every allegation contained in the complaint except those

1 allegations which are hereinafter admitted, qualified or otherwise answered.

2 **JURISDICTIONAL ALLEGATIONS**

3 1. Defendant is without sufficient knowledge or information upon which to form a belief
4 as to the truth of the allegation contained in said paragraph, and therefore generally and specifically
5 denies the allegations contained therein.

6 2. Defendant is without sufficient knowledge or information upon which to form a belief
7 as to the truth of the allegation contained in said paragraph, and therefore generally and specifically
8 denies the allegations contained therein.

9 3. Defendant admits that First 100 is a Nevada limited liability company that, at all times
10 relevant, was conducting business in Clark County, Nevada.

11 4. The allegations contained in this paragraph of the complaint do not relate to
12 Defendant, thus no response is required. To the extent a response is deemed required, Defendant
13 specifically and generally denies each and every allegation.

14 5. The allegations contained in this paragraph of the complaint do not relate to
15 Defendant, thus no response is required. To the extent a response is deemed required, Defendant
16 specifically and generally denies each and every allegation.

17 **GENERAL ALLEGATIONS**

18 **THE OMNI LOAN AGREEMENT**

19 6. In answering the allegations contained in this paragraph of the complaint, the
20 allegations contained herein attempt to characterize the terms of an Omni Loan, which speaks for
21 itself. Defendant specifically and generally denies the allegations contained in this paragraph.

22 7. In answering the allegations contained in this paragraph of the complaint, the
23 allegations contained herein attempt to characterize the terms of a Security Agreement, which speaks
24 for itself. Defendant specifically and generally denies the allegations contained in this paragraph.

25 8. In answering the allegations contained in this paragraph of the complaint, the
26 allegations contained herein attempt to characterize the terms of a Security Agreement, which speaks
27 for itself. Defendant specifically and generally denies the allegations contained in this paragraph.

28 9. In answering the allegations contained in this paragraph of the complaint, the

1 allegations contained herein attempt to characterize the terms of a Deed of Trust, which speaks for
2 itself. Defendant specifically and generally denies the allegations contained in this paragraph.

3 10. In answering the allegations contained in this paragraph of the complaint, the
4 allegations contained herein (including all subparts) attempt to characterize the terms of a Deed of
5 Trust, which speaks for itself. Defendant specifically and generally denies the allegations contained
6 in this paragraph.

7 11. In answering the allegations contained in this paragraph of the complaint, the
8 allegations contained herein attempt to characterize the terms of a Deed of Trust, which speaks for
9 itself. Defendant specifically and generally denies the allegations contained in this paragraph.

10 12. In answering the allegations contained in this paragraph of the complaint, the
11 allegations contained herein attempt to characterize the terms of a Deed of Trust, which speaks for
12 itself. Defendant specifically and generally denies the allegations contained in this paragraph.

13 13. In answering the allegations contained in this paragraph of the complaint, the
14 allegations contained herein (including all subparts) attempt to characterize the terms of a Deed of
15 Trust, which speaks for itself. Defendant specifically and generally denies the allegations contained
16 in this paragraph.

17 14. In answering the allegations contained in this paragraph of the complaint, the
18 allegations contained herein attempt to characterize the terms of a Deed of Trust, which speaks for
19 itself. Defendant specifically and generally denies the allegations contained in this paragraph.

20 15. In answering the allegations contained in this paragraph of the complaint, the
21 allegations contained herein attempt to characterize the terms of a Deed of Trust, which speaks for
22 itself. Defendant specifically and generally denies the allegations contained in this paragraph.

23 16. In answering the allegations contained in this paragraph of the complaint, the
24 allegations contained herein attempt to characterize the terms of a Deed of Trust, which speaks for
25 itself. Defendant specifically and generally denies the allegations contained in this paragraph.

26 17. In answering the allegations contained in this paragraph of the complaint, the
27 allegations contained herein attempt to characterize the terms of a Deed of Trust, which speaks for
28 itself. Defendant specifically and generally denies the allegations contained in this paragraph.

1 18. In answering the allegations contained in this paragraph of the complaint, the
2 allegations contained herein attempt to characterize the terms of a Deed of Trust, which speaks for
3 itself. Defendant specifically and generally denies the allegations contained in this paragraph.

4 **KAL-MOR PURCHASE OF THE REAL PROPERTIES AT ISSUE**

5 **1217 Neva Ranch Avenue, North Las Vegas, Nevada 89081 (APN 124-26-311-029)**

6 19. Defendant is without sufficient knowledge or information upon which to form a belief
7 as to the truth of the allegation contained in said paragraph, and therefore generally and specifically
8 denies the allegations contained therein.

9 20. Defendant is without sufficient knowledge or information upon which to form a belief
10 as to the truth of the allegation contained in said paragraph, and therefore generally and specifically
11 denies the allegations contained therein.

12 21. In answering the allegations contained in this paragraph of the complaint, the
13 allegations contained herein attempt to characterize the terms of a Foreclosure Deed Upon Sale,
14 which speaks for itself. Defendant specifically and generally denies the allegations contained in this
15 paragraph.

16 22. In answering the allegations contained in this paragraph of the complaint, the
17 allegations contained herein attempt to characterize the terms of a Deed of Sale, which speaks for
18 itself. Defendant specifically and generally denies the allegations contained in this paragraph.

19 23. Defendant denies the allegations contained in this paragraph.

20 24. In answering the allegations contained in this paragraph of the complaint, the
21 allegations contained herein attempt to characterize the terms of a Deed of Sale, which speaks for
22 itself. Defendant specifically and generally denies the allegations contained in this paragraph.

23 25. Defendant denies the allegations contained in this paragraph.

24 **230 East Flamingo Road, #330, Las Vegas, Nevada 89169 (APN 162-16-810-355)**

25 26. Defendant is without sufficient knowledge or information upon which to form a belief
26 as to the truth of the allegation contained in said paragraph, and therefore generally and specifically
27 denies the allegations contained therein.

28 27. Defendant is without sufficient knowledge or information upon which to form a belief

1 as to the truth of the allegation contained in said paragraph, and therefore generally and specifically
2 denies the allegations contained therein.

3 28. In answering the allegations contained in this paragraph of the complaint, the
4 allegations contained herein attempt to characterize the terms of a Foreclosure Deed Upon Sale,
5 which speaks for itself. Defendant specifically and generally denies the allegations contained in this
6 paragraph.

7 29. In answering the allegations contained in this paragraph of the complaint, the
8 allegations contained herein attempt to characterize the terms of a Deed of Sale, which speaks for
9 itself. Defendant specifically and generally denies the allegations contained in this paragraph.

10 30. Defendant denies the allegations contained in this paragraph.

11 31. In answering the allegations contained in this paragraph of the complaint, the
12 allegations contained herein attempt to characterize the terms of a Deed of Sale, which speaks for
13 itself. Defendant specifically and generally denies the allegations contained in this paragraph.

14 32. Defendant denies the allegations contained in this paragraph.

15 ***2615 West Gary Avenue, #1065, Las Vegas, Nevada 89123 (APN 177-20-813-127)***

16 33. Defendant is without sufficient knowledge or information upon which to form a belief
17 as to the truth of the allegation contained in said paragraph, and therefore generally and specifically
18 denies the allegations contained therein.

