

IN THE SUPREME COURT OF THE STATE OF NEVADA

STATE OF NEVADA, EX REL.
COMMISSIONER OF INSURANCE,
BARBARA D. RICHARDSON, IN HER
OFFICIAL CAPACITY AS RECEIVED
FOR SPIRIT COMMERCIAL AUTO
RISK RETENTION GROUP, INC

Petitioner,

v.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF
NEVADA, IN AND FOR THE
COUNTY OF CLARK, AND THE
HONORABLE, MARK R. DENTON,
DISTRICT JUDGE, DEPT. 13

Respondents,

And Concerning,

THOMAS MULLIGAN, an individual; CTC
TRANSPORTATION INSURANCE
SERVICES OF MISSOURI, LLC, a Missouri
Limited Liability Company; CTC
TRANSPORTATION INSURANCE
SERVICES LLC, a California Limited Liability
Company; CTC TRANSPORTATION
INSURANCE SERVICES OF HAWAII LLC,
Hawaii Limited Liability Company;
CRITERION CLAIMS SOLUTIONS OF
OMAHA, INC., a Nebraska Corporation;
PAVEL KAPELNIKOV, an individual;
CHELSEA FINANCIAL GROUP, INC., a
California Corporation; CHELSEA
FINANCIAL GROUP, INC., a Missouri
Corporation; CHELSEA FINANCIAL
GROUP, INC., a New Jersey Corporation d/b/a

Electronically Filed
Apr 01 2021 03:15 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

Supreme Court Case No.:

Dist. Ct. Case No.: **A-20-809963-B**

PETITIONER'S APPENDIX

Volume VI (APP1078-1316)

CHELSEA PREMIUM FINANCE CORPORATION; FOURGOREAN CAPITAL, LLC, a New Jersey Limited Liability Company; KAPA MANAGEMENT CONSULTING, INC. a New Jersey Corporation; KAPA VENTURES, INC., a New Jersey Corporation; GLOBAL FORWARDING ENTERPRISES LIMITED LIABILITY COMPANY, a New Jersey Limited Liability Company; NEW TECH CAPITAL, LLC, a Delaware Limited Liability Company; LEXICON INSURANCE MANAGEMENT LLC, a North Carolina Limited Liability Company; ICAP MANAGEMENT SOLUTIONS, LLC, a Vermont Limited Liability Company; SIX ELEVEN LLC, a Missouri Limited Liability Company; 10-4 PREFERRED RISK MANAGERS INC., a Missouri Corporation; IRONJAB LLC, a New Jersey Limited Liability Company; YANINA G. KAPELNIKOV, an individual; IGOR KAPELNIKOV, an individual; QUOTE MY RIG LLC, a New Jersey Limited Liability Company; MATTHEW SIMON, an individual; DANIEL GEORGE, an individual; JOHN MALONEY, an individual; JAMES MARX, an individual; CARLOS TORRES, an individual; VIRGINIA TORRES, an individual; SCOTT McCRAE, an individual; BRENDA GUFFEY, an individual; and 195 GLUTEN FREE LLC, a New Jersey Limited Liability Company,

Real Parties in Interest,

Mark E. Ferrario, Esq., NBN 1625
Kara B. Hendricks, Esq., NBN 7743
Tami D. Cowden, Esq., NBN 8994

GREENBERG TRAURIG, LLP

10845 Griffith Peak Drive, Ste. 600
Las Vegas, Nevada 89135
Telephone (702) 792-3773
Facsimile (702) 792-9002
Attorneys for Petitioner

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VOL.	PAGES	DATE FILED	DESCRIPTION
I	APP0001-79	2/6/20	Complaint
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I	APP0121-139	4/1/20	Brenda Guffey's Answer to Complaint
I	APP0140-206	4/2/20	Defendant Daniel George's Answer to Complaint
II	APP0207-268	4/2/20	Defendant ICAP Management Solutions, LLC's Answer to Complaint
II	APP0269-282	4/2/20	Defendant James Marx's Answer to Complaint
II	APP0283-344	4/2/20	Defendant Lexicon Insurance Management, LLC's Answer to Complaint
II	APP345-380	4/15/20	Defendants Igor and Yanina Kapelnikov's Answer to Complaint
II	APP0381-394	4/17/20	Answer to Complaint on behalf of Carlos Torres and Virginia Torres
II	APP0395-408	5/13/20	Defendant John Maloney's Answer to Complaint
II	APP0409-425	5/14/20	Defendant Thomas Mulligan's Answer to Complaint
II	APP0426-451	5/14/20	Answer to Complaint filed by Defendants Six Eleven, et al.,
III	APP0452-475	5/14/20	Defendant Criterion's Motion to Compel Arbitration
III	APP0476-536	5/14/20	CTC Defendants' Motion to Compel Arbitration
III	APP0537-669	6/4/20	Appendix of Exhibits in Support of Plaintiff's Opposition to CTC Defendants' Motion to Compel Arbitration
IV	APP0670-718	6/4/20	Plaintiff's Opposition to Criterion's Motion to Compel Arbitration
IV	APP0719-751	6/4/20	Plaintiff's Opposition to CTC Defendants' Motion to Compel Arbitration
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IV	APP0774-846	6/11/20	CTC Defendants' Reply in Support of Motion to Compel Arbitration

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V	APP0996	7/6/20	Minute Order re CTC Defendants' Motion to Compel Arbitration
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VI	APP1078-1105	8/13/20	CTC Defendants' Opposition to Plaintiff's Motion for Reconsideration and/or Clarification of the Court's July 17, 2020 Order Regarding CTC Defendants' Motion to Compel Arbitration
VI	APP1106-1120	8/19/20	Criterion's Opposition to Plaintiff's Motion for Reconsideration and/or Clarification of the Court's July 22, 2020 Order Regarding Criterion's Motion to Compel Arbitration
VI	APP1121-1138	8/24/20	Reply in Support of Motion for Reconsideration and/or Clarification of the Court's July 17, 2020 Order Regarding CTC Defendants' Motion to Compel Arbitration
VI	APP1139-1159	8/25/20	Matthew Simon, Jr.'s Answer to Complaint
VI	APP1160-1180	8/25/20	Scott McCrae's Answer to Complaint
VI	APP1181-1193	8/28/20	Motion to Stay Pending Arbitration

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VI	APP1258	9/4/20	Minute Order re Motion for Reconsideration and/or Clarification of the Court's July 17, 2020 Order Regarding CTC Defendants' Motion to Compel Arbitration
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CERTIFICATE OF SERVICE

Pursuant to NRAP 25,1 certify that I am an employee of GREENBERG TRAURIG, LLP, that in accordance therewith, that on April 1, 2021, I caused a copy of *Petitioner's Appendix* to be served via U.S. Mail, first class postage prepaid, and via the 8th Judicial District Court's e-service system, upon the below identified Real Parties:

<p>William R. Urga, Esq. David J. Malley, Esq. Michael R. Ernst, Esq. Jolley Urga Woodbury & Holthus 330 S. Rampart Blvd., Suite 380 Las Vegas, Nevada 89145 wru@juwlaw.com; djm@juwlaw.com; mre@juwlaw.com</p> <p><i>Attorneys for Real Parties in Interest Thomas Mulligan</i></p>	<p>Matthew T. Dushoff, Esq. Jordan D. Wolff, Esq. Satzman Mugan Dushoff 1835 Village Center Circle Las Vegas, Nevada 89134 Mdushoff@nvbusinesslaw.com jwolff@nvbusinesslaw.com</p> <p><i>Attorneys for Real Parties in Interest CTC Transportation Insurance Services of Missouri, LLC, CTC Transportation Insurance Services, LLC and CTC Transportation Services of Hawaii, LLC</i></p>
<p>John R. Bailey, Esq. Joshua M. Dickey, Esq. Rebecca L. Crooker, Esq. Bailey Kennedy 8984 Spanish Ridge Avenue Las Vegas, Nevada 89148 JBailey@BaileyKennedy.com JDickey@BaileyKennedy.com RCrooker@BaileyKennedy.com</p> <p><i>Attorneys for Real Parties in Interest Criterion Claim Solutions of Omaha, Inc.</i></p>	

<p>Thomas E. McGrath, Esq. Russell D. Christian, Esq. Tyson & Mendes LLP 3960 Howard Hughes Parkway, #600 Las Vegas, Nevada 89169 tmcgrath@tysonmendes.com rchristian@tysonmendes.com</p> <p><i>Attorneys for Real Parties in Interest Attorneys for Defendants Pavel Kapelnikov; Chelsea Financial Group, Inc. a California corporation; Chelsea Financial Group, Inc. a New Jersey corporation; Global Forwarding Enterprises, LLC; Kapa Management Consulting, Inc.; Kapa Ventures, Inc.; and Igor and Yanina Kapelnikov</i></p>	<p>L. Christopher Rose, Esq. Kirill V. Mikhaylov, Esq. William A. Gonzales, Esq. HOWARD & HOWARD ATTORNEYS PLLC 3800 Howard Hughes Parkway, #1000 lcr@h2law.com; kvm@h2law.com wag@h2law.com</p> <p><i>Attorneys for Defendants Six Eleven LLC; Quote My Rig, LLC; New Tech Capital LLC; 195 Gluten Free LLC; 10- 4 Preferred Risk Managers, Inc.; Ironjab, LLC; Fourgorean Capital LLC; Chelsea Financial Group, Inc. a Missouri corporation</i></p>
<p>Robert S. Larsen, Esq. Wing Yan Wong, Esq. Gordon Rees Scully Mansukhani, LLP 300 South Fourth Street, Suite 1550 Las Vegas, Nevada 89101 rlarsen@grsm.com wwong@grsm.com</p> <p><i>Attorneys for Real Parties in Interest Lexicon Insurance Management LLC, Daniel George and ICAP Management Solutions, LLC</i></p>	<p>Tamara Beatty Peterson, Esq. Nikki L. Baker, Esq. David E. Astur, Esq. Peterson Baker, PLLC 701 S. 7th Street Las Vegas, Nevada 89101 tpeterson@petersonbaker.com nbaker@petersonbaker.com dastur@petersonbaker.com</p> <p><i>Attorneys for Real Parties in Interest Matthew Simon Jr. and Scott McCrae</i></p>

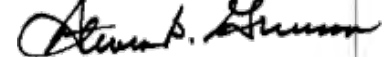
<p>Sheri M. Thome, Esq. Rachel L. Wise, Esq. Wilson, Elser, Moskowitz, Edelman & Dicker LLP 6689 Las Vegas Blvd., Suite 200 Las Vegas, Nevada 89119 Sheri.Thome@wilsonelser.com Rachel.Wise@wilsonelser.com</p> <p><i>Attorneys for Real Parties in Interest Attorneys for Defendant James Marx, John Maloney, Virginia Torres, and Carlos Torres</i></p>	<p>Kurt R. Bonds, Esq. Trevor R. Waite, Esq. Alverson Taylor & Sanders 6605 Grand Montecito Pkwy, Ste 200 Las Vegas, Nevada 89149 efile@alversontaylor.com</p> <p><i>Attorneys for Real Parties in Interest Brenda Guffey</i></p>
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With a courtesy copy to

Judge Mark R. Denton
Eighth Judicial District Court
Clark County, Nevada
Regional Justice Center
200 Lewis Avenue
Las Vegas, NV 89155

via email on April 1, 2021 to Dept13lc@clarkcountycourts.us

/s/ Andrea Lee Rosehill
An Employee of Greenberg Traurig LLP



SALTZMAN MUGAN DUSHOFF PLLC

1835 Village Center Circle
Las Vegas, Nevada 89134
Tel: (702) 405-8500 / Fax: (702) 405-8501

1 **OPP**
2 MATTHEW T. DUSHOFF, ESQ.
3 Nevada Bar No. 004975
4 JORDAN D. WOLFF, ESQ.
5 Nevada Bar No. 014968
6 **SALTZMAN MUGAN DUSHOFF**
7 1835 Village Center Circle
8 Las Vegas, Nevada 89134
9 Telephone: (702) 405-8500
10 Facsimile: (702) 405-8501
11 E-Mail: mdushoff@nvbusinesslaw.com
12 jwolff@nvbusinesslaw.com
13
14 Attorneys for Defendants
15 **CTC TRANSPORTATION INSURANCE**
16 **SERVICES OF MISSOURI, LLC; CTC**
17 **TRANSPORTATION INSURANCE SERVICES**
18 **LLC; and CTC TRANSPORTATION**
19 **INSURANCE SERVICES OF HAWAII LLC**

DISTRICT COURT
CLARK COUNTY, NEVADA

15 BARBARA D. RICHARDSON IN HER
16 CAPACITY AS THE STATUTORY RECEIVER
17 FOR SPIRIT COMMERCIAL AUTO RISK
18 RETENTION GROUP, INC.,

Plaintiff,

vs.

19 THOMAS MULLIGAN, an individual; CTC
20 TRANSPORTATION INSURANCE SERVICES
21 OF MISSOURI, LLC, a Missouri Limited
22 Liability Company; CTC TRANSPORTATION
23 INSURANCE SERVICES LLC, a California
24 Limited Liability Company; CTC
25 TRANSPORTATION INSURANCE SERVICES
26 OF HAWAII LLC, a Hawaii Limited Liability
27 Company; CRITERION CLAIMS SOLUTIONS
28 OF OMAHA, INC., a Nebraska Corporation;
PAVEL KAPELNIKOV, an individual;
CHELSEA FINANCIAL GROUP, INC., a
California Corporation; CHELSEA FINANCIAL
GROUP, INC., a Missouri Corporation;
CHELSEA FINANCIAL GROUP, INC., a New
Jersey Corporation d/b/a CHELSEA PREMIUM
FINANCE CORPORATION; CHELSEA
FINANCIAL GROUP, INC., a Delaware

CASE NO. A-20-809963-B

DEPT NO. XIII

**DEFENDANTS CTC
TRANSPORTATION INSURANCE
SERVICES OF MISSOURI, LLC;
CTC TRANSPORTATION
INSURANCE SERVICES LLC; AND
CTC TRANSPORTATION
INSURANCE SERVICES OF
HAWAII LLC'S OPPOSITION TO
PLAINTIFF'S MOTION FOR
RECONSIDERATION AND/OR
CLARIFICATION OF THE
COURT'S JULY 17, 2020 ORDER
REGARDING THE CTC
DEFENDANTS' MOTION TO
COMPEL ARBITRATION**

Corporation; CHELSEA HOLDING COMPANY, LLC, a Nevada Limited Liability Company; CHELSEA HOLDINGS, LLC, a Nevada Limited Liability Company; FOURGOREAN CAPITAL, LLC, a New Jersey Limited Liability Company; KAPA MANAGEMENT CONSULTING, INC., a New Jersey Corporation; KAPA VENTURES, INC., a New Jersey Corporation; GLOBAL FORWARDING ENTERPRISES LIMITED LIABILITY COMPANY, a New Jersey Limited Liability Company; GLOBAL CAPITAL GROUP, LLC, a New Jersey Limited Liability Company; GLOBAL CONSULTING; NEW TECH CAPITAL, LLC, a Delaware Limited Liability Company; LEXICON INSURANCE MANAGEMENT LLC, a North Carolina Limited Liability Company; ICAP MANAGEMENT SOLUTIONS, LLC, a Vermont Limited Liability Company; SIX ELEVEN LLC, a Missouri Limited Liability Company; 10-4 PREFERRED RISK MANAGERS INC., a Missouri Corporation; IRONJAB LLC, a New Jersey Limited Liability Company; YANINA G. KAPELNIKOV, an individual; IGOR KAPELNIKOV, an individual; QUOTE MY RIG LLC, a New Jersey Limited Liability Company; MATTHEW SIMON, an individual; DANIEL GEORGE, an individual; JOHN MALONEY, an individual; JAMES MARX, an individual; CARLOS TORRES, an individual; VIRGINIA TORRES, an individual; SCOTT McCRAE, an individual; BRENDA GUFFEY, an individual; 195 GLUTEN FREE LLC, a New Jersey Limited Liability Company, DOE INDIVIDUALS I-X; and ROE CORPORATE ENTITIES I-X,

Defendants.

DEFENDANTS CTC TRANSPORTATION INSURANCE SERVICES OF MISSOURI, LLC; CTC TRANSPORTATION INSURANCE SERVICES LLC; AND CTC TRANSPORTATION INSURANCE SERVICES OF HAWAII LLC'S OPPOSITION TO PLAINTIFF'S MOTION FOR RECONSIDERATION AND/OR CLARIFICATION OF THE COURT'S JULY 17, 2020 ORDER REGARDING THE CTC DEFENDANTS' MOTION TO COMPEL ARBITRATION

Defendants CTC TRANSPORTATION INSURANCE SERVICES OF MISSOURI, LLC ("CTC-MO"); CTC TRANSPORTATION INSURANCE SERVICES LLC ("CTC-CA"); and CTC TRANSPORTATION INSURANCE SERVICES OF HAWAII LLC ("CTC-HI" and hereafter collectively referred to with CTC-MO and CTC-CA as "CTC"), by and through their

1 counsel, Saltzman Mugan Dushoff, hereby files their opposition to Plaintiff's Motion for
2 Reconsideration and/or Clarification of this Court's July 17, 2020 Order Regarding the CTC
3 Defendants' Motion to Compel Arbitration (the "Motion").

4 This Opposition is made and based upon EDCR 2.24, the following Memorandum
5 of Points and Authorities, the exhibits annexed thereto, the pleadings and papers on file
6 herein, and any argument presented at the time of hearing on this matter.

7 DATED this 13th day of August, 2020.

8 SALTZMAN MUGAN DUSHOFF

9
10 By 

MATTHEW T. DUSHOFF, ESQ.
Nevada Bar No. 004975
JORDAN D. WOLFF, ESQ.
Nevada Bar No. 0114968
1835 Village Center Circle
Las Vegas, Nevada 89134

Attorneys for Defendants
**CTC TRANSPORTATION INSURANCE
SERVICES OF MISSOURI, LLC; CTC
TRANSPORTATION INSURANCE
SERVICES LLC; and CTC
TRANSPORTATION INSURANCE
SERVICES OF HAWAII LLC**

MEMORANDUM OF POINTS AND AUTHORITIES**I. INTRODUCTION**

Plaintiff Barbara D. Richardson, in her capacity as Statutory Receiver for Spirit Commercial Auto Risk Retention Group, Inc. ("Plaintiff" or "Receiver") purportedly brings a Motion for Reconsideration and/or Clarification before this Court, however, she blatantly disregards the appropriate legal standard for such a motion and then proceeds to misread many of the same authorities upon which she claims to rely. Indeed, most of her arguments are not even properly before this Court, and her remaining points fall woefully short of providing any legitimate reason for this Court to alter its July 17, 2020 Order granting CTC's Motion to Compel Arbitration (referred to respectively as the "Order to Compel" and "Motion to Compel"). Ultimately, the Receiver accuses this Court of exercising poor judgment in ruling in favor of CTC, and then asks it to do little more than re-analyze its own well-reasoned rulings for a second time.