19 34. Defendant is without sufficient knowledge or information upon which to form a belief
20 as to the truth of the allegation contained in said paragraph, and therefore generally and specifically
21 denies the allegations contained therein.

22 35. In answering the allegations contained in this paragraph of the complaint, the
23 allegations contained herein attempt to characterize the terms of a Foreclosure Deed Upon Sale,
24 which speaks for itself. Defendant specifically and generally denies the allegations contained in this
25 paragraph.

26 36. In answering the allegations contained in this paragraph of the complaint, the
27 allegations contained herein attempt to characterize the terms of a Deed of Sale, which speaks for
28 itself. Defendant specifically and generally denies the allegations contained in this paragraph.

1 37. Defendant denies the allegations contained in this paragraph.

2 38. In answering the allegations contained in this paragraph of the complaint, the
3 allegations contained herein attempt to characterize the terms of a Deed of Sale, which speaks for
4 itself. Defendant specifically and generally denies the allegations contained in this paragraph.
5 Defendant denies the allegations contained in this paragraph.

6 39. Defendant denies the allegations contained in this paragraph.

7 ***6575 Shining Sand Avenue, Las Vegas, Nevada 89142 (APN 161-10-511-072)***

8 40. Defendant is without sufficient knowledge or information upon which to form a belief
9 as to the truth of the allegation contained in said paragraph, and therefore generally and specifically
10 denies the allegations contained therein.

11 41. Defendant is without sufficient knowledge or information upon which to form a belief
12 as to the truth of the allegation contained in said paragraph, and therefore generally and specifically
13 denies the allegations contained therein.

14 42. In answering the allegations contained in this paragraph of the complaint, the
15 allegations contained herein attempt to characterize the terms of a Foreclosure Deed Upon Sale,
16 which speaks for itself. Defendant specifically and generally denies the allegations contained in this
17 paragraph.

18 43. In answering the allegations contained in this paragraph of the complaint, the
19 allegations contained herein attempt to characterize the terms of a Deed of Sale, which speaks for
20 itself. Defendant specifically and generally denies the allegations contained in this paragraph.

21 44. Defendant denies the allegations contained in this paragraph.

22 45. In answering the allegations contained in this paragraph of the complaint, the
23 allegations contained herein attempt to characterize the terms of a Deed of Sale, which speaks for
24 itself. Defendant specifically and generally denies the allegations contained in this paragraph.
25 Defendant denies the allegations contained in this paragraph.

26 46. Defendant denies the allegations contained in this paragraph.

27 ***4921 Indian River Drive, #112, Las Vegas, Nevada 89103 (APN 163-24-612-588)***

28 47. Defendant is without sufficient knowledge or information upon which to form a belief

1 as to the truth of the allegation contained in said paragraph, and therefore generally and specifically
2 denies the allegations contained therein.

3 48. Defendant is without sufficient knowledge or information upon which to form a belief
4 as to the truth of the allegation contained in said paragraph, and therefore generally and specifically
5 denies the allegations contained therein.

6 49. In answering the allegations contained in this paragraph of the complaint, the
7 allegations contained herein attempt to characterize the terms of a Foreclosure Deed Upon Sale,
8 which speaks for itself. Defendant specifically and generally denies the allegations contained in this
9 paragraph.

10 50. In answering the allegations contained in this paragraph of the complaint, the
11 allegations contained herein attempt to characterize the terms of a Deed of Sale, which speaks for
12 itself. Defendant specifically and generally denies the allegations contained in this paragraph.

13 51. Defendant denies the allegations contained in this paragraph.

14 52. In answering the allegations contained in this paragraph of the complaint, the
15 allegations contained herein attempt to characterize the terms of a Deed of Sale, which speaks for
16 itself. Defendant specifically and generally denies the allegations contained in this paragraph.
17 Defendant denies the allegations contained in this paragraph.

18 53. Defendant denies the allegations contained in this paragraph.

19 ***5009 Indian River Drive, #155, Las Vegas, Nevada 89103 (APN 163-24-612-639)***

20 54. Defendant is without sufficient knowledge or information upon which to form a belief
21 as to the truth of the allegation contained in said paragraph, and therefore generally and specifically
22 denies the allegations contained therein.

23 55. Defendant is without sufficient knowledge or information upon which to form a belief
24 as to the truth of the allegation contained in said paragraph, and therefore generally and specifically
25 denies the allegations contained therein.

26 56. In answering the allegations contained in this paragraph of the complaint, the
27 allegations contained herein attempt to characterize the terms of a Foreclosure Deed Upon Sale,
28 which speaks for itself. Defendant specifically and generally denies the allegations contained in this

1 paragraph.

2 57. In answering the allegations contained in this paragraph of the complaint, the
3 allegations contained herein attempt to characterize the terms of a Deed of Sale, which speaks for
4 itself. Defendant specifically and generally denies the allegations contained in this paragraph.

5 58. Defendant denies the allegations contained in this paragraph.

6 59. In answering the allegations contained in this paragraph of the complaint, the
7 allegations contained herein attempt to characterize the terms of a Deed of Sale, which speaks for
8 itself. Defendant specifically and generally denies the allegations contained in this paragraph.
9 Defendant denies the allegations contained in this paragraph.

10 60. Defendant denies the allegations contained in this paragraph.

11 ***5295 Indian River Drive, #314, Las Vegas, Nevada 89103 (APN 163-24-612-798)***

12 61. Defendant is without sufficient knowledge or information upon which to form a belief
13 as to the truth of the allegation contained in said paragraph, and therefore generally and specifically
14 denies the allegations contained therein.

15 62. Defendant is without sufficient knowledge or information upon which to form a belief
16 as to the truth of the allegation contained in said paragraph, and therefore generally and specifically
17 denies the allegations contained therein.

18 63. In answering the allegations contained in this paragraph of the complaint, the
19 allegations contained herein attempt to characterize the terms of a Foreclosure Deed Upon Sale,
20 which speaks for itself. Defendant specifically and generally denies the allegations contained in this
21 paragraph.

22 64. In answering the allegations contained in this paragraph of the complaint, the
23 allegations contained herein attempt to characterize the terms of a Deed of Sale, which speaks for
24 itself. Defendant specifically and generally denies the allegations contained in this paragraph.

25 65. Defendant denies the allegations contained in this paragraph.

26 66. In answering the allegations contained in this paragraph of the complaint, the
27 allegations contained herein attempt to characterize the terms of a Deed of Sale, which speaks for
28 itself. Defendant specifically and generally denies the allegations contained in this paragraph.

1 Defendant denies the allegations contained in this paragraph.

2 67. Defendant denies the allegations contained in this paragraph.

3 ***4400 Sandy River Drive, #16, Las Vegas, Nevada 89103 (APN 163-24-612-500)***

4 68. Defendant is without sufficient knowledge or information upon which to form a belief
5 as to the truth of the allegation contained in said paragraph, and therefore generally and specifically
6 denies the allegations contained therein.

7 69. Defendant is without sufficient knowledge or information upon which to form a belief
8 as to the truth of the allegation contained in said paragraph, and therefore generally and specifically
9 denies the allegations contained therein.

10 70. In answering the allegations contained in this paragraph of the complaint, the
11 allegations contained herein attempt to characterize the terms of a Foreclosure Deed Upon Sale,
12 which speaks for itself. Defendant specifically and generally denies the allegations contained in this
13 paragraph.

14 71. In answering the allegations contained in this paragraph of the complaint, the
15 allegations contained herein attempt to characterize the terms of a Deed of Sale, which speaks for
16 itself. Defendant specifically and generally denies the allegations contained in this paragraph.

17 72. Defendant denies the allegations contained in this paragraph.

18 73. In answering the allegations contained in this paragraph of the complaint, the
19 allegations contained herein attempt to characterize the terms of a Deed of Sale, which speaks for
20 itself. Defendant specifically and generally denies the allegations contained in this paragraph.

21 Defendant denies the allegations contained in this paragraph.

22 74. Defendant denies the allegations contained in this paragraph.

23 ***5782 Camino Ramon Avenue, Las Vegas, Nevada 89156 (APN 140-21-611-018)***

24 75. Defendant is without sufficient knowledge or information upon which to form a belief
25 as to the truth of the allegation contained in said paragraph, and therefore generally and specifically
26 denies the allegations contained therein.

27 76. Defendant is without sufficient knowledge or information upon which to form a belief
28 as to the truth of the allegation contained in said paragraph, and therefore generally and specifically

1 denies the allegations contained therein.

2 77. In answering the allegations contained in this paragraph of the complaint, the
3 allegations contained herein attempt to characterize the terms of a Foreclosure Deed Upon Sale,
4 which speaks for itself. Defendant specifically and generally denies the allegations contained in this
5 paragraph.

6 78. In answering the allegations contained in this paragraph of the complaint, the
7 allegations contained herein attempt to characterize the terms of a Deed of Sale, which speaks for
8 itself. Defendant specifically and generally denies the allegations contained in this paragraph.

9 79. Defendant denies the allegations contained in this paragraph.

10 80. In answering the allegations contained in this paragraph of the complaint, the
11 allegations contained herein attempt to characterize the terms of a Deed of Sale, which speaks for
12 itself. Defendant specifically and generally denies the allegations contained in this paragraph.

13 Defendant denies the allegations contained in this paragraph.

14 81. Defendant denies the allegations contained in this paragraph.

15 **THE FIRST 100 ACTION**

16 82. In answering the allegations contained in this paragraph of the complaint, the
17 allegations contained herein attempt to characterize the terms of a written document, which speaks
18 for itself. Defendant specifically and generally denies the allegations contained in this paragraph.

19 83. In answering the allegations contained in this paragraph of the complaint, the
20 allegations contained herein attempt to characterize the terms of a written document, which speaks
21 for itself. Defendant specifically and generally denies the allegations contained in this paragraph.

22 84. In answering the allegations contained in this paragraph of the complaint, the
23 allegations contained herein attempt to characterize the terms of a written document, which speaks
24 for itself. Defendant specifically and generally denies the allegations contained in this paragraph.

25 85. Defendant is without sufficient knowledge or information upon which to form a belief
26 as to the truth of the allegation contained in said paragraph, and therefore generally and specifically
27 denies the allegations contained therein.

28 86. Defendant is without sufficient knowledge or information upon which to form a belief

1 as to the truth of the allegation contained in said paragraph, and therefore generally and specifically
2 denies the allegations contained therein.

3 87. Defendant is without sufficient knowledge or information upon which to form a belief
4 as to the truth of the allegation contained in said paragraph, and therefore generally and specifically
5 denies the allegations contained therein.

6 88. Defendant admits the allegations contained in this paragraph.

7 89. In answering the allegations contained in this paragraph of the complaint, the
8 allegations contained herein attempt to characterize the terms of a written document, which speaks
9 for itself. Defendant specifically and generally denies the allegations contained in this paragraph.

10 90. In answering the allegations contained in this paragraph of the complaint, the
11 allegations contained herein attempt to characterize the terms of a written document, which speaks
12 for itself. Defendant specifically and generally denies the allegations contained in this paragraph.

13 91. In answering the allegations contained in this paragraph of the complaint, the
14 allegations contained herein attempt to characterize the terms of a written document, which speaks
15 for itself. Defendant specifically and generally denies the allegations contained in this paragraph

16 92. Defendant admits that First 100 and Omni entered into a written settlement agreement
17 (the “First 100 Settlement”).

18 93. In answering the allegations contained in this paragraph of the complaint, the
19 allegations contained herein attempt to characterize the terms of a written document, which speaks
20 for itself. Defendant specifically and generally denies the allegations contained in this paragraph.

21 94. In answering the allegations contained in this paragraph of the complaint, the
22 allegations contained herein attempt to characterize the terms of a written document, which speaks
23 for itself. Defendant specifically and generally denies the allegations contained in this paragraph.

24 95. In answering the allegations contained in this paragraph of the complaint, the
25 allegations contained herein attempt to characterize the terms of a written document, which speaks
26 for itself. Defendant specifically and generally denies the allegations contained in this paragraph.

27 96. To the extent the allegations contained in this paragraph are legal conclusions, no
28 response is required. To the extent an answer is required, Defendant is without sufficient knowledge

1 or information upon which to form a belief as to the truth of the allegation contained in said
2 paragraph, and therefore generally and specifically denies the allegations contained therein.

3 **OMNI EFFORTS TO ENFORCE THE DEEDS OF TRUST**

4 97. To the extent the allegations contained in this paragraph are legal conclusions, no
5 response is required. To the extent an answer is required, Defendant is without sufficient knowledge
6 or information upon which to form a belief as to the truth of the allegation contained in said
7 paragraph, and therefore generally and specifically denies the allegations contained therein.

8 98. Defendant is without sufficient knowledge or information upon which to form a belief
9 as to the truth of the allegation contained in said paragraph, and therefore generally and specifically
10 denies the allegations contained therein.

11 99. Defendant is without sufficient knowledge or information upon which to form a belief
12 as to the truth of the allegation contained in said paragraph, and therefore generally and specifically
13 denies the allegations contained therein.

14 100. Defendant is without sufficient knowledge or information upon which to form a belief
15 as to the truth of the allegation contained in said paragraph, and therefore generally and specifically
16 denies the allegations contained therein.

17 101. Defendant is without sufficient knowledge or information upon which to form a belief
18 as to the truth of the allegation contained in said paragraph, and therefore generally and specifically
19 denies the allegations contained therein.

20 102. Defendant is without sufficient knowledge or information upon which to form a belief
21 as to the truth of the allegation contained in said paragraph, and therefore generally and specifically
22 denies the allegations contained therein.

23 103. Defendant is without sufficient knowledge or information upon which to form a belief
24 as to the truth of the allegation contained in said paragraph, and therefore generally and specifically
25 denies the allegations contained therein.

26 104. Defendant is without sufficient knowledge or information upon which to form a belief
27 as to the truth of the allegation contained in said paragraph, and therefore generally and specifically
28 denies the allegations contained therein.

1 **FIRST CAUSE OF ACTION**

2 **(Breach of Contract – Against First 100)**

3 105. Defendant repeats and realleges its answers to paragraphs 1 through 104 above, and
4 incorporates the same herein by reference as though fully set forth herein.

5 106. To the extent the allegations contained in this paragraph are legal conclusions, no
6 response is required. To the extent an answer is required, Defendant is without sufficient knowledge
7 or information upon which to form a belief as to the truth of the allegation contained in said
8 paragraph, and therefore generally and specifically denies the allegations contained therein.