Plaintiff begins by disregarding the July 6, 2020 Minute Order of this Court (the "Minute Order") which states, in pertinent part, "Counsel for Defendants is directed to submit a proposed order consistent herewith and with briefing supportive of the same." (emphasis added). CTC followed this Court's directive and submitted a Proposed Order which included briefing that was entirely consistent with the underlying motion papers which led this Court to grant CTC's Motion to Compel. To be sure, this requisite briefing is taken directly from the moving papers and encompasses the exact same legal arguments underpinning this Court's correct decision. Nevertheless, Plaintiff makes a prolonged, baseless argument against the inclusion of this briefing, even though it was done in accordance with this Court's clear instructions.

Plaintiff then fails to even provide the appropriate legal standard for this Motion. Plaintiff relies exclusively on *Trail v. Faretto*, which does not explain the legal standard applicable to this Court in reconsidering its Order to Compel with respect to Plaintiff's Motion pursuant to EDCR 2.24. Plaintiff knows she has no chance at satisfying the actual legal standard, so this is simply a weak attempt to distract this Court from the deficiencies in Plaintiff's own legal arguments.

As explained herein, a court may grant a motion to reconsider a previously decided issue only if substantially different evidence is subsequently introduced, or the decision is clearly

1 erroneous. Such motions are granted only in very rare instances in which previously unknown
2 facts or newly issued laws are raised in support of a ruling contrary to the initial decision. Plaintiff
3 is unable to raise any new issues of fact or law because none exist. Instead, Plaintiff simply
4 reformulates the exact same arguments and supporting authorities that were stated in her prior
5 opposition to CTC's Motion to Compel in the hopes of getting a different result.

6 Under ordinary circumstances, CTC would characterize this as Plaintiff's inappropriate
7 attempt to get a second bite at the apple. However, Plaintiff (along with her same attorneys)
8 recently lost an almost identical motion in *Nevada Commissioner of Insurance, v. Milliman Inc, et*
9 *al.*, Case No. A-17-760558-C, whereby the District Court enforced an arbitration provision in a
10 contract between a Nevada regulated insurer and a third-party service provider during a
11 contemporaneous liquidation proceeding before this same Receiver. They then lost a motion to
12 reconsider that decision before the District Court, and the decision was subsequently upheld by
13 the Nevada Supreme Court in *State ex rel. Comm'r of Ins. v. Eighth Judicial Dist. Court of Nev.*,
14 454 P.3d 1260 (Nev. 2019). To be clear, the *Milliman* case is so similar to the present action, that
15 the Receiver's attorneys cut and pasted at least seven pages from their opposition brief in *Milliman*
16 directly into their opposition to CTC's Motion to Compel. Thus, this Motion is actually Plaintiff's
17 inappropriate attempt to get a fifth bite at the apple.

18 In essence, this Motion is nothing more than Plaintiff's request for a "do over" in a last-
19 ditch attempt to distance herself from the relevant, persuasive Nevada authorities that this Court
20 properly applied in deciding CTC's Motion to Compel. Plaintiff fails to provide a single legitimate
21 argument for this Court to consider in light of the appropriate legal standard on a Motion for
22 Reconsideration, and as such, the Court should deny this Motion in its entirety.

23 II. FACTUAL BACKGROUND

24 CTC relies on the factual background provided in its Motion to Compel.

25 III. LEGAL ARGUMENT

26 A. Legal Standard on a Motion for Reconsideration.

27 "A district court may reconsider a previously decided issue if substantially different
28 evidence is subsequently introduced or the decision is clearly erroneous." *Masonry & Tile*

1 *Contractors v. Jolley, Urga & Wirth Ass'n*, 113 Nev. 737, 741, 941 P.2d 486, 489 (1997). "Only
 2 in very rare instances in which new issues of fact or law are raised supporting a ruling contrary to
 3 the ruling already reached should a motion for rehearing be granted." *Moore v. Las Vegas*, 92
 4 Nev. 402, 405, 551 P.2d 244, 246 (1976). *See also Mustafa v. Clark Cty. Sch. Dist.*, 157 F.3d
 5 1169, 1179 (9th Cir. 1998) (leave for reconsideration may be granted upon the showing of newly
 6 discovered evidence, clear error or manifest injustice, or an intervening change in controlling
 7 law).¹ Further, points and contentions not raised in the first instance cannot be raised on rehearing.
 8 *Carmar Drive Tr. v. Bank of Am., N.A.*, 132 Nev. 952, 386 P.3d 988 (2016) (citing *Edward J.*
 9 *Achrem, Chtd. v. Expressway Plaza Ltd. Pshp.*, 112 Nev. 737, 742, 917 P.2d 447, 450 (1996)).
 10 Put simply, a motion for reconsideration is not the proper vehicle for rehashing old arguments and
 11 is not intended to give an unhappy litigant one additional chance to sway the judge. *Campbell v.*
 12 *Nev. Prop. 1, LLC*, No. 2:10-cv-2169-RLH-PAL, 2012 U.S. Dist. LEXIS 192, at *3 (D. Nev. Jan.
 13 3, 2012) (internal citations omitted).

14 Plaintiff's Motion for Reconsideration fails to raise any new issues of fact or law for this
 15 Court to consider in accordance with the requisite standard. No new facts have been uncovered
 16 since the entry of this Court's prior decision, and it is obvious that no intervening decisions have
 17 been issued, as all cases relied upon by Plaintiff were released prior to the filing of CTC's Motion
 18 to Compel. *See, e.g., Estate of Anthony Michael Viola v. County of Clark*, 2019 Nev. Dist. LEXIS
 19 336, *12 ("The Court also finds that Plaintiffs' motion is also not based on any new or changed
 20 law.... the sole case relied upon by Plaintiffs, was issued in 2016, well before Meadow Valley's
 21 Motion for Summary Judgment.").

22 Also, Plaintiff cannot show that this Court's decision was erroneous in any way. In fact,
 23 Plaintiff goes so far as to chastise this Court for relying on prior Nevada Supreme Court and
 24 District Court decisions, arguing that they are "for persuasive value only" and "not binding or
 25 precedential." Plaintiff then tries to factually distinguish this case from *Milliman*, despite the fact
 26

27 ¹ Federal cases interpreting the Federal Rules of Civil Procedure "are strong persuasive authority, because the Nevada
 28 Rules of Civil Procedure are based in large part upon their federal counterparts." *Exec. Mgmt. v. Ticor Title Ins. Co.*,
 118 Nev. 46, 53, 38 P.3d 872, 876 (2002).

1 that Plaintiff recycled the same underlying arguments, essentially verbatim, from her opposition
2 brief in *Milliman* when arguing that that CTC's Motion to Compel should have been denied. This
3 Court is absolutely entitled to rely on persuasive, relevant Nevada authority and doing so does not
4 constitute reversible error, regardless of whether or not Plaintiff agrees with the result. *See* NRAP
5 36(c)(3).

6 In sum, this Court may deny Plaintiff's Motion for Reconsideration solely on the basis that
7 Plaintiff fails to make a single argument that could potentially satisfy the requisite standard for
8 reconsideration. However, for the sake of completeness, Defendants will also refute each of the
9 arguments set forth in Plaintiff's Motion, as they are factually inaccurate, in addition to being
10 deficient as a matter of law.

11 **B. The Order to Compel Complies with this Court's Clear Instructions to Include**
12 **Briefing in Support of its Minute Order.**

13 This Court's Minute Order granting CTC's Motion to Compel includes the following
14 instructions to CTC:

15 **Counsel for Defendants is directed to submit a proposed order**
16 **consistent herewith and with briefing supportive of the same.**
17 Such proposed order is to be submitted to opposing counsel for
18 review and signification of approval/disapproval. Instead of seeking
19 to clarify or litigate meaning or any disapproval through
20 correspondence to the Court or to counsel with copies to the Court,
21 any such clarification or disapproval should be the subject of
22 appropriate motion practice.

23 (emphasis added). The Minute Order clearly instructs CTC to draft a proposed order which
24 includes briefing in support of this Court's decision to grant the Motion to Compel. In following
25 this Court's instructions, CTC drafted the Proposed Order which summarizes the legal issues that
26 the parties thoroughly briefed in support of their respective positions.

27 As part of this Court's requested briefing, Plaintiff included a quote from the District
28 Court's decision in *Nevada Commissioner of Insurance, v. Milliman Inc, et al.*, Case No. A-17-
760558-C, and also included a copy of the decision as an exhibit to the Proposed Order. This
inclusion was for good reason, as the *Milliman* decision was cited to and discussed in CTC's initial
moving papers, addressed in Plaintiff's opposition, and again analyzed as well as attached as an

1 exhibit to CTC's reply. *See*, CTC's Motion to Compel at p. 15, l. 18-28; p. 16, l. 1-10; CTC's
2 Reply at p. 4-5; 9-13; *See also*, Plaintiff's Opposition to CTC's Motion to Compel p. 2, l. 2-4; p.
3 14, l. 14-25. Plaintiff's unsuccessful arguments that the arbitration provision of the CTC
4 Agreement should not be enforced pursuant to either the Federal Arbitration Act (the "FAA") or
5 Nevada law were based upon: (i) the Nevada Insurers Liquidation Act (the "NILA") reverse-
6 preempting the FAA pursuant to the McCarran-Ferguson Act; (ii) the arbitration provision not
7 being enforceable under the NILA; (iii) the District Court having jurisdiction pursuant to NRS
8 696B.200; and (iv) the claim that the Receiver is not bound by the arbitration provision since she
9 acts on behalf of Spirit's members, insureds, and creditors, as opposed to Spirit itself.²

10 As explained in CTC's reply, not only did these arguments completely lack merit, but they
11 were copied word-for-word from Plaintiff's prior, unsuccessful opposition to an identical motion
12 to compel arbitration in *Milliman*. The present case is essentially identical to *Milliman*, with the
13 same Plaintiff, represented by the same attorneys, in the same jurisdiction, concerning another
14 insurance company regulated under Nevada law, in the context of a receivership action wherein
15 an order of liquidation has been entered, concerning a third-party performing similar services
16 subject to an agreement with an arbitration provision, and in which Plaintiff is pursuing almost
17 identical causes of action. Hence, the *Milliman* case is not only persuasive authority that Plaintiff's
18 arguments lack merit, but it also completely undercuts Plaintiff's disingenuous attempt to factually
19 distinguish the present case from *Milliman*, both in its unsuccessful opposition to CTC's Motion
20 to Compel and now in this Motion to Reconsider. In granting CTC's Motion to Compel, there can
21 be no doubt that this Court considered these arguments and agreed with CTC's position.
22 Therefore, the citations to *Milliman* and inclusion of the decision as an exhibit to the Order to
23 Compel are undeniably appropriate in accordance with this Court's Minute Order.

24 In arguing to the contrary, Plaintiff claims that the *Milliman* order should not be included
25 because "it was not referenced in the July Minute Order." Plaintiff is wrong. First, Plaintiff again
26

27
28 ² Tellingly, Plaintiff now seeks to misuse this Motion as an opportunity to relitigate all these issues despite the fact
that doing so is clearly prohibited in accordance with the requisite legal standard.

1 ignores this Court's instruction to include briefing in support of its decision in the Proposed Order,
2 which inarguably includes the *Milliman* decision.

3 Plaintiff then brashly insults this Court stating that "[t]here is no indication that this Court
4 reviewed the *Milliman* Order and summarily adopted the same." (Plaintiff's Motion, p. 6, fn. 8).
5 To be clear, Plaintiff accuses this Court of either failing to read, or failing to understand the
6 Proposed Order, despite the fact that it has obviously been carefully reviewed, signed by the Hon.
7 Judge Denton, and entered into the docket as the Order to Compel. This is nothing short of
8 outrageous. It is one thing to disagree with this Court, but it is another to accuse this Court of
9 failing to read or understand its own decision. Yet, that is exactly what Plaintiff resorts to in her
10 last-ditch effort to upend the Order to Compel. Aside from disparaging this Court, Plaintiff's
11 argument has no bearing on the relevant standard on a Motion to Reconsider, clearly ignores this
12 Court's own instructions to CTC concerning requisite contents of the Proposed Order, and as such,
13 provides no basis to reconsider or clarify the Order to Compel Arbitration.

14 **C. CTC Cited to the *Milliman* Trial Court Order in its Initial Moving Papers and**
15 **Plaintiff's Argument to the Contrary is a Deliberate Attempt to**
Mischaracterize the Prior Briefing on this Issue and Mislead this Court.

16 Plaintiff begins her next argument by repeating her prior contention that the *Milliman*
17 decision was improperly included in the Order to Compel. As already discussed, the decision was
18 attached as an exhibit to the underlying briefing on the Motion to Compel, properly included in
19 the Proposed Order in accordance with this Court's instructions to include such briefing, and then
20 reviewed and accepted by this Court through its entry of the Order to Compel. Plaintiff is simply
21 wrong.

22 Plaintiff then complains about the alleged "late submission" of the *Milliman* order because
23 it was attached to CTC's reply memorandum, arguing that it did not have an opportunity to argue
24 that it lacks precedential value and factually distinguish the case. Plaintiff is incorrect. In fact,
25 CTC's initial moving papers (not only CTC's Reply) explicitly cited to the *Milliman* trial court
26 order and argued that the case was factually similar to this case. Specifically, CTC stated the
27 following in its initial motion:

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1 In *State ex rel. Comm'r of Ins. v. Eighth Judicial Dist. Court of Nev.*,
2 454 P.3d 1260 (Nev. 2019), the Supreme Court affirmed a decision
3 of the district court holding that Richardson, when acting in her
4 capacity as receiver for an insurance company in liquidation that is
5 pursuing breach of contract and tort claims against third parties on
6 the insurance company's behalf, is bound by an arbitration
7 agreement between the insurance company and such a third party.
8 **As a result, the Trial Court's order compelling all claims in the**
9 **underlying action against defendant Milliman, Inc. to be**
10 **resolved through arbitration was upheld. See Nevada**
11 **Commissioner of Insurance, v. Milliman Inc, et al., Case No. A-**
12 **17-760558-C.**

13 In addition, it should be noted that many of the same claims that
14 Richardson/Spirit are now alleging against CTC in this action
15 are the same claims that Richardson, on behalf of the Nevada
16 Health Co-op, brought against Milliman, Inc. in that prior
17 complaint, including: (i) fraud; (ii) breach of fiduciary duty; (iii)
18 breach of contract; (iv) tortious breach of the implied covenant
19 of good faith and fair dealing; (v) breach of the implied duty of
20 good faith and fair dealing; (vi) unjust enrichment; and (vii)
21 civil conspiracy.

22 (See CTC's Motion to Compel, at pp. 15-16) (emphasis added). Plaintiff either failed to review
23 CTC's moving papers, or now seeks to intentionally mislead this Court.

24 Obviously, it was up to Plaintiff to decide whether it was worth her time to review the cases
25 cited by CTC in its initial papers, including the *Milliman* trial order, before drafting her Opposition.
26 However, the fact that she subsequently decided to cut and paste at least 7 pages from her prior
27 opposition in *Milliman* directly into her Opposition to the Motion to Compel is good anecdotal
28 evidence that she not only reviewed the *Milliman* trial court order and related briefing, but also
29 recognized the fact that the two cases concern identical issues of fact and law before deciding to
30 wholesale copy her prior arguments.

31 Plaintiff then attempts to make the allegedly "new" argument that *Milliman* is factually
32 distinguishable due to differences in the arbitration agreements at issue, but predictably, she
33 already made the same argument on page 14 of her Opposition to the Motion to Compel arguing

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1 that the CTC Agreement is different because it is “an instrument in a criminal enterprise.”³
2 Plaintiff’s attempt to reiterate that same argument here is improper in the context of this Motion,
3 and any additional points that she attempts to raise have been waived. *See Campbell v. Nev. Prop.*
4 *1, LLC*, 2012 U.S. Dist. LEXIS 192, at *3 (a motion for reconsideration is “not the proper vehicle
5 for rehashing old arguments” and “is not intended to give an unhappy litigant one additional chance
6 to sway the judge”); *Carmar Drive Tr.*, 132 Nev. 952, 386 P.3d 988 (2016) (points and contentions
7 not raised in the first instance cannot be raised on rehearing). Thus, Plaintiff’s argument cannot
8 provide a legal basis for granting this Motion.

9 Therefore, Plaintiff’s attempt to distinguish *Milliman* is premised upon a misreading of this
10 Court’s instructions to CTC in its Minute Order, a misleading description of CTC’s prior moving
11 papers on the Motion to Compel, and her failure to satisfy the requisite legal standard. For all
12 these reasons, this Motion should be denied.

13 **D. The Order to Compel Properly Cites to the Nevada Supreme Court Decision**
14 **in *State ex rel. Comm’r of Ins.* Which is Again Factually Analogous to this Case.**

15 Next, Plaintiff again takes issue with this Court’s reliance on the Nevada Supreme Court
16 decision in *State ex rel. Comm’r of Ins.* in granting CTC’s Motion to Compel. After admitting that
17 the decision is persuasive authority pursuant to NRAP 36, Plaintiff proceeds to argue that the Order
18 to Compel must go too far, somehow, because the *State ex rel. Comm’r of Ins.* decision is only two
19 pages and the Order to Compel is twelve pages. Again, this simply comes down to Plaintiff
20 ignoring this Court’s instructions to CTC to include briefing in the Proposed Order. Plaintiff’s
21 opposition to the Motion to Compel alone was thirty pages, so it should be no surprise to her that
22 an order addressing these underlying issues is twelve pages in length.

23 Plaintiff then includes a chart through which she attempts to illustrate that certain aspects
24 of the *State ex rel. Comm’r of Ins.* decision do not apply here, but in doing so, she misreads *State*

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26
27 ³ It should be noted that the same set of underlying facts were before the District Court and the Nevada Supreme Court
28 in *Milliman*. Therefore, Plaintiff cannot argue that her present argument is new simply because she cites to the lower
court decision in this Motion and the Nevada Supreme Court decision in her prior Opposition to the Motion to Compel
while making the same argument.

1 *ex rel. Comm'r of Ins.*, reverses the Court's holding, and then incorrectly applies her flawed
2 interpretation to this case.

3 Specifically, the third row of Plaintiff's chart (and the only row that attempts to
4 substantively address the decision) erroneously states that the issue in *State ex rel. Comm'r of Ins.*
5 was that the Court "did not find legal error" in the underlying district court decision finding that
6 "the McCarran Ferguson Act reverse-preempted the Federal Arbitration Act" (the "FAA"). *See*,
7 Plaintiff's Motion p. 8, l. 11-26.