9 107. In answering the allegations contained in this paragraph of the complaint, the
10 allegations contained herein attempt to characterize the terms of written documents, which speak for
11 themselves. Defendant specifically and generally denies the allegations contained in this paragraph.

12 108. Defendant denies the allegations contained in this paragraph.

13 109. Defendant denies the allegations contained in this paragraph.

14 110. Defendant denies the allegations contained in this paragraph.

15 **SECOND CAUSE OF ACTION**

16 **(Breach of Implied Covenant of Good Faith and Fair Dealing – Against First 100)**

17 111. Defendant repeats and realleges its answers to paragraphs 1 through 110 above, and
18 incorporates the same herein by reference as though fully set forth herein.

19 112. To the extent the allegations contained in this paragraph are legal conclusions, no
20 response is required. To the extent an answer is required, Defendant is without sufficient knowledge
21 or information upon which to form a belief as to the truth of the allegation contained in said
22 paragraph, and therefore generally and specifically denies the allegations contained therein.

23 113. To the extent the allegations contained in this paragraph are legal conclusions, no
24 response is required. To the extent an answer is required, Defendant is without sufficient knowledge
25 or information upon which to form a belief as to the truth of the allegation contained in said
26 paragraph, and therefore generally and specifically denies the allegations contained therein.

27 114. Defendant denies the allegations contained in this paragraph.

28 115. Defendant denies the allegations contained in this paragraph.

116. Defendant denies the allegations contained in this paragraph.

THIRD CAUSE OF ACTION

(Negligent Misrepresentation – Against First 100)

117. Defendant repeats and realleges its answers to paragraphs 1 through 116 above, and incorporates the same herein by reference as though fully set forth herein.

118. Defendant denies the allegations contained in this paragraph.

119. Defendant denies the allegations contained in this paragraph.

120. Defendant denies the allegations contained in this paragraph.

121. Defendant denies the allegations contained in this paragraph.

122. Defendant denies the allegations contained in this paragraph.

123. Defendant denies the allegations contained in this paragraph.

FOURTH CAUSE OF ACTION

(Declaratory Relief – All Defendants)

124. Defendant repeats and realleges its answers to paragraphs 1 through 123 above, and incorporates the same herein by reference as though fully set forth herein.

125. Defendant denies the allegations contained in this paragraph.

126. Defendant denies the allegations contained in this paragraph.

127. Defendant denies the allegations contained in this paragraph.

128. Defendant denies the allegations contained in this paragraph.

FIFTH CAUSE OF ACTION

(Quiet Title – Against All Defendants)

129. Defendant repeats and realleges its answers to paragraphs 1 through 128 above, and incorporates the same herein by reference as though fully set forth herein.

130. To the extent the allegations contained in this paragraph are legal conclusions, no response is required. To the extent an answer is required, Defendant is without sufficient knowledge or information upon which to form a belief as to the truth of the allegation contained in said paragraph, and therefore generally and specifically denies the allegations contained therein.

131. Defendant is without sufficient knowledge or information upon which to form a belief

1 as to the truth of the allegation contained in said paragraph, and therefore generally and specifically
2 denies the allegations contained therein.

3 132. Defendant is without sufficient knowledge or information upon which to form a belief
4 as to the truth of the allegation contained in said paragraph, and therefore generally and specifically
5 denies the allegations contained therein.

6 133. Defendant is without sufficient knowledge or information upon which to form a belief
7 as to the truth of the allegation contained in said paragraph, and therefore generally and specifically
8 denies the allegations contained therein.

9 134. Defendant denies the allegations contained in this paragraph.

10 **SIXTH CAUSE OF ACTION**

11 **(Unjust Enrichment – Against Omni)**

12 135. Defendant repeats and realleges its answers to paragraphs 1 through 134 above, and
13 incorporates the same herein by reference as though fully set forth herein.

14 136. This paragraph does not assert allegations against Defendant, thus no response is
15 necessary.

16 137. This paragraph does not assert allegations against Defendant, thus no response is
17 necessary.

18 138. This paragraph does not assert allegations against Defendant, thus no response is
19 necessary.

20 139. This paragraph does not assert allegations against Defendant, thus no response is
21 necessary.

22 140. This paragraph does not assert allegations against Defendant, thus no response is
23 necessary.

24 141. This paragraph does not assert allegations against Defendant, thus no response is
25 necessary.

26 **SEVENTH CAUSE OF ACTION**

27 **(Conversion – Against Omni)**

28 142. Defendant repeats and realleges its answers to paragraphs 1 through 141 above, and

incorporates the same herein by reference as though fully set forth herein.

143. This paragraph does not assert allegations against Defendant, thus no response is necessary.

144. This paragraph does not assert allegations against Defendant, thus no response is necessary.

145. This paragraph does not assert allegations against Defendant, thus no response is necessary.

146. This paragraph does not assert allegations against Defendant, thus no response is necessary.

147. This paragraph does not assert allegations against Defendant, thus no response is necessary.

EIGHTH CAUSE OF ACTION

(Slander of Title – Against Omni)

148. Defendant repeats and realleges its answers to paragraphs 1 through 147 above, and incorporates the same herein by reference as though fully set forth herein.

149. This paragraph does not assert allegations against Defendant, thus no response is necessary.

150. This paragraph does not assert allegations against Defendant, thus no response is necessary.

151. This paragraph does not assert allegations against Defendant, thus no response is necessary.

152. This paragraph does not assert allegations against Defendant, thus no response is necessary.

153. This paragraph does not assert allegations against Defendant, thus no response is necessary.

154. This paragraph does not assert allegations against Defendant, thus no response is necessary.

///

1 **NINTH CAUSE OF ACTION**

2 **(Intentional Interference with Contractual Relations – Against Omni)**

3 155. Defendant repeats and realleges its answers to paragraphs 1 through 154 above, and
4 incorporates the same herein by reference as though fully set forth herein.

5 156. This paragraph does not assert allegations against Defendant, thus no response is
6 necessary.

7 157. This paragraph does not assert allegations against Defendant, thus no response is
8 necessary.

9 158. This paragraph does not assert allegations against Defendant, thus no response is
10 necessary.

11 159. This paragraph does not assert allegations against Defendant, thus no response is
12 necessary.

13 160. This paragraph does not assert allegations against Defendant, thus no response is
14 necessary.

15 161. This paragraph does not assert allegations against Defendant, thus no response is
16 necessary.

17 **TENTH CAUSE OF ACTION**

18 **(Injunctive Relief – Against Omni)**

19 162. Defendant repeats and realleges its answers to paragraphs 1 through 161 above, and
20 incorporates the same herein by reference as though fully set forth herein.

21 163. This paragraph does not assert allegations against Defendant, thus no response is
22 necessary.

23 164. This paragraph does not assert allegations against Defendant, thus no response is
24 necessary.

25 165. This paragraph does not assert allegations against Defendant, thus no response is
26 necessary.

27 166. This paragraph does not assert allegations against Defendant, thus no response is
28 necessary.

1 **ANSWER TO PRAYER FOR RELIEF**

2 Answering the allegations contained in the entirety of Plaintiff's prayer for relief, Defendant
3 denies that Plaintiff is entitled to the relief being sought therein or to any relief in this matter.