8 Of course, that statement is wrong. The underlying district court (i.e. the *Milliman* Court)
9 actually determined that the FAA did preempt the McCarran Ferguson Act, which is why the
10 District Court granted Milliman's motion to compel arbitration. To be clear, it is Plaintiff who has
11 unsuccessfully argued for reverse-preemption on four prior occasions, including in *Milliman*, and
12 now tries again for the fifth time here. Furthermore, in *State ex rel. Comm'r of Ins.*, the Nevada
13 Supreme Court went on to reject Plaintiff's claim that the *Milliman* Court committed "legal error"
14 by holding that the FAA preempts the McCarran Ferguson Act. Basically, Plaintiff reverses both
15 holdings to misrepresent that she prevailed in these cases, when in fact, both cases were decided
16 against her.

17 Unsurprisingly, the second column of the third row is also inaccurate. Plaintiff goes on to
18 claim that the Nevada Supreme Court "did not opine" on reverse-preemption "other than to note
19 that the claims brought by [the receiver] were contractual and tort based, rather than a creditor's
20 claim." In fact, the Nevada Supreme Court actually stated the following:

21 Richardson claims the district court committed legal error by
22 ordering arbitration despite her argument that the McCarran
23 Ferguson Act, 15 U.S.C. § 1012, reverse-preempts the FAA. In her
24 view, enforcement of an arbitration agreement against an insurance
25 liquidator pursuing contract and tort damages against third parties
26 would thwart the insurance liquidator's broad statutory powers and
27 the general policy under Nevada's Uniform Insurance Liquidation
28 Act (VILA), *see* NRS 696B.280, to concentrate creditor claims in a
single, exclusive forum. However, at issue here is not a creditor's
claim against the Co-Op; at issue is Richardson's breach-of-contract
and tort claims against several third parties on behalf of the Co-Op,
which happens to be in receivership. Courts elsewhere that have
considered Richardson's argument have rejected it.

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1 *State ex rel. Comm'r of Ins. v. Eighth Judicial Dist. Court of Nev.*, 454 P.3d 1260 (Nev. 2019)
2 (internal cites omitted). To be clear, in denying Plaintiff's writ, the Nevada Supreme Court also
3 rejected, in no uncertain terms, the precise argument that Plaintiff attempts to resurrect here – that
4 the McCarran Ferguson Act gives the Receiver some special power under Nevada law to evade an
5 arbitration provision in order to consolidate her claims against third parties into a single action.
6 Importantly, Plaintiff asserted not only tort and contract claims against Milliman, but also claims
7 such as fraud, civil conspiracy, and unjust enrichment. All of these claims were consistently
8 determined to be subject to mandatory arbitration by both the District Court and the Nevada
9 Supreme Court. Any argument to the contrary is simply false.

10 Not only was this Court correct in granting CTC's Motion to Compel in accordance with
11 the above rulings, but Plaintiff again provides no intervening law, no previously undiscovered
12 facts, and no cognizable basis for clear error that would have any bearing on the relevant standard
13 for this Motion. As such, this argument can also be disregarded.

14 The same can be said for Plaintiff's remaining five subpoints in Section D of her Motion,
15 each of which is merely a regurgitation of a prior arguments without any new facts, law, or a
16 showing of clear error. Notwithstanding the fact that these arguments are again inadequate as a
17 matter of law with respect to the standard on a Motion for Reconsideration, their inaccuracies will
18 nonetheless be addressed herein.

19 **1. Plaintiff's Restatement of her Prior Argument that the Arbitration**
20 **Agreement is Unenforceable as an Instrument of Fraud is Improper and**
Meritless.

21 Plaintiff restates her previous argument that she should not be bound by the arbitration
22 provision in the Program Administration Agreement between Spirit and CTC-MO (the "CTC
23 Agreement") because it was "an instrument in a criminal enterprise" allegedly perpetrated by CTC
24 and the other Defendants. *See* Plaintiff's Opposition to the Motion to Compel, at pp. 8-9. In
25 support, Plaintiff again relies solely on the concurring opinion in *Janvey v. Alguire*, 847 F.3d 231

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1 (5th Cir. 2017), a fifth circuit decision which has no bearing on this action for a plethora of reasons.⁴
2 As a threshold matter, this argument contains no new facts or law, and for this reason alone should
3 be entirely disregarded by this Court. *Moore v. Las Vegas*, 92 Nev. 402, 405, 551 P.2d 244, 246
4 (1976) (“Only in very rare instances in which new issues of fact or law are raised supporting a
5 ruling contrary to the ruling already reached should a motion for rehearing be granted.”).

6 Nonetheless, *Janvey* is easily distinguished on the facts, as it concerns a receiver
7 appointed by a federal district court, at the behest of the Securities and Exchange Commission, to
8 preserve and recover corporate assets that were stolen from investors through the commission of
9 a Ponzi scheme organized by two individuals, namely Messrs. Stanford and Davis, who had
10 already pled guilty to several federal offenses and were in jail at the time the *Janvey* court issued
11 its decision. At issue were a series of employment agreements containing arbitration clauses that
12 were entered into between the various companies used by Stanford and Davis to carry out their
13 crimes, and employees whose actual job was to assist with the commission of said crimes. The
14 concurring opinion in *Janvey*, upon which Plaintiff solely relies, argues that the arbitration
15 clauses in these contracts should not be enforced because they were intended to “perpetuate[] the
16 Ponzi scheme by shielding the fraudulent activity from potentially revealing discovery while
17 giving the scheme an air of legitimacy.” *Janvey*, 847 F.3d, at 250.

18 First, unlike *Janvey*, this case is not a criminal matter in which the principals of a sham
19 enterprise have been convicted by the federal government for running an illegal scheme. Instead,
20 this is a breach of contract case concerning an accounting disagreement between CTC and Spirit.
21 It is undisputed that Spirit was a fully functioning insurance company that wrote policies and paid
22 out claims on behalf of its insureds, and that CTC acted as its Program Administrator pursuant to
23

24 ⁴ Plaintiff cites only to the *Janvey* court’s concurring opinion, but the majority opinion was decided on entirely
25 different grounds. Only one of the employment agreements at issue was between the employee and the entity
26 represented by the receiver, and so the court held that all the other agreements were not enforceable against the receiver
27 since he was not a party to those agreements. *See Janvey*, 847 F.3d, at 242 (“Because the Receiver brings his claims
28 on behalf of the Bank and the Bank has not consented to arbitration, the motions to compel arbitration fail.”). The
final employment agreement, which was between an employee and the actual entity represented by the receiver, was
not upheld because the employee actively participated in the civil case brought against him constituting waiver, and
prejudiced the plaintiff by not seeking to invoke his right to arbitration until almost three years of litigation had been
completed. *Id.*, at 243-244. Neither of these arguments have any relevance to this case.

1 the CTC Agreement. In fact, pursuant to FTI Report, dated December 20, 2019 (the “FTI Report”)
2 upon which Plaintiff relies, FTI stated that CTC paid Spirit a total of \$288,500,472 in its capacity
3 as program administrator. See Exhibit 2 to Plaintiff’s Opposition to the Motion to Compel, p. 11,
4 Table 2. The FTI Report then continues to state that in FTI’s opinion, CTC still owes Spirit an
5 additional payment of \$30,839,150, a claim that CTC denies. *Id.*

6 In sum, the crux of this dispute between CTC and Spirit is whether or not CTC underpaid
7 Spirit by approximately 10%. In this context, Plaintiff’s exaggerated cries of “criminality” are
8 ridiculous and self-serving. In fact, even the concurring opinion in *Janvey* upon which Plaintiff
9 relies is ultimately in favor of resolving similar claims in arbitration. See *Janvey*, 847 F.3d, at 249
10 (“The Supreme Court has long enforced agreements to arbitrate statutory claims, including claims
11 under the Racketeer Influenced and Corrupt Organizations Act (RICO)”).

12 Second, the rational underpinning the concurring opinion in *Janvey* has no applicability
13 here. In *Janvey*, the “illegal” agreements were employment contracts wherein the job of the
14 employee was to break the law and steal from his or her customers, and the concurring judge
15 opined that he believed the arbitration provisions were included in the defendants’ agreements in
16 order to keep their criminal acts hidden. See *Janvey*, 847 F.3d, at 250.

17 But there is no “secret” agreement to conceal evidence here. The Receiver was not only
18 provided with an advance copy of the CTC Agreement (including the arbitration clause) in
19 conjunction with her role as industry regulator – she also personally approved it on June 29, 2016.
20 See Exhibit B to the CTC’s Motion to Compel. Moreover, Plaintiff’s claim that the arbitration
21 clause in the CTC Agreement could be used to “conceal” evidence of a fraudulent scheme is
22 equally ludicrous. Spirit and CTC have been subject to the regulation of the Nevada Department
23 of Insurance (the “Department”). Specifically, the Receiver, herself, for almost a decade oversaw
24 Spirit and CTC, and their underlying financials had been previously made available to the
25 Receiver. In fact, FTI has already been permitted to review all of CTC’s primary financial records
26 during the preparation of the FTI Report. See Exhibit 2 to the Plaintiff’s Opposition to the Motion
27 to Compel, at pp. 4-5. CTC disputes FTI’s purported findings in its report and expects to prevail

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1 in the upcoming arbitration. However, it is ridiculous for Plaintiff to claim that CTC is concealing
2 anything when Plaintiff has already been provided with all of CTC's records.

3 Equally ridiculous is Plaintiff's allegation that a filing to the Nevada Division of Insurance
4 disclosing the relationship between CTC and Spirit constitutes an indicia of wrongdoing. *See, e.g.,*
5 Appendix of Exhibit In Support of Plaintiff's Opposition to CTC Defendants' Motion to Compel,
6 at p.089. Again, Plaintiff glosses over the fact that this was a filing that was submitted to her, in
7 her capacity as Receiver, not a secret that was hidden from her. There can be no doubt that the
8 Receiver knows, and in fact has always known about the structure of Spirit and CTC, the
9 relationship between the entities, and the terms of the CTC Agreement, including the arbitration
10 provision. Spirit and CTC operated under her watch, and their actions were subject to her approval.

11 Plaintiff concludes her argument with the bizarre assertion that arbitration is inappropriate
12 because it would allow CTC to "avoid the ramifications of a public litigation" and "keep the extent
13 of their wrongdoings from the Court." This is nonsensical. CTC is entitled to arbitration because
14 it entered into the CTC Agreement, which even Plaintiff admits is a "valid and enforceable
15 contract," and CTC is now entitled to the benefit of that bargain. *See* Complaint, at ¶¶ 264 (alleging
16 that the CTC Agreement is a "valid and enforceable contract"); *AT&T Mobility LLC v.*
17 *Concepcion*, 563 U.S. 333, 339, 131 S. Ct. 1740, 1745 (2011) (stating that the FAA reflects a
18 liberal federal policy in favor of arbitration and the fundamental principal that arbitration is a
19 matter of contract); *Seasons Homeowners Ass'n v. Richmond Am. Homes of Nev., Inc.*, No. 2:11-
20 cv-01875-RCJ-PAL, 2012 U.S. Dist. LEXIS 100859, at *26 (D. Nev. July 19, 2012) (recognizing
21 that Nevada law favors the lower costs and faster resolution afforded by arbitration when compared
22 to traditional litigation).

23 Furthermore, Spirit alleges that defendant Thomas Mulligan, not CTC, is actually the
24 "orchestrator" of this purported conspiracy and he is still a party to the case. *Compare* Complaint,
25 at ¶ 1 ("This complaint arises out of a vast fraudulent conspiracy orchestrated by Thomas Mulligan
26 and others..."), *with* Complaint, at ¶ 354 (stating that CTC and the other company defendants "are
27 merely vehicles by which funds are knowingly and intentionally siphoned from Spirit for the
28 benefit or the individual defendants and/or the entities controlled by the same."). To the extent

1 that Plaintiff believes CTC has relevant information, it is more than capable of compelling its
2 production through a subpoena in accordance with the Nevada Rules of Civil Procedure.

3 For all these reasons, Plaintiff's argument fails to provide any cognizable argument in favor
4 of her Motion, and so this Court should deny the Motion in its entirety.

5 **2. There is no Basis for Clarification of this Court's Order to Compel as it**
6 **Properly Included the Factual Finding That the Arbitration Provision in**
7 **the CTC Agreement Was Not the Product of a Criminal Enterprise.**

8 As previously discussed in detail above, Plaintiff again wrongly contends that the
9 arbitration provision in the CTC Agreement was the product of a criminal enterprise, and on that
10 basis, argues that the *Janvey* decision renders it unenforceable as a matter of law. This time, she
11 does so to argue that the Order to Compel should be "clarified" by removing any reference from
12 this Court's correct finding to the contrary.

13 This issue was thoroughly briefed by both sides in conjunction with the Motion to Compel,
14 and unlike Plaintiff, CTC respects the fact that this Court reviewed and understood the arguments
15 that were presented by both sides. As this Court granted CTC's Motion to Compel, it is evident
16 that the Court did in fact agree with CTC that the CTC Agreement was not the product of a criminal
17 enterprise, and so this fact is properly included in the Order to Compel in accordance with the
18 Court's instructions to include briefing.

19 In arguing to the contrary, Plaintiff tries to misconstrue paragraphs 64-69 of her own
20 Complaint which concern purported deficiencies with respect to Spirit's books and records. While
21 these allegations could theoretically support a breach of contract claim against CTC for
22 underpayment (assuming they could be proven to be true), this is not a criminal case and these are
23 not accusations of criminal behavior on the part of CTC. In any event, these allegations are
24 irrelevant to Plaintiff's argument because they only concern purported breaches of the CTC
25 Agreement, and not circumstances surrounding the creation of the CTC Agreement. Try as she
26 might, Plaintiff cannot walk away from the fact that she approved the CTC Agreement herself in
27 her capacity as Insurance Commissioner, including the arbitration provision, and there is no
28 dispute that CTC did in fact act as Spirit's Program Administrator pursuant to its terms. Plaintiff's

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1 continued attempt to disguise a civil accounting matter as a criminal prosecution is not any more
2 compelling the second time around.

3 This Court was correct in determining that the CTC Agreement was enforceable, not the
4 product of a criminal enterprise, and thereby ordering that Plaintiff must pursue her claims against
5 CTC through arbitration. This is properly stated in the Order to Compel, and Plaintiff raises no
6 new argument that should cause this Court to clarify its order in any way.

7 **3. The Order to Compel Properly States that the Receiver Stands in the Shoes**
8 **of Spirit and that All Claims Arise Out of the CTC Agreement.**

9 Next, Plaintiff returns to her argument for reconsideration, but again only repeats
10 arguments that were already addressed in her Opposition to the Motion to Compel without any
11 new facts or law, and as such, they are also improper for this Court to even consider. They are
12 also meritless, as discussed below.

13 First, Plaintiff argues that as Receiver, she should be considered separately from Spirit
14 since she herself did not actually “sign the contract or agree to the arbitration provision at issue”
15 and again argues that the CTC agreement is an instrument in a criminal scheme. Of course, this
16 assertion is false because the Receiver did in fact approve the CTC Agreement (*See* Exhibit B to
17 the Motion to Compel) and Plaintiff also made this exact argument, again premised on the *Janvey*
18 decision, in her prior Opposition. *See* Opposition to the Motion to Compel, at pp. 8-9. This Court’s
19 justified rejection of Plaintiff’s criminal instrument argument has already been sufficiently
20 discussed above.

21 Second, Plaintiff reargues that certain claims cannot arise out of the CTC Agreement
22 because CTC-HI was not a signatory, and CTC-CA and CTC-MO were signatories for different
23 time periods, which is yet another argument already made in her prior Opposition. *See* Opposition
24 to the Motion to Compel, at pp. 20-22.

25 As previously explained, Plaintiff ignores the fact that her Complaint only refers to the
26 CTC entities collectively, and claims that all three entities are parties to, and breached the CTC
27 Agreement containing the arbitration provision at issue. *See* Complaint, at ¶¶ 55, 264, 266. CTC
28 has no option but to address the allegations as Plaintiff has stated them in her Complaint. In fact,

1 while Plaintiff names CTC-HI as a party, the Complaint does not contain any specific allegations
2 against CTC-HI whatsoever, mentioning it only as a part of the defined term "CTC." For this
3 reason alone, CTC-HI should be excluded from whatever legal proceeding Plaintiff may bring to
4 pursue these claims in the future, as she clearly has no good faith basis to allege any claims against
5 CTC-HI.

6 The other two CTC entities, CTC-CA and CTC-MO, both entered into agreements with
7 Spirit containing identical arbitration provisions. CTC-CA's Agreement was effective from
8 November 2011 until July 1, 2016, at which time CTC-MO and Spirit executed the CTC
9 Agreement which was effective on that same date. While Plaintiff grasps at straws arguing that
10 she has alleged claims against those two entities that would somehow fall outside their respective
11 contractual periods with Plaintiff, Plaintiff cannot cite to a single allegation in her Complaint in
12 support of that argument, because no such allegations exist. Again, Plaintiff's Complaint only
13 refers to the CTC entities collectively, claiming that all three entities are parties to, and breached
14 the same CTC Agreement.⁵ (See Complaint, at ¶¶ 55, 264, 266). There is simply no cognizable
15 argument that distinct allegations were made against either entity either before or after they
16 contracted with CTC.

17 Next, Plaintiff improperly cites to the *Britton v. Co-op Banking Group*, 4 F.3d 742 (9th
18 Cir. 1993) for the first time, arguing that non-parties to an arbitration agreement may generally not
19 enforce such a clause. This is irrelevant, as the Receiver has alleged in her Complaint that all CTC
20 entities were parties to the valid and enforceable CTC Agreement, and she asserted an identical
21 breach of contract claim against all three of them.⁶

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24 ⁵ Plaintiff does not allege in the Complaint that CTC-CA, or any CTC entity for that matter, ever breached the
25 agreement between Spirit and CTC-CA. However, even if Spirit had made such an allegation, that contract contains
an identical arbitration provision.

26 ⁶ Notably, Plaintiff's legal analysis in support of this argument is also incorrect. As stated in CTC's previous reply in
27 support of the Motion to Compel, even if Plaintiff's Complaint did contain allegations against an entity that was not
28 a party to CTC Agreement, that entity would still be bound by the arbitration provision as a non-signatory since it
would allegedly be an agent of the other entities, and would also be subject to estoppel as it benefitted from the
existence of the agreement. See *Truck Ins. Exch. v. Swanson*, 124 Nev. 629, 634-35, 189 P.3d 656, 660 (2008).

1 Finally, Plaintiff combines two more of her prior arguments, namely, that her claims are
2 actually brought on behalf of Spirit's members, insured enrollees, and creditors, and not Spirit
3 itself, and that fraudulent conveyance claims under the Nevada liquidation statutes shouldn't be
4 subject to arbitration. *See* Opposition to the Motion to Compel, at pp. 17-18. As discussed more
5 thoroughly in the following section, both arguments were previously rejected by the *Milliman*
6 Court, the Nevada Supreme Court, and this Court, as each authority has confirmed that the
7 Receiver does in fact stand in Spirit's shoes (and not the members, insured enrollees, and
8 creditors), and that FAA preemption requires arbitration regardless of any Nevada statutory law
9 that may provide potential jurisdiction elsewhere. *See, e.g. State ex rel. Comm'r of Ins.*, 454 P.3d
10 at 1260 ("Richardson claims the district court committed legal error by ordering arbitration despite
11 her argument that the McCarran Ferguson Act, 15 U.S.C. § 1012, reverse-preempts the
12 FAA....Courts elsewhere that have considered Richardson's argument have rejected it.").