4 **AFFIRMATIVE DEFENSES**

5 Defendant, without altering the burdens of proof the parties must bear, asserts the following
6 affirmative defenses to the complaint, and the claims asserted therein, and Defendant specifically
7 incorporates into these affirmative defenses its answers to the preceding paragraphs of the complaint
8 as if fully set forth herein.

9 **FIRST AFFIRMATIVE DEFENSE**

10 The complaint, and all the claims for relief alleged therein, fails to state a claim against
11 Defendant upon which relief can be granted.

12 **SECOND AFFIRMATIVE DEFENSE**

13 Plaintiff has not been damaged directly, indirectly, proximately or in any manner whatsoever
14 by any conduct of Defendant.

15 **THIRD AFFIRMATIVE DEFENSE**

16 Defendant alleges that the occurrence referred to in the complaint, and all alleged damages, if
17 any, resulting therefrom, were caused by the acts or omissions of a third party over whom Defendant
18 had no control.

19 **FOURTH AFFIRMATIVE DEFENSE**

20 Plaintiff has failed to mitigate its damages, if any, as required by law and is barred from
21 recovering by reason thereof.

22 **FIFTH AFFIRMATIVE DEFENSE**

23 Any harm or claim of damage of Plaintiff or cause of action of Plaintiff, as alleged or stated
24 in the complaint, is barred by the doctrines of laches, unclean hands, Statute of Frauds, estoppel and/or
25 waiver, as to all or part of the claims of Plaintiff.

26 **SIXTH AFFIRMATIVE DEFENSE**

27 Plaintiff failed to allege sufficient facts and cannot carry the burden of proof imposed on it by
28 law to recover attorney's fees incurred to bring this action.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SEVENTH AFFIRMATIVE DEFENSE

Any amount sought to be recovered in this action is barred, in whole or in part, by a setoff and/or offset of the amount already recovered by Plaintiff.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiff’s claims are barred, in whole or in part, by failure of contract or by Plaintiff’s own breach of contract.

NINTH AFFIRMATIVE DEFENSE

Plaintiff’s claims are barred, in whole or in part, by its failure to perform or satisfy required conditions precedent and by her own bad acts.

TENTH AFFIRMATIVE DEFENSE

Plaintiff is barred by law from accelerating damages, if any.

ELEVENTH AFFIRMATIVE DEFENSE

The claims, and each of them, are barred by the failure of Plaintiff to plead those claims with particularity.

TWELFTH AFFIRMATIVE DEFENSE

Plaintiff has failed to join an indispensable party.

THIRTEENTH AFFIRMATIVE DEFENSE

Any recovery by Plaintiff must be settled, reduced, abated, set-off, or apportioned to the extent that any other party’s actions or non-party’s actions, including those of Plaintiff, caused or contributed to Plaintiff’s damages, if any.

FOURTEENTH AFFIRMATIVE DEFENSE

Plaintiff has waived any right of recovery against First 100.

FIFTEENTH AFFIRMATIVE DEFENSE

First 100 acted reasonably and in good faith at all times material to this action, based upon all relevant facts and circumstances known by it at the time it so acted and, accordingly, Plaintiff is barred from any recovery in this action.

SIXTEENTH AFFIRMATIVE DEFENSE

All damages sought by the Plaintiff fail as a matter of law because they are speculative.

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

WHEREFORE, defendant First 100, LLC prays for the following:

- DATED this 26th day of November, 2019.

MAIER GUTIERREZ & ASSOCIATES

JOSEPH A. GUTIERREZ, ESQ.
Nevada Bar No. 9046
DANIELLE J. BARRAZA, ESQ.
Nevada Bar No. 13822
8816 Spanish Ridge Avenue
Las Vegas, Nevada 89148
Attorneys for Defendant First 100, LLC

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

6
7
8

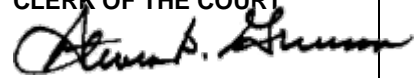
9
0
1

3
4

EXHIBIT “11”

First 100, LLC’s Answer to First Amended Cross Claim of
Omni Financial

EXHIBIT “11”



XCAN
JOSEPH A. GUTIERREZ, ESQ.
Nevada Bar No. 9046
DANIELLE J. BARRAZA, ESQ.
Nevada Bar No. 13822
MAIER GUTIERREZ & ASSOCIATES
8816 Spanish Ridge Avenue
Las Vegas, Nevada 89148
Telephone: (702) 629-7900
Facsimile: (702) 629-7925
E-mail: jag@mgalaw.com
djb@mgalaw.com

Attorneys for Defendant First 100, LLC

DISTRICT COURT
CLARK COUNTY, NEVADA

KAL-MOR-USA, LLC, a Nevada limited
liability company,

Plaintiff,

vs.

OMNI FINANCIAL, LLC, a foreign limited
liability company; FIRST 100, LLC, a Nevada
limited liability company; DOES I through X; and
ROE ENTITIES I through X, inclusive,

Defendants.

OMNI FINANCIAL, LLC, a foreign limited
liability company,

Counter-claimant,

vs.

KAL-MOR-USA, LLC, a Nevada limited
liability company; DOES 1 – 10; ROE
ENTITIES 1 – 10,

Counter-defendants.

Case No.: A-17-757061-C
Dept. No.: XVIII

**FIRST 100, LLC'S ANSWER TO OMNI
FINANCIAL, LLC'S FIRST AMENDED
CROSS CLAIM**

1 OMNI FINANCIAL, LLC, a foreign limited
2 liability company,

3 Cross-Claimant,

4 vs.

5 FIRST 100, LLC, a Nevada limited liability
6 company; DOES 11 – 20, ROE ENTITIES 11 –
7 20.

8 Cross-Defendants

9 Cross-defendant First 100, LLC (“First 100” or “Cross-defendant”), by and through its
10 attorneys of record, the law firm MAIER GUTIERREZ & ASSOCIATES, hereby answers the crossclaims
11 asserted against it in Cross-Claimant OMNI FINANCIAL, LLC’s (“Omni”) First Amended
12 Crossclaim (“Amended Crossclaim”), filed on October 31, 2019 as follows:

13 First 100 denies each and every allegation contained in the Amended Crossclaim except those
14 allegations which are hereinafter admitted, qualified or otherwise answered.

15 **ANSWER**

16 1. Cross-defendant is without sufficient knowledge or information upon which to form
17 a belief as to the truth of the allegation contained in said paragraph, and therefore generally and
18 specifically denies the allegations contained therein

19 2. Cross-defendant admits that First 100, LLC is a Nevada limited liability company
20 which at all times relevant was doing business in Clark County, Nevada.

21 3. The allegations contained in this paragraph of the Amended Crossclaim do not relate
22 to First 100, thus no response is required. To the extent a response is deemed required, Cross-
23 defendant specifically and generally denies each and every allegation.

24 4. The allegations contained in this paragraph of the Amended Crossclaim do not relate
25 to First 100, thus no response is required. To the extent a response is deemed required, Cross-
26 defendant specifically and generally denies each and every allegation.

27 5. The allegations contained in this paragraph attempt to characterize the terms of a
28 written document, which speaks for itself. Therefore, Cross-defendant specifically and generally
denies the allegations contained in this paragraph.