13 **4. The FAA Requires that All of CTC's Claim are Subject to Arbitration and**
14 **the Result Under Nevada Law is No Different.**

15 Plaintiff next asks for reconsideration or for clarification concerning her continued refusal
16 to acknowledge that Nevada courts have uniformly rejected her contention that the McCarran
17 Ferguson Act should preempt the FAA. In doing so, Plaintiff again presumes that this Court did
18 not review the underlying briefing on the Motion to Compel, and again tries to misread the holding
19 in *State ex rel. Comm'r of Ins.*

20 In Plaintiff's prior writ before the Nevada Supreme Court, Plaintiff argued that the
21 *Milliman* Court committed legal error by ordering that the FAA preempts the McCarran Ferguson
22 Act under essentially identical facts. In its Motion to Compel, CTC's counsel cited to the *Milliman*
23 decision and the *State ex rel. Comm'r of Ins.* decision, both of which rejected reverse-preemption,
24 and when Plaintiff ignored their clear precedent in her Opposition, CTC attached copies of both
25 decisions to its Reply. Taken in context, Plaintiff's argument that this Court did not thoroughly
26 consider these prior decisions is patently unconscionable.

27 Equally unreasonable is Plaintiff's contention that the Nevada Supreme Court decision
28 does not squarely address this issue. Again, the Nevada Supreme Court decision stated

1 “Richardson claims the district court committed legal error by ordering arbitration despite her
2 argument that the McCarran Ferguson Act, 15 U.S.C. § 1012, reverse-preempts the FAA....Courts
3 elsewhere that have considered Richardson’s argument have rejected it.” Then the Nevada
4 Supreme Court inarguably rejected it as well when it declined to upend the *Milliman* order which
5 expressly states that the FAA preempts McCarran Ferguson Act.

6 Plaintiff’s next claim, that a separate analysis is required for any determination under
7 Nevada law, is equally inaccurate. Again, Plaintiff has already lost this same argument many times
8 over. First, the *Milliman* Court held that the FAA and the Nevada Arbitration Act are substantively
9 identical. Next, Plaintiff lost a prior motion to reconsider before the *Milliman* Court in an attempt
10 to change that language. Plaintiff was unable to persuade the Supreme Court on her subsequent
11 writ, and then lost again when she made that same argument before this Court. Moreover, prior to
12 all these decisions, this rule was already well-established under Nevada law. *See, e.g. Clark Cty.*
13 *Pub. Emps. Ass’n v. Pearson*, 106 Nev. 587, 591, 798 P.2d 136, 138 (1990) (“Disputes are
14 presumptively arbitrable, and courts should order arbitration of particular grievances unless it may
15 be said with positive assurance that the arbitration clause is not susceptible of an interpretation that
16 covers the asserted dispute.”); *Int’l Ass’n of Firefighters, Local #1285 v. Las Vegas*, 104 Nev. 615,
17 618, 764 P.2d 478, 480 (1988) (“Nevada courts resolve all doubts concerning the arbitrability of
18 the subject matter of a dispute in favor of arbitration.”); *MMAWC v. Zion Wood Obi Wan Tr.*, 448
19 P.3d 568, 572 (Nev. 2019) (holding that NRS 597.995 is preempted by the Federal Arbitration Act
20 and therefore concluding that arbitration clause in a licensing agreement applies to claims alleged
21 in the underlying complaint).

22 The only unique argument facing this Court was whether the result would be the same
23 pursuant to District of Columbia law, but again, the case law is clear that this Court reached the
24 correct result when it ruled in the affirmative. *See D.C. Code § 16-4401, et seq.* “Under the
25 District’s arbitration act, a written agreement to ‘submit to arbitration any existing or subsequent
26 controversy arising between the parties to the agreement is valid, enforceable, and irrevocable
27 except upon a ground that exists at law or in equity for the revocation of a contract.’” *Giron v.*
28 *Dodds*, 35 A.3d 433, 437 (D.C. 2012) (quoting D.C. Code § 16-4406(a)). “Once it is established

1 that the parties intended a particular dispute to be arbitrated, 'a court may not override that
2 agreement by itself deciding such a dispute.'" *Giron*, 35 A.3d at 437 (quoting *Hercules & Co. v.*
3 *Beltway Carpet Serv., Inc.*, 592 A.2d 1069, 1072 (D.C. 1991)).

4 Next, Plaintiff again argues for reverse-preemption under the McCarran Ferguson Act by
5 complaining that this Court did not take into account Nevada's interest in regulating the business
6 of insurance and failed to consider the three prong test in *Humana Inc. v. Forsyth*, 525 U.S. 299,
7 119 S.Ct. 710 (1999). But obviously, this Court did consider these arguments, as Plaintiff again
8 cut and pasted this argument almost entirely from her prior Opposition to the Motion to Compel,
9 which in turn was already cut and pasted from her *Milliman* Opposition. Compare Plaintiff's
10 Opposition to the Motion to Compel, at pp. 11-12 with Exhibit A to CTC's Reply to the Motion to
11 Compel, at pp. 9-10. Again, Plaintiff boldly accuses this Court of not reading or understanding
12 the moving papers that were previously submitted. Not only is it clear that this Court properly
13 considered these arguments in entering the Order the Compel, but the legal standard for a Motion
14 to Reconsider cannot be satisfied by Plaintiff simply rehashing prior unsuccessful arguments
15 almost word-for-word.⁷

16 Then, Plaintiff once more tries to distinguish this case from *Milliman* on the basis that she
17 alleges that CTC is in possession of many of Spirit's books and records concerning the transactions
18 at issue, and also complains that pursuing a simultaneous litigation and arbitration will be overly
19 burdensome and inefficient. These arguments were also already discussed in Plaintiff's prior
20 Opposition, and thus cannot be properly repeated here in support of her argument for
21 reconsideration. See Opposition to the Motion to Compel, at p. 29. Again, there is no doubt this
22 Court reviewed and understood Plaintiff's arguments before issuing the Minute Order and Order
23 to Compel.

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26 ⁷ Plaintiff also claims that Defendant's "boldly cut and paste" from the *Milliman* decision, when that decision was
27 cited and included in the underlying briefing in support of CTC's prevailing arguments, and is thus properly quoted
28 in this Court's Order to Compel memorializing the same. It is common for a court decision to include citations and
quotes from other relevant cases in the same jurisdiction. Again, this is simply Plaintiff refusing to acknowledge that
CTC properly included briefing in the Proposed Order in accordance with this Court's instructions.

1 It should also be noted that similar contentions were also refuted by the Nevada Supreme
2 Court in *State ex rel. Comm'r of Ins.*, which stated “[t]he burden of simultaneous arbitration and
3 litigation arises where, as here, not all persons involved in a dispute are subject to arbitration, an
4 inconvenience that may be mitigated by staying litigation while arbitration runs its course.” The
5 Receiver admits that following this Court’s entry of the Order to Compel at issue here, as well as
6 a similar order compelling the arbitration of all claims against Criterion Claim Solutions of Omaha,
7 Inc., several other defendants have contacted Spirit to suggest that this case be stayed pending the
8 necessary arbitrations. That should be good news for Plaintiff, but instead, Plaintiff irrationally
9 states that “it will not agree to any such stay” as it believes it would disrupt the liquidation
10 proceedings. It may be wise for Plaintiff to finally heed the advice of the Nevada Supreme Court
11 and consider a stay. However, if Plaintiff fails to do so, she cannot then complain to this Court
12 about any “self-inflicted” procedural wounds that she suffers in the future, and they certainly do
13 not provide her with a basis to argue for reconsideration here.

14 **5. The Order to Compel Properly Describes the Jurisdictional Effect of NRS**
15 **696B and is Entirely Consistent with the Receivership Order.**

16 Finally, Plaintiff seeks clarification of the Order to Compel by asking for the removal of
17 the reference made to NRS 696B. This is yet another request by Plaintiff to remove language
18 concerning an issue that was thoroughly briefed by the Parties, reviewed by this Court reaching its
19 correct decision, and therefore properly included in the Order to Compel in accordance with this
20 Court’s instructions in its Minute Order.

21 Plaintiff repeats her argument that NRS 696B.200 should somehow give this Court
22 exclusive jurisdiction over a claim between CTC and Plaintiff. It does not. As previously
23 explained, NRS 696B.200 provides that a Nevada court “has jurisdiction” in an action brought by
24 an insurance receiver against certain persons, including managers, organizers, and promoters of an
25 insurer. However, there is absolutely nothing in the statute that would support an argument that
26 this grant of jurisdiction is exclusive, or that it otherwise prohibits the enforcement of an agreement
27 to arbitrate.

28 //

1 Also, Plaintiff's argument is again wholly inconsistent with prior Nevada decisions. As
2 already discussed *ad nauseam* in this opposition as well as in the underlying moving papers, the
3 prior decisions in *Milliman* and *State ex rel. Comm'r of Ins.* show that claims brought by a Receiver
4 to pursue against third-parties can absolutely be compelled to proceed in arbitration when they are
5 subject to an enforceable arbitration agreement, such as here, whereby the FAA preempts any state
6 law to the contrary. There is no support for Plaintiff's argument whatsoever.

7 Likewise, Plaintiff is wrong in arguing that this somehow conflicts with Judge Allf's prior
8 receivership order issued in Case No. A-19-787325. It does not. As previously explained in CTC's
9 Reply, the order appointing Richardson as permanent receiver for Spirit gives her the power to
10 commence an arbitration against a third-party, stating that she has "the power to **initiate and**
11 **maintain actions at law or equity, in this and other jurisdictions**" and to "[i]nstitute and
12 prosecute, in the name of [Spirit] or in her own name, any and all suits, to defend suits in which
13 [Spirit] or the Receiver is a party in this state or elsewhere, whether or not such suits are pending
14 as of the date of this Order, to abandon the prosecution or defense of such suits, legal proceedings
15 and claims which she deems inappropriate, **to pursue further and to compromise suits, legal**
16 **proceedings or claims on such terms and conditions as she deems appropriate.**" Exhibit 1 to
17 the Opposition, Section 15(a)(ii), p.9, ln. 24-25; Section 15(h), pp. 10-11 (emphasis added). In
18 addition, the language granting the Receiver the right to "initiate and maintain actions at law or
19 equity, **in this and other jurisdictions**" directly contradicts Plaintiff's argument that NRS 696B
20 mandates that Nevada is the exclusive forum in which the Receiver may pursue her claims.

21 So there can be no doubt, *Milliman* and *State ex rel. Comm'r of Ins.* also dealt with almost
22 identical language in their prior receivership order, with the *Milliman* Court stating the following,
23 which was subsequently upheld by the Nevada Supreme Court:

24 Moreover, nothing in the Nevada Liquidation Act precludes a
25 liquidator from arbitrating its claims. On the contrary, the
26 Receivership Order entered pursuant to the Act expressly authorizes
27 Plaintiff to "initiate and maintain actions at law or equity or any
28 other type of action or proceeding of any nature, in this and other
jurisdictions," and to "[i]nstitute and prosecute ... **any and all**
suits and other legal proceedings" on behalf of NHC.

1 Exhibit B to CTC's Reply to the Motion to Compel, at p. 9. (emphasis added) (internal cites
2 omitted). Therefore, there can be no argument that NRS 696B (as part of the Nevada Liquidation
3 Act) does not prohibit arbitration, and the Receiver is absolutely entitled to pursue her claims
4 against CTC in arbitration pursuant to the Receivership Order.⁸

5 Plaintiff's last argument is to once again try to distinguish this case from *Milliman*, pointing
6 out that CTC-CA and CTC-MO made prior disclosures to the Receiver in her role as Commissioner
7 of Insurance stating that they were "integrally involved" in Spirit's formation and organization,
8 and that CTC-MO was the "ultimate controlling entity" and "program manager" of Spirit. Instead
9 of supporting Plaintiff's argument, this is just another example of the Receiver being continually
10 informed and about the structure and relationship between CTC and Spirit, and her explicit
11 approval of the same. It is duplicitous for Plaintiff to now allege that the relationship between
12 CTC and Spirit, including the CTC Agreement and its arbitration provision, should suggest some
13 sort of criminal or unethical behavior on behalf of CTC when it is undisputed that Plaintiff always
14 had actual knowledge of the relationship between the parties, received frequent documents and
15 information in her role as the state insurance regulator, and directly approved the CTC Agreement.

16 IV. CONCLUSION

17 As provided herein, this Court properly entered the Order to Compel, which was provided
18 by CTC in the form of a Proposed Order that was consistent with this Court's Minute Order
19 concerning the same. Plaintiff intentionally fail to cite to the proper reconsideration standard
20 because she knows that her rehashed arguments fall woefully short of this legal standard. Plaintiff's

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27 ⁸ It should be noted that the Receivership Order was drafted and submitted as a Proposed Order by the same attorneys
28 representing Plaintiff in this action. As explained herein, it is evident that the Receivership Order does not prohibit
the Receiver from initiating an arbitration against CTC, but even if it did, it would be an artificial restriction placed
on the Receiver by her own attorneys, not a requirement of Nevada law.

1 arguments for reconsideration are not only deficient as a matter of law, but also factually inaccurate
2 and unconvincing. For all of these reasons, this Court should deny Plaintiff's Motion in its
3 entirety.

4 DATED this 13th day of August, 2020.

5 SALTZMAN MUGAN DUSHOFF

6
7 By 

8 MATTHEW T. DUSHOFF, ESQ.
9 Nevada Bar No. 004975
10 JORDAN D. WOLFF, ESQ.
11 Nevada Bar No. 014968
12 1835 Village Center Circle
13 Las Vegas, Nevada 89134

14 Attorneys for Defendants
15 **CTC TRANSPORTATION INSURANCE**
16 **SERVICES OF MISSOURI, LLC; CTC**
17 **TRANSPORTATION INSURANCE**
18 **SERVICES LLC; and CTC**
19 **TRANSPORTATION INSURANCE**
20 **SERVICES OF HAWAII LLC**
21
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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of SALTZMAN MUGAN DUSHOFF, and that on the 13th day of August, 2020, I caused to be served a true and correct copy of the foregoing **DEFENDANTS CTC TRANSPORTATION INSURANCE SERVICES OF MISSOURI, LLC; CTC TRANSPORTATION INSURANCE SERVICES LLC; AND CTC TRANSPORTATION INSURANCE SERVICES OF HAWAII LLC'S OPPOSITION TO PLAINTIFF'S MOTION FOR RECONSIDERATION AND/OR CLARIFICATION OF THE COURT'S JULY 17, 2020 ORDER REGARDING THE CTC DEFENDANTS' MOTION TO COMPEL ARBITRATION** 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 the Court's facilities to those parties listed below:

Barbara D Richardson:

Andrea Rosehill (rosehilla@gtlaw.com)
Mark Ferrario (ferrariom@gtlaw.com)
Megan Sheffield (sheffieldm@gtlaw.com)
Kara Hendricks (hendricksk@gtlaw.com)
LVGT docketing (lvitdock@gtlaw.com)
Andrea Flintz (flintza@gtlaw.com)
Kyle Ewing (ewingk@gtlaw.com)

Thomas Mulligan:

William Urga (wru@juvlaw.com)
David Malley (djm@juvlaw.com)
Michael Ernst (mre@juvlaw.com)
Linda Schone (ls@juvlaw.com)

CTC Transportation Insurance Services of Missouri, LLC:

Matthew Dushoff (mdushoff@nvbusinesslaw.com)
Jordan Wolff (jwolff@nvbusinesslaw.com)

Criterion Claims Solutions of Omaha, Inc.:

Joshua Dickey (jdickey@baileykennedy.com)
John Bailey (jbailey@baileykennedy.com)
Bailey Kennedy, LLP (bkfederaldownloads@baileykennedy.com)
Rebecca Crooker (rcrooker@baileykennedy.com)

Chelsea Holding Company, LLC:

L. Christopher Rose (lcr@h2law.com)
Julia Diaz (jd@h2law.com)
Susan Owens (sao@h2law.com)
Kirill Mikhaylov (kvm@h2law.com)
William Gonzales (wag@h2law.com)

Lexicon Insurance Management LLC, a North Carolina LLC:

Sean Owens (sowens@grsm.com)
Gayle Angulo (gangulo@grsm.com)
Robert Larsen (rlarsen@grsm.com)
Wing Wong (wwong@grsm.com)
E-serve GRSM (WL_LVSupport@grsm.com)

James Marx:

Efile LasVegas (efilelasvegas@wilsonelser.com)
Sheri Thome (sheri.thome@wilsonelser.com)
Lani Maile (lani.maile@wilsonelser.com)

Scott McCrae:

Tamara Peterson (tpeterson@petersonbaker.com)
Nikki Baker (nbaker@petersonbaker.com)
Erin Parcells (eparcells@petersonbaker.com)
David Astur (dastur@petersonbaker.com)

Brenda Guffey:

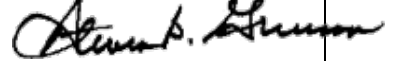
Copy Room (efile@alversontaylor.com)
Kurt Bonds (kbonds@alversontaylor.com)

Other Service Contacts not associated with a party on the case:

Olivia Swibies (oswibies@nevadafirm.com)
Alejandro Pestonit (apestonit@nevadafirm.com)
Richard Holley, Esq. (rholley@nevadafirm.com)
Mary Langsner (mlangsner@nevadafirm.com)
Thomas McGrath (tmcgrath@tysonmendes.com)
Scarlett Fisher (sfisher@tysonmendes.com)
Christopher Lund (clund@tysonmendes.com)
Christina Espinosa (cespinosa@tysonmendes.com)
Denise Doyle (service@cb-firm.com)



An Employee of SALTZMAN MUGAN DUSHOFF



OPPM

JOHN R. BAILEY
Nevada Bar No. 0137

JOSHUA M. DICKEY
Nevada Bar No. 6621

REBECCA L. CROOKER
Nevada Bar No. 15202

BAILEY ♦ KENNEDY

8984 Spanish Ridge Avenue
Las Vegas, Nevada 89148-1302
Telephone: 702.562.8820
Facsimile: 702.562.8821

JBailey@BaileyKennedy.com

JDickey@BaileyKennedy.com

RCrooker@BaileyKennedy.com

*Attorneys for Defendant
Criterion Claim Solutions of Omaha, Inc.*

DISTRICT COURT

CLARK COUNTY, NEVADA

BARBARA D. RICHARDSON IN HER
CAPACITY AS THE STATUTORY
RECEIVER FOR SPIRIT COMMERCIAL
AUTO RISK RETENTION GROUP, INC.,

Plaintiff,

vs.