1 6. The allegations contained in this paragraph attempt to characterize the terms of a
2 written document, which speaks for itself. Therefore, Cross-defendant specifically and generally
3 denies the allegations contained in this paragraph.

4 7. The allegations contained in this paragraph attempt to characterize the terms of a
5 written document, which speaks for itself. Therefore, Cross-defendant specifically and generally
6 denies the allegations contained in this paragraph.

7 8. The allegations contained in this paragraph attempt to characterize the terms of a
8 written document, which speaks for itself. Therefore, Cross-defendant specifically and generally
9 denies the allegations contained in this paragraph.

10 9. The allegations contained in this paragraph attempt to characterize the terms of a
11 written document, which speaks for itself. Therefore, Cross-defendant specifically and generally
12 denies the allegations contained in this paragraph.

13 10. The allegations contained in this paragraph attempt to characterize the terms of a
14 written document, which speaks for itself. Therefore, Cross-defendant specifically and generally
15 denies the allegations contained in this paragraph.

16 11. The allegations contained in this paragraph attempt to characterize the terms of a
17 written document, which speaks for itself. Therefore, Cross-defendant specifically and generally
18 denies the allegations contained in this paragraph.

19 12. The allegations contained in this paragraph (along with all subparts) attempt to
20 characterize the terms of a written document, which speaks for itself. Therefore, Cross-defendant
21 specifically and generally denies the allegations contained in this paragraph.

22 13. The allegations contained in this paragraph (along with all subparts) attempt to
23 characterize the terms of a written document, which speaks for itself. Therefore, Cross-defendant
24 specifically and generally denies the allegations contained in this paragraph.

25 14. The allegations contained in this paragraph (along with its subpart) attempt to
26 characterize the terms of a written document, which speaks for itself. Therefore, Cross-defendant
27 specifically and generally denies the allegations contained in this paragraph.

28 15. Cross-defendant lacks the knowledge or information sufficient to form a belief as to

1 the truth or falsity of the allegations contained in this paragraph of the crossclaim, and therefore
2 specifically and generally denies the same.

3 16. The allegations contained in this paragraph are vague and ambiguous with respect to
4 which properties Kal-Mor is referring to, therefore, Cross-defendant lacks the knowledge or
5 information sufficient to form a belief as to the truth or falsity of the allegations contained in this
6 paragraph of the crossclaim, and specifically and generally denies the same.

7 17. The allegations contained in this paragraph attempt to characterize the terms of a
8 written document, which speaks for itself. Therefore, Cross-defendant specifically and generally
9 denies the allegations contained in this paragraph.

10 18. Cross-defendant lacks the knowledge or information sufficient to form a belief as to
11 the truth or falsity of the allegations contained in this paragraph of the crossclaim, and therefore
12 specifically and generally denies the same.

13 19. Cross-defendant lacks the knowledge or information sufficient to form a belief as to
14 the truth or falsity of the allegations contained in this paragraph of the crossclaim, and therefore
15 specifically and generally denies the same.

16 20. To the extent the allegations contained in this paragraph are legal conclusions, no
17 response is required. To the extent an answer is required, Cross-defendant generally and specifically
18 denies the allegations contained therein.

19 21. Cross-defendant denies the allegations contained in this paragraph.

20 22. Cross-defendant denies the allegations contained in this paragraph.

21 23. The allegations contained in this paragraph attempt to characterize the terms of a
22 written document, which speaks for itself. Therefore, Cross-defendant specifically and generally
23 denies the allegations contained in this paragraph.

24 24. Cross-defendant denies the allegations contained in this paragraph.

25 25. The allegations contained in this paragraph attempt to characterize the terms of a
26 written document, which speaks for itself. Therefore, Cross-defendant specifically and generally
27 denies the allegations contained in this paragraph.

28 26. Cross-defendant lacks the knowledge or information sufficient to form a belief as to

1 the truth or falsity of the allegations contained in this paragraph of the crossclaim, and therefore
2 specifically and generally denies the same.

3 27. Cross-defendant lacks the knowledge or information sufficient to form a belief as to
4 the truth or falsity of the allegations contained in this paragraph of the crossclaim, and therefore
5 specifically and generally denies the same.

6 28. Cross-defendant lacks the knowledge or information sufficient to form a belief as to
7 the truth or falsity of the allegations contained in this paragraph of the crossclaim, and therefore
8 specifically and generally denies the same.

9 29. Cross-defendant lacks the knowledge or information sufficient to form a belief as to
10 the truth or falsity of the allegations contained in this paragraph of the crossclaim, and therefore
11 specifically and generally denies the same.

12 30. Cross-defendant lacks the knowledge or information sufficient to form a belief as to
13 the truth or falsity of the allegations contained in this paragraph of the crossclaim, and therefore
14 specifically and generally denies the same.

15 31. The allegations contained in this paragraph attempt to characterize the terms of a
16 written document, which speaks for itself. Therefore, Cross-defendant specifically and generally
17 denies the allegations contained in this paragraph.

18 32. The allegations contained in this paragraph attempt to characterize the terms of a
19 written document, which speaks for itself. Therefore, Cross-defendant specifically and generally
20 denies the allegations contained in this paragraph.

21 33. The allegations contained in this paragraph attempt to characterize the terms of a
22 written document, which speaks for itself. Therefore, Cross-defendant specifically and generally
23 denies the allegations contained in this paragraph.

24 34. Cross-defendant lacks the knowledge or information sufficient to form a belief as to
25 the truth or falsity of the allegations contained in this paragraph of the crossclaim, and therefore
26 specifically and generally denies the same.

27 35. Cross-defendant denies the allegations regarding a “year-old payment default.” The
28 remaining allegations contained in this paragraph attempt to characterize the terms of a written

1 document, which speaks for itself. Therefore, Cross-defendant specifically and generally denies the
2 allegations contained in this paragraph.

3 36. The allegations contained in this paragraph attempt to characterize the terms of a
4 written document, which speaks for itself. Therefore, Cross-defendant specifically and generally
5 denies the allegations contained in this paragraph.

6 37. The allegations contained in this paragraph attempt to characterize the terms of a
7 written document, which speaks for itself. Therefore, Cross-defendant specifically and generally
8 denies the allegations contained in this paragraph.

9 38. The allegations contained in this paragraph contain a self-serving summary of legal
10 proceedings and therefore, no response is required. To the extent an answer is required, Cross-
11 defendant generally and specifically denies the allegations contained therein.

12 39. The allegations contained in this paragraph relate to legal conclusions/legal
13 proceedings. Cross-defendant lacks the knowledge or information sufficient to form a belief as to
14 the truth or falsity of the allegations contained in this paragraph of the crossclaim, and therefore
15 specifically and generally denies the same.

16 40. The allegations contained in this paragraph relate to legal conclusions/legal
17 proceedings. Cross-defendant lacks the knowledge or information sufficient to form a belief as to
18 the truth or falsity of the allegations contained in this paragraph of the crossclaim, and therefore
19 specifically and generally denies the same.

20 41. The allegations contained in this paragraph attempt to characterize the terms of a
21 written document/order, which speaks for itself. Therefore, Cross-defendant specifically and
22 generally denies the allegations contained in this paragraph.

23 42. Cross-defendant lacks the knowledge or information sufficient to form a belief as to
24 the truth or falsity of the allegations contained in this paragraph of the crossclaim, and therefore
25 specifically and generally denies the same.

26 43. Cross-defendant lacks the knowledge or information sufficient to form a belief as to
27 the truth or falsity of the allegations contained in this paragraph of the crossclaim, and therefore
28 specifically and generally denies the same.

1 44. The allegations contained in this paragraph attempt to characterize the terms of a
2 written document, which speaks for itself. Therefore, Cross-defendant specifically and generally
3 denies the allegations contained in this paragraph.

4 45. Cross-defendant lacks the knowledge or information sufficient to form a belief as to
5 the truth or falsity of the allegations contained in this paragraph of the crossclaim, and therefore
6 specifically and generally denies the same.

7 46. Cross-defendant lacks the knowledge or information sufficient to form a belief as to
8 the truth or falsity of the allegations contained in this paragraph of the crossclaim, and therefore
9 specifically and generally denies the same.

10 47. Cross-defendant lacks the knowledge or information sufficient to form a belief as to
11 the truth or falsity of the allegations contained in this paragraph of the crossclaim, and therefore
12 specifically and generally denies the same.

13 48. Cross-defendant lacks the knowledge or information sufficient to form a belief as to
14 the truth or falsity of the allegations contained in this paragraph of the crossclaim, and therefore
15 specifically and generally denies the same.

16 49. The allegations contained in this paragraph attempt to characterize the terms of a
17 written document, which speaks for itself. Therefore, Cross-defendant specifically and generally
18 denies the allegations contained in this paragraph.

19 50. The allegations contained in this paragraph attempt to characterize the terms of a
20 written document, which speaks for itself. Therefore, Cross-defendant specifically and generally
21 denies the allegations contained in this paragraph.

22 51. The allegations contained in this paragraph attempt to characterize the terms of a
23 written document, which speaks for itself. Therefore, Cross-defendant specifically and generally
24 denies the allegations contained in this paragraph.

25 52. The allegations contained in this paragraph attempt to characterize the terms of a
26 written document, which speaks for itself. Therefore, Cross-defendant specifically and generally
27 denies the allegations contained in this paragraph.

28 53. To the extent the allegations contained in this paragraph are legal conclusions, no

1 response is required. To the extent an answer is required, Cross-defendant generally and specifically
2 denies the allegations contained therein.

3 54. The allegations contained in this paragraph attempt to characterize the terms of a
4 written document, which speaks for itself. Therefore, Cross-defendant specifically and generally
5 denies the allegations contained in this paragraph.

6 55. To the extent the allegations contained in this paragraph are legal conclusions, no
7 response is required. To the extent an answer is required, Cross-defendant generally and specifically
8 denies the allegations contained therein.

9 56. Cross-defendant lacks the knowledge or information sufficient to form a belief as to
10 the truth or falsity of the allegations contained in this paragraph of the crossclaim, and therefore
11 specifically and generally denies the same.

12 57. Cross-defendant lacks the knowledge or information sufficient to form a belief as to
13 the truth or falsity of the allegations contained in this paragraph of the crossclaim, and therefore
14 specifically and generally denies the same.

15 58. The allegations contained in this paragraph attempt to characterize the terms of a
16 written document, which speaks for itself. Therefore, Cross-defendant specifically and generally
17 denies the allegations contained in this paragraph.

18 59. Cross-defendant lacks the knowledge or information sufficient to form a belief as to
19 the truth or falsity of the allegations contained in this paragraph of the crossclaim, and therefore
20 specifically and generally denies the same.

21 60. The allegations contained in this paragraph (including all subparts) attempt to
22 characterize the terms of a written document, which speaks for itself. Therefore, Cross-defendant
23 specifically and generally denies the allegations contained in this paragraph.

24 61. The allegations contained in this paragraph attempt to characterize the terms of a
25 written document, which speaks for itself. Therefore, Cross-defendant specifically and generally
26 denies the allegations contained in this paragraph.

27 62. Cross-defendant lacks the knowledge or information sufficient to form a belief as to
28 the truth or falsity of the allegations contained in this paragraph of the crossclaim, and therefore

specifically and generally denies the same.

63. The allegations contained in this paragraph attempt to characterize the terms of a written document, which speaks for itself. Therefore, Cross-defendant specifically and generally denies the allegations contained in this paragraph.

64. The allegations contained in this paragraph (including all subparts) attempt to characterize the terms of a written document, which speaks for itself. Therefore, Cross-defendant specifically and generally denies the allegations contained in this paragraph.

65. The allegations contained in this paragraph attempt to characterize the terms of a written document, which speaks for itself. Therefore, Cross-defendant specifically and generally denies the allegations contained in this paragraph.

66. Cross-defendant lacks the knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in this paragraph of the crossclaim, and therefore specifically and generally denies the same.

67. The allegations contained in this paragraph attempt to characterize the terms of a written document, which speaks for itself. Therefore, Cross-defendant specifically and generally denies the allegations contained in this paragraph.

68. The allegations contained in this paragraph attempt to characterize the terms of a written document, which speaks for itself. Therefore, Cross-defendant specifically and generally denies the allegations contained in this paragraph.

69. The allegations contained in this paragraph attempt to characterize the terms of a written document, which speaks for itself. Therefore, Cross-defendant specifically and generally denies the allegations contained in this paragraph.

70. Cross-defendant lacks the knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in this paragraph of the crossclaim, and therefore specifically and generally denies the same.

71. Cross-defendant lacks the knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in this paragraph of the crossclaim, and therefore specifically and generally denies the same.

1 72. Cross-defendant lacks the knowledge or information sufficient to form a belief as to
2 the truth or falsity of the allegations contained in this paragraph of the crossclaim, and therefore
3 specifically and generally denies the same.

4 73. Cross-defendant lacks the knowledge or information sufficient to form a belief as to
5 the truth or falsity of the allegations contained in this paragraph of the crossclaim, and therefore
6 specifically and generally denies the same.

7 74. To the extent the allegations contained in this paragraph are legal conclusions, no
8 response is required. To the extent an answer is required, Cross-defendant lacks the knowledge or
9 information sufficient to form a belief as to the truth or falsity of the allegations contained in this
10 paragraph of the crossclaim, and therefore specifically and generally denies the same.

11 75. Cross-defendant lacks the knowledge or information sufficient to form a belief as to
12 the truth or falsity of the allegations contained in this paragraph of the crossclaim, and therefore
13 specifically and generally denies the same.

14 76. The allegations contained in this paragraph attempt to characterize the terms of a
15 written document, which speaks for itself. Therefore, Cross-defendant specifically and generally
16 denies the allegations contained in this paragraph.

17 77. The allegations contained in this paragraph attempt to characterize the terms of a
18 written document, which speaks for itself. Therefore, Cross-defendant specifically and generally
19 denies the allegations contained in this paragraph.

20 78. Cross-defendant lacks the knowledge or information sufficient to form a belief as to
21 the truth or falsity of the allegations contained in this paragraph of the crossclaim, and therefore
22 specifically and generally denies the same.

23 79. Cross-defendant lacks the knowledge or information sufficient to form a belief as to
24 the truth or falsity of the allegations contained in this paragraph of the crossclaim, and therefore
25 specifically and generally denies the same.