THOMAS MULLIGAN, an individual; CTC
TRANSPORTATION INSURANCE SERVICES
OF MISSOURI, LLC, a Missouri Limited
Liability Company; CTC TRANSPORTATION
INSURANCE SERVICES LLC, a California
Limited Liability Company; CTC
TRANSPORTATION INSURANCE SERVICES
OF HAWAII LLC, a Hawaii Limited Liability
Company; CRITERION CLAIMS SOLUTIONS
OF OMAHA, INC., a Nebraska Corporation;
PAVEL KAPELNIKOV, an individual;
CHELSEA FINANCIAL GROUP, INC., a
California Corporation; CHELSEA FINANCIAL
GROUP, INC., A Missouri Corporation;
CHELSEA FINANCIAL GROUP, INC., a New
Jersey Corporation d/b/a CHELSEA PREMIUM
FINANCE CORPORATION; CHELSEA
FINANCIAL GROUP, INC., a Delaware
Corporation; CHELSEA HOLDING
COMPANY, LLC, a Nevada Limited Liability
Company; CHELSEA HOLDINGS, LLC, a
Nevada Limited Liability Company;

Case No. A-20-809963-B

Dept. No. XIII

**DEFENDANT CRITERION CLAIM
SOLUTIONS OF OMAHA, INC.'S
OPPOSITION TO PLAINTIFF'S
MOTION FOR RECONSIDERATION
AND/OR CLARIFICATION OF THE
COURT'S JULY 22, 2020 ORDER
REGARDING CRITERION CLAIM
SOLUTIONS OF OMAHA, INC.'S
MOTION TO COMPEL ARBITRATION**

FOURGOREAN CAPITAL, LLC, a New Jersey Limited Liability Company; KAPA MANAGEMENT CONSULTING, INC., a New Jersey Corporation; KAPA VENTURES, INC., a New Jersey Corporation; GLOBAL FORWARDING ENTERPRISES LIMITED LIABILITY COMPANY, a New Jersey Limited Liability Company; GLOBAL CAPITAL GROUP, LLC, a New Jersey Limited Liability Company; GLOBAL CONSULTING; NEW TECH CAPITAL, LLC, a Delaware Limited Liability Company; LEXICON INSURANCE MANAGEMENT LLC, a North Carolina Limited Liability Company; ICAP MANAGEMENT SOLUTIONS, LLC, a Vermont Limited Liability Company; SIX ELEVEN LLC, a Missouri Limited Liability Company; 10-4 PREFERRED RISK MANAGERS INC., a Missouri Corporation; IRONJAB LLC, a New Jersey Limited Liability Company; YANINA G. KAPELNIKOV, an individual; IGOR KAPELNIKOV, an individual; QUOTE MY RIG LLC, a New Jersey Limited Liability Company; MATTHEW SIMON, an individual; DANIEL GEORGE, an individual; JOHN MALONEY, an individual; JAMES MARX, an individual; CARLOS TORRES, an individual; VIRGINIA TORRES, an individual; SCOTT McCRAE, an individual; BRENDA GUFFEY, an individual; 195 GLUTEN FREE LLC, a New Jersey Limited Liability Company, DOE INDIVIDUALS I-X; and ROE CORPORATE ENTITIES I-X,

Defendants.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

In the face of a recent definitive decision by the Nevada Supreme Court involving this very Receiver, the Receiver refused to honor the arbitration clause in the very agreement it admits is valid and enforceable. After extensive briefing in which the Receiver largely regurgitated the same unsuccessful arguments she made in the *Milliman* case, this Court granted Criterion Claim Solutions of Omaha, Inc.’s (“Criterion”) Motion to Compel Arbitration (the “Motion to Compel”). The Order signed by this Court accurately reflects its ruling.

Undeterred, and with apparent disregard for the preservation of Spirit Commercial’s (“Spirit”) assets and this Court’s resources, the Receiver filed a Motion for Reconsideration and/or Clarification of the Court’s July 22, 2020 Order Regarding Criterion Claim Solutions of Omaha, Inc.’s Motion to Compel Arbitration (the “Motion”). In the Motion, the Receiver again regurgitates and repackages arguments that have been rejected not only by Judge Delaney and the Nevada Supreme Court in the *Milliman* case, but also this Court. The Motion is baseless. It raises no new issue of law or fact that could not have been made in connection with Criterion’s Motion to Compel. Indeed, the Receiver’s attempt to distinguish *Milliman* from this case could have been made in its Opposition to Criterion’s Motion to Compel. Moreover, the Receiver’s belated attempt to distinguish *Milliman* is not only meritless, but it is also belied by the Receiver’s own action in copying and pasting her arguments from *Milliman* into the Opposition to Criterion’s Motion to Compel.

Even if the Receiver met the stringent standard for reconsideration, her arguments (both those previously made and those waived by neglecting to raise them in opposing the Motion to Compel) fail as a matter of law. For these reasons, the Court should deny the Receiver’s Motion and award Criterion its attorneys’ fees and costs.

II. LEGAL ARGUMENT

A. The Receiver Lacks Sufficient Cause to Bring a Motion for Reconsideration

To move for reconsideration, a party must have “sufficient cause.” *Trail v. Faretto*, 91 Nev. 401, 403, 536 P.2d 1026, 1027 (1975). However, a court may only “reconsider a previously decided issue if substantially different evidence is subsequently introduced or the decision is clearly erroneous.” *Masonry & Tile Contrs. v. Jolley, Urga & Wirth Ass’n*, 113 Nev. 737, 741, 941 P.2d 486, 489 (1997). “Only in *very rare instances in which new issues of fact or law are raised* supporting a ruling contrary to the ruling already reached should a motion for rehearing be granted.” *Moore v. City of Las Vegas*, 92 Nev. 402, 405, 551 P.2d 244, 246 (1976) (emphasis added). This is **not** one of those instances.

Here, the Receiver raises no new issues of fact or law that could not have been raised in its Opposition to the Motion to Compel. Instead, the Receiver simply regurgitates arguments made in

1 opposing Criterion’s Motion to Compel *and* made to both the district court¹ and the Nevada
2 Supreme Court² in *State ex rel. Commissioner of Insurance v. Milliman*. Moreover, the Receiver
3 raises *new* arguments as to why she should not be compelled to arbitrate that could have been (but
4 were not) raised in connection with Criterion’s Motion to Compel.

5 The Receiver argues for the first time that Criterion’s role as Spirit’s claims administrator
6 somehow excuses the Receiver from arbitration. Criterion’s contractual role as Spirit’s claims
7 administrator is not a new fact, and the Receiver does not raise any issues of law that were
8 unavailable at the time this Court granted Criterion’s Motion to Compel. This argument accordingly
9 fails to meet the standard for a motion to reconsideration.

10 The Receiver then raises the now-familiar arguments; namely: (i) the arbitration provision
11 was the “instrument of a criminal enterprise”; (ii) the FAA is reverse-preempted by the McCarran-
12 Ferguson Act; and (iii) the arbitration provision does not encompass all of the Receiver’s claims
13 against Criterion. Each of these arguments was made in the Receiver’s Opposition to Criterion’s
14 Motion to Compel and the Court subsequently rejected each of them. (Opp. to Mot. to Compel ¶¶
15 8:18–10:9, 10:21–14:22, 16:2–18:7; Min. Order, July 6, 2020). Without new issues of law or fact,
16 the Receiver’s “sufficient cause” consists of nothing more than a disagreement with the language of
17 this Court’s Order granting Criterion’s Motion to Compel—language which, at the Court’s
18 instruction, tracked the parties’ briefing of the issue. (Mot. for Recons. 3:15–18; Min. Order, July 6,
19 2020). In sum, the Receiver presents no basis for the Court to reconsider its Order on Criterion’s
20 Motion to Compel. The Motion should therefore be denied on this basis alone.

21 Nonetheless, even if the Receiver could satisfy the stringent standards for reconsideration,
22 her arguments fail as a matter of law.

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26 ¹ *State ex rel. Comm’r of Ins. v. Milliman, Inc.*, No. A-17-760558-B, slip op. (Nev. Dist. Ct.
27 Mar. 12, 2018).

28 ² *State ex rel. Comm’r of Ins. v. Eighth Judicial Dist. Ct.*, No. 77682, 2019 Nev. Unpub.
LEXIS 1366 (Nev. Dec. 19, 2019).

1 **B. The Order Granting Criterion’s Motion to Compel Was Prepared in Conformity**
2 **with this Court’s Direction**

3 On July 6, 2020, this Court issued a minute order granting Criterion’s Motion to Compel.
4 The Court stated that it considered the Nevada Supreme Court’s reasoning in *State ex rel.*
5 *Commissioner of Insurance v. Milliman* to be “persuasive, if not binding, authority in what appears
6 to be a case involving Plaintiff addressing similar issues regarding arbitration that have been
7 proffered by Plaintiff in this case,” and that any distinctions raised by the Receiver “did not warrant
8 a different result.” (Min. Order, July 6, 2020).

9 The Court then directed Criterion “to submit a proposed order consistent herewith and with
10 briefing supportive of the same.” (*Id.*). Criterion accordingly submitted an order in conformity with
11 the Court’s directive, which the Court signed on July 22, 2020.

12 **C. Criterion’s Contractual Relationship with Spirit Does Not Alter the Receiver’s**
13 **Obligation to Arbitrate All Claims**

14 The Receiver argues that the Court should reconsider its decision to compel arbitration
15 because it failed to include in its Order a discussion of Criterion’s role as Spirit’s claims
16 administrator. (Mot. for Recons. 7:2–3). Even had the Receiver not waived this argument by failing
17 to raise it in opposing the Motion to Compel, Criterion’s contractual relationship with Spirit would
18 not have affected the Court’s analysis.

19 First, Criterion was an entity separate and distinct from Spirit, and the relationship between
20 the entities was based solely on the written agreement between them (the “Criterion/Spirit
21 Agreement”). As in *Milliman*,³ any duties that Criterion owed to Spirit were solely governed by the
22 terms of the contract. Indeed, the Receiver’s claims against Criterion stem from the Criterion/Spirit
23 Agreement and Criterion’s perceived deficiencies under it.⁴ Importantly, each and every one of the

24 _____
25 ³ Although the Receiver goes to great pains to distinguish *Milliman* from the facts of this case,
26 her efforts are belied by the fact that she copied and pasted nearly seven pages of her argument in
27 *Milliman* into her Opposition to the Motion to Compel.

28 ⁴ The Commissioner asserts the following claims against Criterion:

- Third Cause of Action—Breach of Contract (alleging that the “Criterion Agreement was a valid and enforceable contract,” that “Criterion failed to perform under the Criterion Agreement,” and

Receiver's claims is made on behalf of **Spirit**. Ultimately, the Receiver's claims each stem from an agreement which she concedes is valid and binding—an agreement that she alleges Criterion breached. Regardless of the services provided by Criterion pursuant to the Criterion/Spirit Agreement, the Receiver is *not* bringing any claims against Criterion on behalf of Spirit's policyholders or creditors. *State ex rel. Comm'r of Ins. v. Eighth Judicial Dist. Ct.*, at *3–*4. (“However, at issue here is not a creditor's claim against the Co-Op; at issue is Richardson's breach-

“[a]s a direct and proximate result of Criterion's conduct, Plaintiff has suffered damages...” (Compl. ¶¶ 275, 277–78));

- Ninth Cause of Action—Breach of the Implied Covenant of Good Faith and Fair Dealing arising out of the Criterion Agreement (alleging that “[e]very contract, including the Criterion Agreement, contains an implied covenant of good faith and fair dealing in which neither party will do anything which will injure the right of the other to receive the benefits under the contract.” (Compl. ¶ 322));
- Tenth Cause of Action—Nevada RICO (alleging that Criterion acted in contravention of the Criterion Agreement by “set[ting] claim reserves at artificially low amounts...with the intent of overstating Spirit's financial performance and the effect of exposing Spirit to claim excessive exposure for policy losses without reserving sufficient funds to pay the losses.” (Compl. ¶ 335(f)));
- Eleventh Cause of Action—Unjust Enrichment (alleging that Criterion wrongfully retained “funds and/or other property rightfully belonging to Spirit” which it received in connection with the Criterion Agreement (Compl. 346));
- Twelfth Cause of Action—Fraud (alleging that Criterion, who set claims reserves for Spirit pursuant to the Criterion Agreement, did so “at artificially low amounts... with the intent of overstating Spirit's financial performance.” (Compl. ¶ 354, 363));
- Thirteenth Cause of Action—Civil Conspiracy (alleging that Criterion “set claim reserves at artificially low amounts... with the intent of overstating Spirit's financial performance.” (Compl. ¶ 374(g)));
- Fifteenth Cause of Action—Avoidance of Transfers (alleging that Criterion, through its performance under the Criterion Agreement, received from CTC “funds and/or other property rightfully belonging to Spirit.” (Compl. ¶ 388));
- Sixteenth Cause of Action—NRS 696B Voidable Transfers (alleging that Criterion, through its performance under the Criterion Agreement, “transferred funds and/or other property rightfully belonging to Spirit.” (Compl. ¶ 401));
- Seventeenth Cause of Action—NRS 696B Recovery of Distributions and Payments (alleging that Criterion, through its performance under the Criterion Agreement, “transferred funds and/or other property rightfully belonging to Spirit.” (Compl. ¶ 412));
- Eighteenth Cause of Action—NRS 692C.402 Recovery of Distributions and Payments (alleging that Criterion, through its performance under the Criterion Agreement, “transferred funds and/or other property rightfully belonging to Spirit.” (Compl. ¶ 424)).

of-contract and tort claims against several third parties on behalf of the Co-Op, which happens to be in receivership.”).

D. The Criterion/Spirit Agreement is Valid and Not the “Instrument of a Criminal Enterprise”

The Receiver further asserts that she should be excused from arbitration due to Criterion’s role as an “instrument[] in a criminal enterprise.” (Mot. for Recons. 9:4). Presumably, if this outrageous allegation had any basis in fact, the associated entities and individuals would be facing criminal investigations and indictments—as in *Janvey*.⁵ *Janvey*’s facts involved a \$7 billion Ponzi scheme perpetuated over a decade—not a Receiver’s breach of contract claims brought on behalf of an insurance company with more than \$40 million in assets.

Instead, the Receiver, standing in Spirit’s shoes, is bringing civil claims against Criterion based on a contract that the Receiver concedes Criterion and Spirit entered into in 2011, five years before the Receiver alleges that any improprieties occurred. In 2011, Criterion was owned by a “third party,” – not Tom Mulligan. The arbitration provision was bargained for and agreed upon by two neutral parties, and the Court must enforce the terms of that agreement. *See Dean Witter Reynolds Inc. v. Byrd*, 470 U.S. 213, 218 (1985) (The FAA “leaves no place for the exercise of discretion by a district court, but instead mandates that district courts *shall* direct the parties to proceed to arbitration on issues as to which an arbitration agreement has been signed.”).

Further, the Receiver is trying to *enforce* other provisions arising from this same Agreement. The Receiver cannot, on the one hand, sue for purported breaches of the Agreement while on the other hand contend that she (on behalf of Spirit) is exempt from the Agreement’s terms. *See, e.g., Phillips v. Parker*, 106 Nev. 415, 418, 794 P.2d 716, 718 (1990) (“Parker may not rely on the agreement to prove ownership and simultaneously disavow the applicability of the arbitration clause.”); *see also Truck Ins. Exch. v. Swanson*, 124 Nev. 629, 636, 189 P.3d 656, 661 (2008) (under the doctrine of estoppel, “[a] nonsignatory is estopped from refusing to comply with an arbitration

⁵ *Janvey v. Alguire*, 847 F.3d 231, 235–36 (5th Cir. 2017).

1 clause ‘when it receives a ‘direct benefit’ from a contract containing an arbitration clause.’” (quoting
2 *Inter. Paper v. Schwabedissen Maschinen & Anlagen*, 206 F.3d 411, 418 (4th Cir. 2000)).

3 Ironically, the Receiver urges this Court to adopt rationale arising from the concurring
4 opinion in a Fifth Circuit case (rationale which was rejected by the majority opinion), while urging
5 this Court to reject the decision from the Nevada Supreme Court in *Milliman*, in which the Court
6 considered a nearly identical set of facts and rejected *this Receiver’s* nearly identical arguments.
7 The law is clear, this Receiver must pursue her claims against Criterion in arbitration.

8 **E. The Receiver’s Arguments Regarding the FAA and the McCarran-Ferguson Act**
9 **Do Not Change the Applicability of the Arbitration Provision**

10 The Receiver further argues (without providing any rationale) that the FAA does not govern
11 the terms of arbitration here. (Mot. for Recons. 10:20–25). This, of course, is false. As set forth in
12 the Criterion/Spirit Agreement, “[n]otwithstanding the provisions of paragraph 21, “Choice of Law,”
13 this agreement to arbitrate is governed by the Federal Arbitration Act, 9 U.S.C. 1 through 15
14 (1988).”⁶ The FAA provides that “a written provision in a contract “shall be valid, irrevocable, and
15 enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.”
16 9 U.S.C. § 2. This provision reflects “both a liberal federal policy favoring arbitration, and the
17 fundamental principle that arbitration is a matter of contract[.]” *AT&T Mobility LLC v. Concepcion*,
18 563 U.S. 333, 339 (2011) (quotation marks omitted) (citations omitted).

19 Further, although the FAA is applicable here, it is not reverse-preempted by the McCarran-
20 Ferguson Act. In order for reverse-preemption through the McCarran-Ferguson Act to occur: the
21 state statute at issue must be (1) for the purpose of regulating the business of insurance; (2) the
22 federal statute involved must not specifically relate to the business of insurance; and (3) the
23 application of the federal statute would “invalidate, impair or supersede” the state statute regulating
24 insurance. *Humana Inc. v. Forsyth*, 525 U.S. 599, 307 (1999). This analysis does not require the
25 court to analyze NRS 696B as a whole. “Analyzing the [liquidation act] as a whole in this situation
26 presents an opportunity for state legislatures to bypass the Supremacy Clause and federal law simply
27

28 ⁶ Criterion/Spirit Agreement § 13.

1 by including an unrelated provision into an act that generally regulates insurance.” *Milliman, Inc. v.*
2 *Roof*, 353 F. Supp. 3d 588, 603 (E.D. Ky. 2018).

3 Here, the Receiver points to NRS 696B.200(c) as the state statute at issue. (Mot. for Recons.
4 11:24–26). While NRS 696B.200(c) *does* relate to the business of insurance, it is wholly
5 inapplicable to the instant action. In sum, NRS 696B.200(c) discusses a court’s jurisdiction over
6 parties in *delinquency proceedings*. “Delinquency proceedings” are defined as “[a]ny proceeding
7 commenced ***against an insurer*** pursuant to this chapter for the purpose of conserving, rehabilitating,
8 reorganizing or liquidating the insurer.” NRS 696B.060(1). Unquestionably, this action does not
9 meet that definition. This action is being brought by the Receiver **on behalf of Spirit**. The court’s
10 analysis proceeds no further.