26 80. The allegations contained in this paragraph attempt to characterize the terms of a
27 written document, which speaks for itself. Therefore, Cross-defendant specifically and generally
28 denies the allegations contained in this paragraph.

1 81. The allegations contained in this paragraph attempt to characterize the terms of a
2 written document, which speaks for itself. Therefore, Cross-defendant specifically and generally
3 denies the allegations contained in this paragraph.

4 82. The allegations contained in this paragraph attempt to characterize the terms of a
5 written document, which speaks for itself. Therefore, Cross-defendant specifically and generally
6 denies the allegations contained in this paragraph.

7 83. To the extent the allegations contained in this paragraph are legal conclusions, no
8 response is required. To the extent an answer is required, Cross-defendant generally and specifically
9 denies the allegations contained therein.

10 84. To the extent the allegations contained in this paragraph are legal conclusions, no
11 response is required. To the extent an answer is required, Cross-defendant generally and specifically
12 denies the allegations contained therein.

13 85. To the extent the allegations contained in this paragraph are legal conclusions, no
14 response is required. To the extent an answer is required, Cross-defendant generally and specifically
15 denies the allegations contained therein.

16 86. Cross-defendant denies the allegations contained in this paragraph.

17 87. To the extent the allegations contained in this paragraph are legal conclusions, no
18 response is required. To the extent an answer is required, Cross-defendant generally and specifically
19 denies the allegations contained therein.

20 **FIRST CLAIM FOR RELIEF**

21 **(Intentional Misrepresentation)**

22 88. Cross-defendant repeats and realleges its answers to paragraphs 1 through 87 above,
23 and incorporates the same herein by reference as though fully set forth herein.

24 89. Cross-defendant denies the allegations contained in this paragraph.

25 90. Cross-defendant denies the allegations contained in this paragraph.

26 91. Cross-defendant denies the allegations contained in this paragraph.

27 92. Cross-defendant denies the allegations contained in this paragraph.

28 93. Cross-defendant denies the allegations contained in this paragraph.

1 94. Cross-defendant denies the allegations contained in this paragraph.

2 95. Cross-defendant denies the allegations contained in this paragraph.

3 **ANSWER TO PRAYER FOR RELIEF**

4 Answering the allegations contained in the entirety of Plaintiff's prayer for relief, Cross-
5 defendant denies that Omni is entitled to the relief being sought therein or to any relief in this matter.

6 **AFFIRMATIVE DEFENSES**

7 Cross-defendant First 100, without altering the burdens of proof the parties must bear, asserts
8 the following affirmative defenses to Cross-claimant Omni's First Amended Cross-Claim, and the
9 claims asserted therein, and specifically incorporates into these affirmative defenses its answers to the
10 preceding paragraphs of the First Amended Cross-Claim as if fully set forth herein.

11 **FIRST AFFIRMATIVE DEFENSE**

12 The First Amended Cross-Claim, and all the claims for relief alleged therein, fails to state a
13 claim against Cross-defendant upon which relief can be granted.

14 **SECOND AFFIRMATIVE DEFENSE**

15 Cross-claimant has not been damaged directly, indirectly, proximately or in any manner
16 whatsoever by any conduct of Cross-defendant.

17 **THIRD AFFIRMATIVE DEFENSE**

18 Cross-defendant alleges that the occurrence referred to in the First Amended Cross-Claim, and
19 all alleged damages, if any, resulting therefrom, were caused by the acts or omissions of a third party
20 over whom Cross-defendant had no control.

21 **FOURTH AFFIRMATIVE DEFENSE**

22 Cross-claimant has failed to mitigate its damages, if any, as required by law and is barred from
23 recovering by reason thereof.

24 **FIFTH AFFIRMATIVE DEFENSE**

25 Any harm or claim of damage of Cross-claimant or cause of action of Cross-claimant, as
26 alleged or stated in the First Amended Cross-Claim, is barred by the doctrines of laches, unclean
27 hands, Statute of Frauds, estoppel and/or waiver, as to all or part of the claims of Cross-claimant.

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SIXTH AFFIRMATIVE DEFENSE

Cross-claimant failed to allege sufficient facts and cannot carry the burden of proof imposed on it by law to recover attorney’s fees incurred to bring this action.

SEVENTH AFFIRMATIVE DEFENSE

Any amount sought to be recovered in this action is barred, in whole or in part, by a setoff and/or offset of the amount already recovered by Cross-claimant.

EIGHTH AFFIRMATIVE DEFENSE

Cross-claimant’s claims are barred, in whole or in part, by failure of contract or by Cross-claimant’s own breach of contract.

NINTH AFFIRMATIVE DEFENSE

Cross-claimant’s claims are barred, in whole or in part, by its failure to perform or satisfy required conditions precedent and by its own bad acts.

TENTH AFFIRMATIVE DEFENSE

Cross-claimant is barred by law from accelerating damages, if any.

ELEVENTH AFFIRMATIVE DEFENSE

The claims, and each of them, are barred by the failure of Cross-claimant to plead those claims with particularity.

TWELFTH AFFIRMATIVE DEFENSE

Cross-claimant has failed to join an indispensable party.

THIRTEENTH AFFIRMATIVE DEFENSE

Any recovery by Cross-claimant must be settled, reduced, abated, set-off, or apportioned to the extent that any other party’s actions or non-party’s actions, including those of Cross-claimant, caused or contributed to Cross-claimant’s damages, if any.

FOURTEENTH AFFIRMATIVE DEFENSE

Cross-claimant has waived any right of recovery against First 100.

FIFTEENTH AFFIRMATIVE DEFENSE

First 100 acted reasonably and in good faith at all times material to this action, based upon all relevant facts and circumstances known by it at the time it so acted and, accordingly, Cross-claimant

1 is barred from any recovery in this action.

2 **SIXTEENTH AFFIRMATIVE DEFENSE**

3 All damages sought by the Cross-claimant fail as a matter of law because they are speculative.

4 **SEVENTEENTH AFFIRMATIVE DEFENSE**

5 Pursuant to Nevada Rules of Civil Procedure, all possible affirmative defenses may not have
6 been alleged herein insofar as sufficient facts were not available after reasonable inquiry upon the
7 filing of this answer and, therefore, Cross-defendant reserves the right to amend this answer to allege
8 additional affirmative defenses if subsequent investigation warrants.

9 WHEREFORE, Cross-defendant First 100, LLC prays for the following:

- 10 1. That Cross-claimant Omni take nothing by way of its complaint;
11 2. That Cross-claimant Omni's First Amended Cross-Claim be dismissed in its entirety;
12 3. That First 100 be awarded reasonable attorney fees and costs incurred in defending
13 this action;
14 4. For such other and further relief as the Court may deem just and proper.

15 DATED this 25th day of November, 2019.

16 Respectfully submitted,

17 **MAIER GUTIERREZ & ASSOCIATES**

18 /s/ Danielle J. Barraza

19 JOSEPH A. GUTIERREZ, ESQ.

20 Nevada Bar No. 9046

DANIELLE J. BARRAZA, ESQ.

21 Nevada Bar No. 13822

8816 Spanish Ridge Avenue

22 Las Vegas, Nevada 89148

Attorneys for Defendant First 100, LLC

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

2
3
4
5
6
7
8

9
0
1
2

3
4
5

8