11 Assuming, *arguendo*, that NRS 696B.200(c) meets the first criteria set forth in *Humana*, the
12 McCarran-Ferguson Act would still not operate to preempt the FAA in this matter. While Criterion
13 does not dispute that the FAA bears no specific relation to the business of insurance, neither does it
14 “invalidate, impair, or supersede” the Nevada Liquidation Act. The Receiver implicitly concedes
15 this point, as she fails to specify exactly *how* the Nevada Liquidation Act will be impaired through
16 her arbitration of claims against Criterion.⁷ In fact, the Receiver’s only argument in opposing
17 Criterion’s Motion to Compel was that arbitration “would be a tremendous waste of resources and
18 the Receiver, who is pursuing claims for the victims of a fraudulent scheme that Criterion was
19 instrumental in, will directly bear the expense of both proceedings.” (Opp. to Mot. to Compel,
20 18:19–21).

21 Notwithstanding *this* Court’s rejection of this supposition, the Receiver fails to acknowledge
22 that this argument was also rejected by the district court in *Milliman*.⁸ The Receiver then petitioned
23 the Nevada Supreme Court for a writ of mandamus overturning Judge Delaney’s decision.⁹ In
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25 ⁷ The Receiver says only that arbitration would “thwart the insurance liquidator’s broad
26 statutory powers under Nevada’s Uniform Liquidation Act.” (Mot. for Recons. 13:1).

27 ⁸ *State ex rel. Comm’r of Ins. v. Milliman, Inc.*, No. A-17-760558-B, slip op. (Nev. Dist. Ct.
Mar. 12, 2018).

28 ⁹ *State ex rel. Comm’r of Ins. v. Eighth Judicial Dist. Ct.*, No. 77682, 2019 Nev. Unpub.
LEXIS 1366 (Nev. Dec. 19, 2019).

denying the Receiver’s petition, the Nevada Supreme Court affirmed this rejection, explicitly stating that it found no legal error in Judge Delaney’s decision:

Richardson claims the district court committed legal error by ordering arbitration despite her argument that the McCarran Ferguson Act, 15 U.S.C. § 1012, reverse-preempts the FAA. In her view, enforcement of an arbitration agreement against an insurance liquidator pursuing contract and tort damages against third parties would thwart the insurance liquidator’s broad statutory powers and the general policy under Nevada’s Uniform Insurance Liquidation Act (VILA), *see* NRS 696B.280, to concentrate creditor claims in a single, exclusive forum. However, at issue here is not a creditor’s claim against the Co-Op; at issue is Richardson’s breach-of-contract and tort claims against several third parties on behalf of the Co-Op, which happens to be in receivership.

State ex rel. Comm’r of Ins. v. Eighth Judicial Dist. Ct., No. 77682, 2019 Nev. Unpub. LEXIS 1366, at *3–*4 (Nev. Dec. 19, 2019).

Other jurisdictions have also considered this issue and arrived at the same decision:

“[a]rbitration does not deprive the Liquidator of any substantive rights, only altering the forum in which the Liquidator may pursue those rights.” *Milliman, Inc. v. Roof*, 353 F. Supp. 3d 588, 603 (E.D. Ky. 2018). Arbitration “does not alter the disposition of claims of the policy holders and does not ‘invalidate, impair, or supersede’ the [Liquidation Act] as a whole. The arbitration of the Liquidator’s claims against third party contractors does not impair the delinquency proceedings in state court, nor does it invalidate the protections of the [Liquidation Act].” *See also Suter v. Munich Reinsurance Co.*, 223 F.3d 150, 161 (3d Cir. 2000) (“This is not a delinquency proceeding or a proceeding similar to one. Nor is it a suit by a party seeking access to assets of the insurer’s estate. Moreover, even if it were such, the Superior Court would have express authority to enjoin the plaintiff from proceeding in the event that it were to interfere with the proceedings before it. What this proceeding is is a suit instituted by the Liquidator against a reinsurer to enforce contract rights for an insolvent insurer, which, if meritorious, will benefit the insurer’s estate. Accordingly, we fail to perceive any potential for interference with the Liquidation Act proceedings before the Superior Court.”).

The facts of this case lead to the same result. Arbitration does not preclude the Receiver from pursuing her claims against Criterion, nor will it impair the Liquidation Act in part or in whole.

1 **F. The Arbitration Provision in the Criterion/Spirit Agreement Encompasses Each**
2 **of the Receiver’s Claims**

3 The Receiver’s last-ditch argument is that even if the arbitration provision is valid, the
4 provision is narrow and inapplicable to all of her claims against Criterion.

5 In full, the arbitration provision in the Criterion/Spirit Agreement states:

6 **13. *Binding arbitration shall be the exclusive method for resolving***
7 ***disputes between the parties.*** Any dispute concerning the terms of this
8 agreement or performance by the parties under this agreement which
9 cannot be resolved by agreement of the parties shall be submitted to
10 binding arbitration before an arbitrator agreed upon by the parties. If the
11 parties cannot agree, then each party shall select an arbitrator and these
12 two arbitrators shall select a third arbitrator. The decision of the
13 arbitrator or arbitrators shall be final. The arbitrator or arbitrators
14 selected pursuant to this paragraph shall have significant property and
15 casualty insurance company background and experience. Each party
16 shall pay its own attorneys’ fees and any other expenses in connection
17 with the resolution of any dispute relating to this agreement.
18 Notwithstanding the provisions of paragraph 21, “Choice of Law,” this
19 agreement to arbitrate is governed by the Federal Arbitration Act, 9
20 U.S.C. 1 through 15 (1988).¹⁰

21 The language of this provision could be no clearer. “Binding arbitration shall be the
22 exclusive method for resolving disputes between the parties.” *See, e.g., Mentor Capital, Inc. v.*
23 *Bhang Chocolate Co.*, No. 3:14-CV-3630 LB, 2014 U.S. Dist. LEXIS 162857, at *7–*8 (N.D. Cal.
24 Nov. 19, 2014) (“The arbitration clause covers ‘any dispute’ between the parties. ***Any dispute.***”)
25 (emphasis added); *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 336 (2011) (enforcing
26 arbitration agreement providing “for arbitration of all disputes between the parties”); *Henderson v.*
27 *Watson*, No. 64545, 2015 Nev. Unpub. LEXIS 525, at *1 (Nev. April 29, 2015) (enforcing an
28 arbitration agreement “providing that all disputes would be resolved through binding arbitration”).

29 Accordingly, any claim brought in this litigation is subject to arbitration. And, contrary to
30 the Receiver’s misguided assertions, this provision does *not* limit arbitrable issues to those arising
31 from the terms of the Agreement. Rather, it provides Spirit and Criterion the option to first attempt
32 to resolve disputes arising under the Agreement between themselves. Should those attempts fail,
33 they must proceed to arbitration. All other disputes are automatically arbitrable.

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1 “In interpreting a contract, [Nevada courts] construe a contract that is clear on its face from
2 the written language, and it should be enforced as written... As a matter of public policy, Nevada
3 courts encourage arbitration and liberally construe arbitration clauses in favor of granting
4 arbitration.” *State ex rel. Masto v. Second Judicial Dist. Ct.*, 125 Nev. 37, 44, 199 P.3d 828, 832
5 (2009). While the Criterion/Spirit Agreement allows the Receiver to proceed to arbitrate any dispute
6 against Criterion, absent arbitration, the Receiver is barred from pursuing *any* claims against
7 Criterion.

8 **G. The Court Should Grant Criterion Attorneys’ Fees or Sanction the Receiver for**
9 **Bringing this Motion in Bad Faith**

10 NRS 18.010 allows a court to award attorneys’ fees to a prevailing party “when the court
11 finds that the claim, counterclaim, cross-claim or third-party complaint or defense of the opposing
12 party *was brought or maintained without reasonable ground* or to harass the prevailing party.”
13 NRS 18.010(2)(b) (emphasis added). The Court should “liberally construe the provisions of this
14 paragraph in favor of awarding attorney’s fees in all appropriate situations.” *Id.*

15 Absent new law or facts, the Court should decline to hear a motion for reconsideration.
16 Here, the Receiver has raised neither, and accordingly has no good cause in which to bring this
17 motion. Instead, she recycles arguments which were rejected: (1) in Judge Delaney’s Court; (2)
18 before the Nevada Supreme Court; and (3) by *this* Court. Such a tactic is blatant abuse of judicial
19 economy and a willful disregard for the law as it pertains to arbitration agreements.

20 Because orders from Judge Delaney, the Nevada Supreme Court, and this Court have not
21 effectively educated the Receiver in this regard, Criterion respectfully suggests that an award of
22 attorneys’ fees and costs to Criterion may have a more profound effect.

23 **III. CONCLUSION**

24 This Court has recognized that Nevada law compels the Receiver to proceed to arbitration
25 with any claims she wishes to bring against Criterion. The Receiver’s disagreement with this
26 Court’s Order and Nevada law does not constitute sufficient cause for which this Court should grant
27 the Motion. The Court should deny the Receiver’s Motion. Moreover, due to the Receiver’s
28

1 repeated and meritless attempts to avoid arbitration, the Court should award Criterion its attorneys'
2 fees and costs.

3 DATED this 19th day of August, 2020.

4 BAILEY ♦ KENNEDY

5

6

By: /s/ Joshua M. Dickey

7

JOHN R. BAILEY

8

JOSHUA M. DICKEY

9

REBECCA L. CROOKER

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Attorneys for Defendant

Criterion Claim Solutions of Omaha, Inc.

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CERTIFICATE OF SERVICE

I certify that I am an employee of BAILEY ♦ KENNEDY and that on the 19th day of August, 2020, service of the foregoing **DEFENDANT CRITERION CLAIM SOLUTIONS OF OMAHA, INC.'S OPPOSITION TO PLAINTIFF'S MOTION FOR RECONSIDERATION AND/OR CLARIFICATION OF THE COURT'S JULY 22, 2020 ORDER REGARDING CRITERION CLAIM SOLUTIONS OF OMAHA, INC.'S MOTION TO COMPEL ARBITRATION** was made by mandatory electronic service through the Eighth Judicial District Court's electronic filing system and/or by depositing a true and correct copy in the U.S. Mail, first class postage prepaid, and addressed to the following at their last known addresses:

MARK E. FERRARIO, ESQ.
KARA B. HENDRICKS, ESQ.
KYLE A. EWING, ESQ.
GREENBERG TRAURIG, LLP
10845 Griffith Peak Drive
Suite 600
Las Vegas, Nevada 89135

Email: ferrariom@gtlaw.com
hendricksk@gtlaw.com
ewingk@gtlaw.com

*Attorneys for Plaintiff Barbara D.
Richardson in Her Capacity as Statutory
Receiver for Spirit Commercial Auto Risk
Retention Group, Inc.*

KURT R. BONDS, ESQ.
ALVERSON TAYLOR & SANDERS
6605 Grand Montecito Parkway
Suite 200
Las Vegas, Nevada 89149

Email: kbonds@alversontaylor.com
efile@alversontaylor.com

Attorneys for Defendant Brenda Guffey

ROBERT S. LARSEN, ESQ.
WING YAN WONG, ESQ.
**GORDON REES SCULLY
MANSUKHANI, LLP**
300 South Fourth Street
Suite 1550
Las Vegas, Nevada 89101

Email: rlarsen@grsm.com
wwong@grsm.com

*Attorneys for Defendants Lexicon
Insurance Management LLC; Daniel
George; and ICAP Management
Solutions, LLC*

THOMAS E. MCGRATH, ESQ.
CHRISTOPHER A. LUND, ESQ.
TYSON & MENDES LLP
3960 Howard Hughes Parkway
Suite 600
Las Vegas, Nevada 89169

Email: tmcgrath@tysonmendes.com
clund@tysonmendes.com

*Attorneys for Defendants Pavel
Kapelnikov; Igor Kapelnikov; Yanina
Kapelnikov; Chelsea Financial Group,
Inc.; Global Forwarding Enterprises,
LLC; Kapa Management Consulting, Inc.;
and Kapa Ventures, Inc.*

SHERI M. THOME, ESQ.
**WILSON, ELSE, MOSKOWITZ,
EDELMAN & DICKER LLP**
6689 Las Vegas Boulevard South,
Suite 200
Las Vegas, Nevada 89119

Email: Sheri.Thome@wilsonelser.com
*Attorneys for Defendants James Marx;
Carlos Torres; Virginia Torres; and John
Maloney*

MATTHEW T. DUSHOFF, ESQ.
JORDAN D. WOLFF, ESQ.
SALTZMAN MUGAN DUSHOFF
1835 Village Center Circle
Las Vegas, Nevada 89134

Email: mdushoff@nvbusinesslaw.com
jwolff@nvbusinesslaw.com
*Attorneys for Defendants CTC
Transportation Insurance Services of
Missouri, LLC; CTC Transportation
Insurance Services LLC; and CTC
Transportation Insurance Services of
Hawaii LLC*

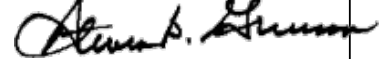
L. CHRISTOPHER ROSE, ESQ.
KIRILL V. MIKHAYLOV, ESQ.
WILLIAM A. GONZALES, ESQ.
**HOWARD & HOWARD
ATTORNEYS PLLC**
3800 Howard Hughes Parkway,
Suite 1000
Las Vegas, Nevada 89169

Email: lcr@h2law.com
kvm@h2law.com
wag@h2law.com
*Attorneys for Defendants Six Eleven LLC;
Quote My Rig, LLC; New Tech Capital
LLC; 195 Gluten Free LLC; 10-4
Preferred Risk Managers, Inc.; Ironjab,
LLC; Fourgorean Capital LLC; Chelsea
Holding Company, LLC; and Chelsea
Financial Group, Inc. (Missouri)*

TAMARA BEATTY PETERSON, ESQ.
NIKKI L. BAKER, ESQ.
DAVID E. ASTUR, ESQ.
PETERSON BAKER, PLLC
701 South 7th Street
Las Vegas, Nevada 89101

Email: tpeterson@petersonbaker.com
nbaker@petersonbaker.com
dastur@petersonbaker.com
*Attorneys for Defendants Matthew Simon
Jr. and Scott McCrae*

/s/ Karen Rodman
Karen Rodman, an Employee of
BAILEY ♦ KENNEDY



1 **RPLY**

2 **GREENBERG TRAURIG, LLP**

3 MARK E. FERRARIO, Bar No. 1625

4 KARA B. HENDRICKS, Bar No. 7743

5 KYLE A. EWING, Bar No. 14051

6 10845 Griffith Peak Drive, Suite 600

7 Las Vegas, NV 89135

8 Telephone: (702) 792-3773

9 Facsimile: (702) 792-9002

10 Email: ferrariom@gtlaw.com

hendricksk@gtlaw.com

ewingk@gtlaw.com

11 *Counsel for Plaintiff*

12 **DISTRICT COURT**

13 **CLARK COUNTY, NEVADA**

14 STATE OF NEVADA, EX REL.
15 COMMISSIONER OF INSURANCE,
16 BARBARA D. RICHARDSON, IN HER
17 OFFICIAL CAPACITY AS RECEIVER FOR
18 SPIRIT COMMERCIAL AUTO RISK
19 RETENTION GROUP, INC.,

20 Plaintiff,

21 v.

22 THOMAS MULLIGAN, et al.

23 Defendants.

Case No.: A-20-809963-B

Dept. No.: XIII

**REPLY IN SUPPORT OF PLAINTIFF'S
MOTION FOR RECONSIDERATION
AND/OR CLARIFICATION OF THE
COURT'S JULY 17, 2020 ORDER
REGARDING CTC DEFENDANTS'
MOTION TO COMPEL ARBITRATION**

Date of Hearing: August 31, 2020

Time: 9:00 a.m.

24 COMES NOW, Plaintiff Barbara D. Richardson, in her capacity as the Statutory Receiver for
25 Spirit Commercial Auto Risk Retention Group, Inc., (hereafter "Receiver") by and through her attorneys
26 of record, the law firm of Greenberg Traurig, LLP, and hereby files this Reply in Support of Plaintiff's
27 Motion for Reconsideration and/or Clarification of the Court's July 17, 2020 Order Regarding the CTC
28 Defendants' Motion to Compel Arbitration ("Reply").

//

1 This Reply is based upon the pleadings and papers on file herein, the following Memorandum
2 of Points & Authorities, and any and all oral arguments allowed by this Court at the time of hearing.

3 Dated this 24th day of August, 2020.

4 By: /s/ Kara B. Hendricks

MARK E. FERRARIO, Bar No. 1625
KARA B. HENDRICKS, Bar No. 7743
KYLE A. EWING, Bar No. 14051
GREENBERG TRAURIG, LLP
10845 Griffith Peak Drive, Suite 600
Las Vegas, NV 89135

5 6 7 8 9 MEMORANDUM OF POINTS & AUTHORITIES

10 I. INTRODUCTION

11 The Opposition goes to great lengths to ignore the facts alleged in this matter because doing so
12 justifies both reconsideration and denial of the CTC Defendants¹ request for arbitration. However,
13 disparaging counsel and claiming the facts of this matter are identical to the facts in the Nevada Co-
14 Op/Milliman case² serves no purpose other than to illustrate the weaknesses in the CTC Defendants'
15 arguments.

16 Reconsideration and/or clarification is warranted here because the Minute Order issued by the
17 Court after briefing of the CTC Defendants' Motion to Compel Arbitration, did not provide a basis for
18 the majority of the factual and legal conclusions that found their way into the order that issued thereafter.
19 And, as much as the CTC Defendants want this Court to ignore the alleged fraud that was present when
20 the arbitration agreements were signed, as well as the CTC Defendants' role in filtering millions of
21 dollars to individuals and entities they are affiliated with, such issues are critical to the Court's analysis
22 and are not issues that were considered in the Nevada Co-Op/Milliman case. Moreover, the CTC

23
24 ¹ Defendant CTC Transportation Insurance Service of Missouri, LLC ("CTC Missouri"); Defendant CTC
25 Transportation Insurance, LLC ("CTC California"); and Defendant CTC Transportation Insurance Service of
26 Hawaii, LLC ("CTC Hawaii") (Collectively "CTC" or "CTC Defendants").

27 ² The CTC Defendants continue to insist that the issues before the Court are identical to those raised in Case
28 No. A-17-760558-B brought by the Receiver of the Nevada Health Co-Op against actuary Milliman, Inc.
("Milliman") and other defendants ("Nevada Co-Op/Milliman case") and specifically the Motion to Compel
Arbitration filed by Milliman. As detailed herein, a separate analysis is needed.

1 Defendants' direct role in an Insurance Holding Company that was created to suggest there was some
2 legitimacy in the entities that formed Spirit and controlled Spirit's assets are factors that have a direct
3 impact on the arbitration request. Again, such were issues not addressed in by the District Court Judge
4 in the Nevada Co-Op/Milliman case or by the Nevada Supreme Court in the Writ that followed.

5 If the Court does not reconsider the impact the fraud perpetuated by the CTC had, the Court must
6 still opine regarding how claims asserted against CTC Hawaii, who did not have a written agreement
7 with Spirit, are compelled to arbitration. Similarly, clarification is needed as to how claims brought
8 against CTC California and CTC Missouri that are outside the timeframe of the applicable contracts are
9 also compelled to arbitration.

10 **II. RELEVANT BACKGROUND**

11 Underlying the claims asserted against the CTC Defendants is a vast fraudulent enterprise that
12 was facilitated by the CTC Defendants. The program administrator agreement that includes the
13 arbitration clause at issue, was created in an attempt to legitimize the CTC Defendants in the eyes of
14 insurance regulators and facilitated a scheme to siphon more than \$43 million from Spirit Commercial
15 Auto Risk Retention Group, Inc. ("Spirit") to individuals and/or entities affiliated with CTC.

16 The Receiver's Motion for Reconsider and/or Clarification ("Subject Motion") was filed because
17 the CTC Order to Compel:³ 1) avoids addressing the charade perpetrated by the CTC Defendants in
18 controlling Spirit; 2) does not accurately reflect a number of the facts of this matter; 3) goes far beyond
19 what was set forth in the July Minute Order;⁴ 4) includes findings that would require evidentiary
20 submittals; 5) does not explain how a party that did not contract with Spirit (CTC Hawaii) can be
21 compelled to arbitration; and 6) does not identify how claims arising before a contract was signed or
22 after a contract was terminated can be compelled to arbitration. Such issues are not adequately addressed
23 in the Opposition and reconsideration and/or clarification of the CTC Order to Compel is warranted.

24 ³ "CTC Order to Compel" refers to the order prepared by counsel for the CTC Defendants that was filed in this
25 matter on July 16, 2020 and titled "Order Granting Defendants CTC Transportation Insurance Services of
26 Missouri, LLC; CTC Transportation Insurances Services LLC; and CTC Transportation Insurance Services of
Hawaii LLC's Motion to Compel Arbitration."

27 ⁴ "July Minute Order" refers to the July 6, 2020 Minute Order on file herein relating to the CTC Defendants'
Motion to Compel Arbitration.

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1 enough to cover claims asserted by an entity (CTC Hawaii) that did not enter into an agreement with
2 Spirit, an analysis of the claims asserted by the Receiver that are outside the timeframe the parties
3 contracted for, or adopting the findings of a District Court Judge in a different matter that was first
4 attached to the CTC Defendants' reply brief. Counsel for the CTC Defendants went too far when they
5 prepared and submitted the CTC Order to Compel.⁶ The inclusion CTC's arguments without guidance
6 or direction from the Court is not consistent with the July Minute Order. Accordingly, reconsideration
7 and/or clarification is warranted.

8 **C. The Facts of this Case are Distinct from those Considered in the Nevada Co-**
9 **Op/Milliman Matter.**

10 The Opposition misses the point when it comes to the CTC Defendants' reliance on (and decision
11 to attach) the order entered by Judge Delaney in regard to actuary Milliman's request for arbitration in
12 the Nevada Co-Op matter. Here, the Court must do its own analysis of the facts of this case and the
13 language within the program administrator agreements between Spirit and CTC California and CTC
14 Missouri to determine if the FAA applies or if the Receiver's claim is pre-empted by the McCarren
15 Ferguson Act as well as the applicability NRS 686B. Just because Judge Delaney found an arbitration
16 provision included in an agreement between Nevada Co-Op and its actuary should be enforced, does
17 not require a finding that the arbitration provision in agreement between Spirit and CTC Missouri and/or
18 CTC California should be enforced. Notably, CTC Missouri and CTC California are related to Spirit
19 and were entities that were purportedly established to provide program administrator services to Spirit
20 under Nevada insurance law, but instead were actually utilized to siphon money to third parties. These
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22

23 ⁶ The July Minute Order simply provides that the Court:

24 being fully advised in the premises, and being persuaded that the Motion has merit, and
25 considering the Order Denying Petition for Writ of Mandamus in State ex rel. Comm'r of Ins. v.
26 Eighth Judicial District Court, Nevada Supreme Court Case No. 77682 to be persuasive, if not
27 binding, authority in what appears to be a case involving Plaintiff addressing similar issues
28 regarding arbitration that have been proffered by Plaintiff in this case, and determining that the
distinctions urged by Plaintiff do not warrant a different result, the Court GRANTS Defendants'
subject Motion.

See, July Minute Order on file herein.

1 factual distinctions are important. Critically, although the legal standards argued by the Plaintiffs' in
2 both cases may be similar, the facts are not. An independent analysis is necessary.

3 There is simply no basis to conclude this Court must reach the same conclusion as Judge Delaney
4 did in the Milliman case because similar legal authority was presented to the court in both case. First,
5 the July Minute Order does not reference Judge Delaney's ruling. Second, such an argument is
6 nonsensical and ignores the importance of the application of facts to law. The CTC Defendants' position
7 is akin to suggesting that every time a summary judgment motion is submitted to the Court that includes
8 case law regarding the standard of review and significance of disputed facts that each judge reviewing
9 a summary judgment motion would rule the same way. That is not the case. Third, the facts of this case
10 and the facts in the Nevada Co-Op/Milliman case are different. Like a Court analyzing a summary
11 judgment motion, the facts here must be considered and applied to the relevant case law before a
12 determination can be made regarding their applicability. This case does not ask the Court to review the
13 Milliman arbitration provision or a similar arbitration provision entered between an insurance company
14 and an actuary. The two cases are not the same and most importantly, because the arbitration provisions
15 and relationship between the parties are different, a separate analysis is required.

16 In an effort to rationalize attaching Judge Delaney's order in the Nevada Co-Op/Milliman case
17 to the CTC Order to Compel, the CTC Defendants attack counsel for the Receiver contending the
18 Opposition was a deliberate attempt to mischaracterize the prior briefing and mislead the Court. Such
19 theatrics are unnecessary and there is no factual basis for such arguments. Not only, is this entire line
20 of argument intended only to distract the Court from the underlying differences between the two cases,
21 but the CTC Defendants do not and cannot contest that the Nevada Co-Op/Milliman Order was first
22 attached to their Reply brief (which the Receiver did not have the ability to respond to). The fact that
23 the CTC Defendants referenced that Judge Delaney's order was upheld as part of the Supreme Court's
24 findings in the Writ in their motion to compel is of no consequence. The Nevada Co-Op/Milliman
25 matter is a different case, with different parties entering into different contracts for different reasons.
26 Just because both cases involve an arbitration provision and a receiver trying to salvage assets for an

insolvent insurance company does not mean the cases are identical. The decision relating to a motion to compel filed in the Nevada Co-Op/Milliman is not substitute a for an analysis of the facts of this matter.

D. The Nevada Supreme Court Writ Order was limited and the CTC Order to Compel Overstates the Same Warranting Reconsideration.

In addressing the application of the *Writ of Mandamus in State ex rel. Comm'r of Ins. v. Eighth Judicial District Court*, Nevada, Supreme Court Case No. 77682 (“the Writ”), the CTC Defendants again misconstrue the Receiver’s arguments in seeking reconsideration and/or clarification regarding the CTC Order to Compel. While conceding the Writ is not binding, the CTC Defendants continue to ignore the applicability of the Writ to the facts of this matter. However, the differences in the underlying cases and the limited issues the Supreme Court actually addressed in the Writ provide the basis for the relief now sought by the Receiver.

The point of the chart provided in the Motion for Reconsideration/Clarification was to illustrate the two-page decision comprising the totality of the Writ was limited and the Nevada Supreme Court did not address the substantive issues presented here. While the Nevada Supreme Court upheld Judge Delaney’s decision regarding the application of the McCarren Ferguson Act to the FAA based on the type of claims asserted against the actuary Milliman, the Supreme Court did not conduct an independent analysis that opined that the FAA was never pre-empted. Instead the Writ indicates that part of the basis for upholding Judge Delaney’s decision was because the issues before Judge Delany did not relate to a creditor claim, but a breach of contract and tort claim against third parties. As detailed in the Subject Motion seeking reconsideration and/or clarification, there are different claims and factual circumstances here that need to be independently evaluated. Because the Receiver has made claims on behalf of creditors and because the CTC Defendants are related to Spirit and not “third parties” it is legal error not to evaluate the impact of such issues. This is especially the case because the Writ indicated these issues were reasons Judge Delaney’s decision was upheld.

1 The five reasons provided in the Motion for reconsideration and/or clarification are further
2 explained below in light of the Opposition filed and the smoke screens the CTC Defendants attempted
3 to utilize to distract the Court from the importance of the issues presented.

4 **1. Reconsideration is Warranted Based on the Fraud Facilitated by the CTC Defendants.**

5 As an initial matter, contrary to the CTC Defendants' assertions, it is not improper for the
6 Receiver to raise the issue of fraud and the fact that Plaintiff should not be bound by an arbitration
7 agreement that was an instrument in a criminal enterprise. The Opposition's attempt to draw
8 distinctions from the holding in *Janvey* ring hollow as the CTC Defendants strategically ignore their
9 own wrong doing and the fact that CTC California and CTC Missouri and CTC Hawaii and Spirit were
10 all controlled by Defendant Mulligan who utilized an Insurance Holding Company structure to try and
11 legitimize the fleecing of Spirit by the CTC Defendants that were responsible for handling Spirit's
12 money and day to day operations.

13 Further, the fact that the claims herein are asserted by a receiver appointed by a Nevada district
14 court after declaring Spirit insolvent compared to a receiver appointed by a federal district judge at the
15 request of the SEC is of no consequence. Distinguishing between the employment contracts at issue in
16 *Janvey* opposed to the program administrator agreement here also serves no purpose. Indeed, the
17 important factor for the Court to consider is that arbitration agreements may be rejected when they are
18 instruments of a criminal enterprise. Here, the control Mulligan and the CTC Defendants asserted over
19 Spirit that led to the company's insolvency provide ample grounds to do so. *See, Janvey v. Alguire*, 847
20 F.3d 231, 246 (5th Cir. 2017) (concurring opinion). The Court cannot ignore what transpired after the
21 initial agreement between Spirit and CTC California was signed in 2011 and the millions of Spirit dollars
22 that have simply disappeared. The allegations in the Complaint provide a sufficient basis to conclude
23 that the program administrator agreement itself was part of the scheme to hide fraudulent activity while
24 giving the CTC Defendants an air of legitimacy as was the case in *Janvey*. *Id.* at 250. Indeed, the CTC
25 Defendants own arguments that information was provided to the Division of Insurance ("DOI") is
26 evidence of the scheme to hide the true nature of CTC's conduct. Notably, the fact that the very

1 information the CTC Defendants attempt to rely on was deemed to have contained significant
2 deficiencies and material misrepresentations regarding Spirit's actual finances, defeats CTC's
3 arguments.⁷

4 Additionally, the fact that the principals involved in the sham enterprise have yet to be convicted,
5 does not change the analysis. The FTI report (*i.e.*, the very own post-receivership independent auditor
6 of CTC Missouri) attached to the briefing of the underlying motion to compel, indicates that stealing
7 occurred and money siphoned away from Spirit's customers to line Mulligan and his affiliates' pockets
8 and this was done by and through CTC California and CTC Missouri under the "legitimate" program
9 administrator agreements which include the arbitration provision the CTC Defendants now seek to
10 enforce. The prior review by the DOI of the agreements at issue and the knowledge regarding the
11 Insurance Holding Company created by Mulligan also does not change the analysis. If the DOI had any
12 indication that CTC entities were not legitimately looking out for Spirit's best interest and instead
13 siphoning money to Mulligan and/or to other Mulligan related entities before receivership, such
14 contracts and structure would have never been approved. Now that the bad acts have come to light,
15 compelling arbitration sends a message condoning the criminal enterprise the CTC Defendants
16 participated in.

17 Interestingly, although the Opposition repeatedly advises the Court that the CTC Defendants are
18 in the exact same position as Milliman, it ignores the fact that in the Nevada Co-Op/Milliman matter
19 there were no allegations that the party seeking arbitration was controlled by the same person that
20 controlled and managed the insolvent insurance company. Milliman was also not a part of an Insurance
21 Holding Company that was established to defraud the state and customers seeking to purchase insurance.
22 Because such issues were not addressed in the Nevada Co-Op/Milliman matter, it is clear error to
23 summarily adopt the findings in the Writ and/or Judge Delaney's decision both of which are silent on

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25 ⁷ As detailed in paragraph 69 of the Complaint, on June 1, 2018, Spirit's former external auditor provided the
26 Division with notice of material misstatements in Spirit's annual financial statements, including concerns
27 regarding deferred tax assets, contributed capital, loss reserves, bad debts, poor collection history, failure to
28 collect premiums amounts due from CTC, failure of CTC to make payments on recorded assets, bad debt, and
concerns regarding policy cancellation dates and premium adjustments.

1 the impact such issues have on an arbitration provision. Accordingly, reconsideration is warranted and
2 the Court should undertake an evaluation of the allegations in the Complaint which include fraud,
3 conspiracy and RICO claims and the scheme perpetrated by the very parties that now want to hide behind
4 the arbitration provision and keep the extent of their wrongdoings from the Court.

5 **2. At a minimum the Court Must Remove Findings in the Order to Compel Indicating the**
6 **Arbitration Provision Was Not a Product of a Criminal Enterprise.**

7 As detailed in the Subject Motion, on pages 6-7 of the CTC Order to Compel, counsel for CTC
8 unabashedly included purported “findings of fact” concluding the arbitration provision at issue was not
9 the product of a criminal enterprise. The Opposition does not address this issue head-on and instead
10 tries to shift the focus to the DOI’s review of the documents. To be clear, there are reputable program
11 administrators in the insurance industry and shockingly Mulligan and the CTC Defendants did not
12 present their plan to defraud Spirit’s customers and siphon money away from what initially appeared to
13 be a legitimate business when they sought DOI approval. In any event, the DOI’s failure to immediately
14 determine Mulligan and CTC were setting up a criminal enterprise does not provide basis for the CTC
15 Order to Compel to boldly conclude “the arbitration provision of the CTC Agreement is valid and
16 enforceable, and *not the product of a “criminal enterprise.”*”⁸ (Emphasis added.) This self-serving
17 language included by counsel for the CTC Defendants goes far beyond what was set forth in the July
18 Minute Order and is factually unsupported and must be removed.

19 Moreover, as previously explained, even if the Court were to find the arbitration agreement valid
20 and enforceable, language in the order indicating that *the agreement was not the product of a criminal*
21 *enterprise* should be stricken. Indeed, in addition to the information set forth above, there are multiple
22 references in complaint to the wrongful and fraudulent acts of the CTC Defendants and efforts taken to
23 hide the truth from the DOI.⁹ A finding that the arbitration provision was “not the product of a criminal
24 enterprise” is not supported by any evidence and must be removed from the CTC Order to Compel. A
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26 ⁸ CTC Order to Compel, at 7.

27 ⁹ See e.g. ¶¶ 78, 80 -85, 93, 96, 100-110, 115-122, 194-196, 241-254, 255- 259.

1 failure to remove such language could be prejudicial to the Receiver moving forward to collect the tens
2 of millions of dollars Spirit is owed.

3 **3. The CTC Order is Inaccurate in Concluding all Claims Arise out of the CTC Agreements**
4 **and that the Appointment of a Receiver is Immaterial.**

5 The Receiver also sought reconsideration and/or clarification due to inaccurate conclusions in
6 the CTC Order to Compel that suggest “all claims arise” from the CTC Agreements without further
7 explanation and case specific information. In answer to questions posed by the Receiver regarding how
8 claims against a party that did not sign an agreement with Spirit can be compelled to arbitration and how
9 claims asserted outside the contract period Spirit had with CTC California and CTC Missouri are subject
10 to arbitration, CTC Defendants now blame the Receiver for a purported lack of clarity in the Complaint
11 instead of addressing the lack of legal support for their position.

12 Interestingly, when it comes to CTC Hawaii, CTC Defendants do not dispute it never had a
13 contract with Spirit. Instead, CTC Defendants now argue that all claims against CTC Hawaii should be
14 excluded from whatever legal proceeding Plaintiff brings. (Opp. at 19.) However, no motion to dismiss
15 was filed by CTC Hawaii for this Court to consider. If dismissal of CTC Hawaii was the goal, a motion
16 to dismiss CTC Hawaii should have been filed and the Receiver provided a full opportunity to respond
17 to the same and detail the basis for the claims against CTC Hawaii. Instead, CTC Hawaii was included
18 in the collective “CTC Defendants” compelling arbitration. This Court cannot compel arbitration when
19 there was not a contract between Spirit and CTC Hawaii in the first instance. Additionally, the Court
20 cannot dismiss a party based on arguments raised in an opposition to a motion to reconsider. Seeking
21 dismissal now is tantamount to an admission that there is no basis for claims against CTC Hawaii to be
22 arbitrated and must be reflected in the order issued by the Court compelling arbitration.

23 When it comes to CTC California and CTC Missouri, CTC Defendants concede that each entity
24 had a contract of limited duration with Spirit. CTC California was the program administrator for Spirit
25 from 2011-2016. Thereafter, CTC Missouri served as Spirit’s program administrator from 2016 to 2019.
26 As explained in the Subject Motion, during the time CTC California served as Spirit’s program
27

1 administrator, CTC Missouri controlled Spirit. And during the time CTC Missouri served in the program
2 administrator role, CTC California was utilized to record Spirit's business even though its program
3 administration agreement was terminated and it had no contractual relationship with Spirit. The actions
4 of each entity that occurred outside their contract period are not subject to arbitration. Once again, the
5 Opposition suggests any confusion is the Receiver's fault because the Complaint is not clear as to what
6 allegations against either entity is outside the contract period. However, the contract periods are
7 specified in the Complaint. *See e.g.*, Complaint ¶¶11, 12, 55. Furthermore, the fact that CTC Missouri
8 controlled Spirit when CTC California was the program administrator, and the fact that CTC California
9 was utilized to record Spirit's business even after its program administrator agreement terminated, is
10 further evidence of the sham and further supports arbitration. This is not an agency type relationship,
11 as suggested in footnote 16 to the Opposition, and if the CTC Defendants are now admitting that each
12 entity benefited as an agent of a different entity that had a contract with Spirit, grounds likely exist for
13 additional claims by the Receiver. The bottom line is if the Complaint was limited to simple breach of
14 contract claims (as alleged by Defendants), sorting out the fraud perpetuated by each of the CTC
15 Defendants and the structure they utilized to siphon money from Spirit would not be an issue. However,
16 the allegations in the Complaint go beyond contractual breaches and arbitration is not the appropriate
17 forum to resolve the same.

18 Furthermore, the CTC Defendants do not adequately address the fact that the Complaint also
19 asserts claims on behalf of Spirit's members, insured enrollees, and creditors. Spirit is seeking the return
20 of company assets and clawing back preferential distributions that were made by CTC to a number of
21 individuals and parties associated with CTC and Mulligan for the benefit of Spirit's members, insured
22 enrollees, and creditors as detailed in the 15th, 16th, 17th and 18th causes of action in the Complaint. Such
23 actions are expressly authorized under the Nevada liquidation statutes and directly affect creditor's
24 rights and should not be subject to arbitration. Further, the CTC Defendants' conclusion in the
25 Opposition that such issues were addressed in the Nevada Co-Op case or in the Writ are wrong. The
26 CTC Defendants' role in an Insurance Holding Company and the direct management control they had

1 of Spirit's finances are unique issues in this case. Indeed, it was the CTC Defendants that directly
2 transferred Spirit money to third parties. The role actuary Milliman had in the Nevada Co-Op case was
3 very different than the allegations in claims 15-18 in the Complaint that are asserted against the CTC
4 Defendants for voidable transfers. Notably, Milliman was never alleged to have direct management
5 control of the defunct insurance company's finances and was not alleged to have directly transferred
6 money belonging to Nevada Co-Op. Here, CTC made numerous transfers of Spirit funds under false
7 pretenses.¹⁰ The factual differences between the claims asserted against Milliman and the claims
8 asserted against the CTC Defendants warrants an independent analysis and a different result.

9 **4. The FAA and Nevada Law Do Not Require that all CTC Claims be Arbitrated and the**
10 **Court Should Reconsider and/or Clarify the CTC Order in this Regard.**

11 There is no support for the CTC Defendants' conclusion that courts uniformly reject the
12 argument that the McCarren Ferguson Act preempts the FAA. Although some Court have not accepted
13 the argument, they have done so after conducting an analysis of case specific facts including the parties
14 involved, the arbitration clause at issue, claims asserted and relevant state law. The Receiver sought
15 reconsideration and/or clarification here because the July Minute Order did not indicate the Court
16 conducted such an analysis and counsel's decision to cut and paste arguments from CTC Defendants'
17 brief into the CTC Order to Compel created an order that is inaccurate. In attempting to dispute the
18 Receiver's contention regarding the reverse preemption of the FAA by the McCarren Ferguson Act, the
19 Opposition resorts to name calling accusing Plaintiff of being "unreasonable", "irrational", and arguing
20 that Plaintiff's position is "patently unconscionable." Although the Receiver disagrees with counsel's
21 opinions and baseless assertions, what is important is that the Opposition avoids the real issues.

22 The CTC Defendants have yet to address the block quote they included in the CTC Order to
23 Compel from Judge Delaney in the Nevada Co-Op/Milliman matter that includes analysis regarding the
24 claims asserted by the receiver against Milliman that were drastically different than the case before this
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26 ¹⁰ See, Complaint Claims 15-18 and FTI report attached as Exhibit 2 to Plaintiff's Opposition to CTC
27 Defendants' Motion to Compel.

1 Court. Notably, when Judge Delaney concluded the standard for reverse preemption was not satisfied
2 her decision was based on fact specific analysis of the claims asserted against Milliman and her decision
3 in the block quote cited by the CTC Defendants included findings that:

- 4 • The standard for reverse preemption was not satisfied in that case, *because* the court
5 determined the pre-insolvency breach of contract and tort claims asserted against Milliman
6 did not implicate the business of insurance or interfere with the liquidator's statutory
7 function.
- 8 • The receiver's action against Milliman had no bearing on the administration, allocation or
9 ownership of NHC's property or assets which is the province of the Receivership Action.

10 CTC Order to Compel at 7. Here, the claims asserted against the CTC Defendants do implicate the
11 business of insurance and interfere with the liquidator's statutory function and have a direct bearing on
12 the administration and allocation of Spirit's property. When the Supreme Court upheld Judge Delaney's
13 ruling in the Writ, they found her analysis in this regard was not in clear error. In this case however, the
14 July Minute Order does not indicate an analysis was done and adopting the CTC Defendants' arguments
15 into the order is inadequate because the different claims asserted against the CTC Defendants (as
16 opposed to those asserted against Milliman) and because of the CTC Defendants' role in an Insurance
17 Holding Company.¹¹

18 As detailed in the Motion, if the Court contends the FAA is applicable, it would still be required
19 to analyze the applicability of the McCarran-Ferguson Act set forth in 15 U.S.C. §§ 1011-1015 to the
20 facts of this matter. The Supreme Court created a three-part test to determine whether reverse-
21 preemption of federal law through McCarran-Ferguson occurs. Specifically, a court is to examine
22 whether: 1) the state statute was enacted for the purpose of regulating the business of insurance; 2) the
23 federal statute involved "does not specifically relat[e] to the business of insurance"; and 3) the
24 application of the federal statute to the facts of the case would "invalidate, impair, or supersede" the
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26 ¹¹ Instead of addressing the application of facts to law, the CTC Defendants again argue that because similar law
27 was presented to the Court in the Nevada Co-Op Milliman case that the outcome of both cases must be the same.
28 However, most lawyers learn in law school that application of the facts to the applicable law is determinative.

1 state statute regulating insurance. *Humana Inc. v. Forsyth*, 525 U.S. 299, 307, 119 S.Ct. 710, 142
2 L.Ed.2d 753 (1999). Such factors are not adequately addressed in the CTC Order to Compel or the
3 Opposition. Furthermore, when the Supreme Court test is applied, a different result is reached as each
4 prong of the test is met for reverse-preemption because of CTC's role in forming, organizing and
5 managing Spirit and the claims asserted.

6 Other issues that must be addressed in the CTC Order to Compel include reference to District of
7 Columbia law and counsel's opinions regarding the Receiver's actions. Indeed, the CTC Defendants'
8 continued reliance on District of Columbia law is equally confounding and there is nothing in the July
9 Minute Order that supports reliance on the same or the result that the CTC Defendants are seeking.
10 Additionally, the Receiver renews its request that the Court should strike all references in the CTC Order
11 to Compel in which counsel for CTC Defendants opines as to what Plaintiff "sought" or "tried" to do.
12 The underlying briefs speak for themselves and the self-serving conclusion have no place the Court's
13 ultimate order and were not addressed in the Opposition.

14 **5. The Purported Legal Conclusions regarding NRS 696B Should Be Stricken from the**
15 **CTC Order to Compel.**

16 The fifth reason for reconsideration and/or clarification identified in the subject Motion relates
17 to language in the CTC Order to Compel that references NRS 696B.200 and appears to have been an
18 attempt to rewrite the statutory provisions and strip the jurisdiction provided to Nevada courts by the
19 legislature to hear claims brought by a receiver. Further, the language in the Order to Compel appears
20 to improperly attack and contradict the Receivership Order issued by Judge Allf in Case No. A-19-
21 787325-B.¹²

22 To put things in context, the CTC Order to Compel, boldly concludes that NRS 696B.200 has
23 no bearing on the enforceability of arbitration provisions pursuant to the FAA and in so doing relies on
24 the Writ and Judge Delaney's order in the Nevada Co-Op/Milliman matter. (CTC Order to Compel at
25 9). However, neither the Nevada Supreme Court or Judge Delaney opined that the FAA always

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27 ¹² See Order, attached to Opposition, exhibit pages 001- 015.

1 preempts Nevada state law concerning arbitration and neither Court analyzed the facts of this matter.
2 As explained in the underlying Motion, the inclusion of such language in the order is tantamount to
3 rewriting Judge Allf's Receivership Order and altering the statutory framework of NRS 696B.
4 Additionally, because CTC California and CTC Missouri not only served as Spirit's program
5 administrator, but also were "integrally involved" in the Spirit's initial formation and organization, NRS
6 696B.200 is implicated. Importantly, this statute provides courts in Nevada jurisdiction over persons
7 and entities that served as managers, trustees, directors, organizers and promoters of the insurer or others
8 with similar positions and responsibilities. Specifically, the statute states:

9
10 **A court of this state in which an order of rehabilitation or liquidation has been**
11 **entered in delinquency proceedings against a domestic insurer or alien insurer domiciled**
12 **in this state, has jurisdiction also over persons, served as provided in subsection 2, in an**
13 **action brought by the insurer's receiver on or arising out of such obligation or relationship,**
14 **as follows:**

- 15 (a) Persons obligated to the insurer as a result of agency or brokerage or transactions
16 between such persons and the insurer;
17 (b) Reinsurers of the insurer and their representatives; and
18 (c) **Past or present** officers, **managers**, trustees, directors, organizers and promoters of
19 the insurer, and other persons in positions of similar responsibility with the insurer.

20 NRS 696B.200(1) (Emphasis Added.) Because the CTC California and CTC Missouri were at times
21 Spirit's program administrator and "integrally involved" in the Spirit's initial formation and
22 organization, this Court has jurisdiction over claims brought by the Receiver arising out of such action.

23 In an attempt to get around this issue, the Opposition argues the statute does not give the Court
24 "exclusive jurisdiction" over claims asserted. This is wholly different and inconsistent with the
25 language in the existing CTC Order to Compel that asserts "NRS 696B.200 has ***no bearing*** on the
26 enforceability of the arbitration provision pursuant to the FAA". (Emphasis added). The CTC
27 Defendants' arguments in this regard serve only to bolster the need for reconsideration and/or
28 clarification of the existing order. Indeed, the Opposition's reliance on the Writ and Judge Delaney's
Order in the Nevada Co-op/Milliman matter further supports reconsideration as Milliman, unlike the
CTC Defendants, was not a part of an Insurance Holding Company, did not serve in an administrative

1 function and was not integrally involved in Nevada Co-Ops initial formation and organization. An
2 analysis of NRS 696B.200 that accounts for the factual differences is necessary.

3 **IV. CONCLUSION**

4 The unique facts of this matter including the CTC Defendants' control of Spirit and the role they
5 played in defrauding creditors and siphoning money cannot be ignored and/or minimized. Such facts
6 were not a part Judge Delaney's analysis in the Nevada Co-Op/Milliman matter and not considered by
7 the Nevada Supreme Court in the Writ. Reconsideration and/or clarification is necessary to address
8 such issues for the reasons set forth herein.

9 WHEREFORE, the Receiver respectfully requests the court GRANT its Motion for
10 Reconsideration and/or Clarification of the Court's July 17, 2020 Order Regarding the CTC Defendants'
11 Motion to Compel Arbitration and allow the claims asserted against the CTC Defendants to proceed
12 herein.

13 Dated this 24th day of August, 2020.

14 By: /s/ Kara B. Hendricks

15 MARK E. FERRARIO, Bar No. 1625
16 KARA B. HENDRICKS, Bar No. 7743
17 KYLE A. EWING, Bar No. 14051
18 GREENBERG TRAURIG, LLP
19 10845 Griffith Peak Drive, Suite 600
20 Las Vegas, NV 89135

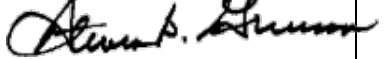
21 *Attorneys for Plaintiff*
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CERTIFICATE OF SERVICE

I hereby certify that on the 24th day of August, 2020, a true and correct copy of the foregoing ***Reply in Support of Plaintiff's Motion for Reconsideration and/or Clarification of the Court's July 17, 2020 Order Regarding CTC Defendants' Motion to Compel Arbitration*** was served electronically using the Odyssey eFileNV Electronic Filing system upon all parties with an email address on record, pursuant to Administrative Order 14-2 and Rule 9 of the N.E.F.C.R. The date and time of the electronic proof of service is in place of the date and place of deposit in the U.S. Mail.

/s/ Andrea Lee Rosehill
An employee of Greenberg Traurig, LLP



1 ANSBU
2 TAMARA BEATTY PETERSON, ESQ., Bar No. 5218
3 tpeterson@petersonbaker.com
4 NIKKI L. BAKER, ESQ., Bar No. 6562
5 nbaker@petersonbaker.com
6 DAVID E. ASTUR, ESQ., Bar No. 15008
7 dastur@petersonbaker.com
8 PETERSON BAKER, PLLC
9 701 S. 7th Street
10 Las Vegas, NV 89101
11 Telephone: 702.786.1001
12 Facsimile: 702.786.1002

13 *Attorneys for Defendants Matthew Simon Jr.*
14 *and Scott McCrae*

15
16 DISTRICT COURT
17 CLARK COUNTY, NEVADA

18 BARBARA D. RICHARDSON IN HER
19 CAPACITY AS THE STATUTORY
20 RECEIVER FOR SPIRIT COMMERCIAL
21 AUTO RISK RETENTION GROUP, INC.,

22 Plaintiff,

23 v.

24 THOMAS MULLIGAN, an individual;
25 CTC TRANSPORTATION INSURANCE
26 SERVICES OF MISSOURI, LLC, a
27 Missouri Limited Liability Company; CTC
28 TRANSPORTATION INSURANCE
SERVICES LLC, a California Limited
Liability Company; CTC
TRANSPORTATION INSURANCE
SERVICES OF HAWAII LLC, a Hawaii
Limited Liability Company; CRITERION
CLAIMS SOLUTIONS OF OMAHA,
INC., a Nebraska Corporation; PAVEL
KAPELNIKOV, an individual; CHELSEA
FINANCIAL GROUP, INC., a California
Corporation; CHELSEA FINANCIAL
GROUP, INC., a Missouri Corporation;
CHELSEA FINANCIAL GROUP, INC., a
New Jersey Corporation d/b/a CHELSEA
PREMIUM FINANCE CORPORATION;
CHELSEA FINANCIAL GROUP, INC., a
Delaware Corporation; CHELSEA
HOLDING COMPANY, LLC, a Nevada
Limited Liability Company; CHELSEA
HOLDINGS, LLC, a Nevada Limited
Liability Company; FOURGOREAN

Case No.: A-20-809963-B
Dept. No.: XIII

MATTHEW SIMON JR.'S ANSWER TO
COMPLAINT

PETERSON BAKER, PLLC
701 S. 7th Street
Las Vegas, NV 89101
702.786.1001

CAPITAL, LLC, a New Jersey Limited Liability Company; KAPA MANAGEMENT CONSULTING, INC. a New Jersey Corporation; KAPA VENTURES, INC., a New Jersey Corporation; GLOBAL FORWARDING ENTERPRISES LIMITED LIABILITY COMPANY, a New Jersey Limited Liability Company; GLOBAL CAPITAL GROUP, LLC, a New Jersey Limited Liability Company; GLOBAL CONSULTING; NEW TECH CAPITAL, LLC, a Delaware Limited Liability Company; LEXICON INSURANCE MANAGEMENT LLC, a North Carolina Limited Liability Company; ICAP MANAGEMENT SOLUTIONS, LLC, a Vermont Limited Liability Company; SIX ELEVEN LLC, a Missouri Limited Liability Company; 10-4 PREFERRED RISK MANAGERS INC., a Missouri Corporation; IRONJAB LLC, a New Jersey Limited Liability Company; YANINA G. KAPELNIKOV, an individual; IGOR KAPELNIKOV, an individual; QUOTE MY RIG LLC, a New Jersey Limited Liability Company; MATTHEW SIMON, an individual; DANIEL GEORGE, an individual; JOHN MALONEY, an individual; JAMES MARX, an individual; CARLOS TORRES, an individual; VIRGINIA TORRES, an individual; SCOTT McCRAE, an individual; BRENDA GUFFEY, an individual; 195 GLUTEN FREE LLC, a New Jersey Limited Liability Company, DOE INDIVIDUALS I X; and ROE CORPORATE ENTITIES I-X,

Defendants.

Defendant Matthew Simon Jr. ("Mr. Simon"), by and through his attorneys of record, the law firm of Peterson Baker, PLLC, hereby responds to the allegations of Plaintiff's Complaint as follows:

INTRODUCTION

1. Answering Paragraph 1 to 4 of Plaintiff's Complaint, Mr. Simon denies the allegations to the extent that the allegations pertain to him. As to the remaining allegations, Mr.

1 Simon is without knowledge or information sufficient to form a belief as to the truth of the
2 allegations, and therefore denies each and every remaining allegation.

3 **PARTIES AND JURISDICTION**

4 2. Answering Paragraph 5 of Plaintiff's Complaint, Mr. Simon admits that Plaintiff
5 Barbara D. Richardson is the court-appointed Permanent Receiver of Spirit. Mr. Simon is without
6 knowledge or information sufficient to form a belief as to the truth of the remaining allegations and
7 therefore denies each and every remaining allegation.

8 3. Answering Paragraph 6 through 9 of Plaintiff's Complaint, Mr. Simon is without
9 knowledge or information sufficient to form a belief as to the truth of the allegations and therefore
10 denies each and every allegation contained in said paragraphs.

11 4. Answering Paragraph 10 through 16 of Plaintiff's Complaint, Mr. Simon is without
12 knowledge or information sufficient to form a belief as to the truth of the allegations and therefore
13 denies each and every allegation contained in said paragraphs.

14 5. Answering Paragraph 17 of Plaintiff's Complaint, Mr. Simon affirmatively states
15 that said paragraph does not contain allegations to which a response is required. To the extent
16 deemed otherwise by the Court, Mr. Simon is without knowledge or information sufficient to form
17 a belief as to the truth of the allegations and therefore denies each and every allegation contained
18 in said paragraph.

19 6. Answering Paragraph 18 through 20, Mr. Simon is without knowledge or
20 information sufficient to form a belief as to the truth of the allegations and therefore denies each
21 and every allegation contained in said paragraphs.

22 7. Answering Paragraph 21 of Plaintiff's Complaint, Mr. Simon affirmatively states
23 that said paragraph does not contain allegations to which a response is required. To the extent
24 deemed otherwise by the Court, Mr. Simon is without knowledge or information sufficient to form
25 a belief as to the truth of the allegations and therefore denies each and every allegation contained
26 in said paragraph.

8. Answering Paragraphs 22 through 35 of Plaintiff's Complaint, Mr. Simon is without knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies each and every allegation contained in said paragraphs.

9. Answering Paragraph 36 of Plaintiff's Complaint, Mr. Simon admits that he was the Chief Operating Officer of CTC California and further admits that he became President of Spirit on June 29, 2018. Mr. Simon is without knowledge or information as to what Plaintiff refers to when alleging that Mr. Simon "has held many executive positions at CTC and its many related entities" and therefore denies the same. Mr. Simon denies each and every remaining allegation in said paragraph.

10. Answering Paragraph 37 through 48 of Plaintiff's Complaint, Mr. Simon is without knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies each and every allegation contained in said paragraphs.

11. Answering Paragraphs 49 through 51 of Plaintiff's Complaint, Mr. Simon states that the allegations contained in said paragraphs assert legal conclusions to which no response is required. To the extent deemed otherwise by the Court, Mr. Simon denies each and every allegation contained in said paragraphs.

FACTUAL ALLEGATIONS

12. Answering Paragraphs 52 through 62 of Plaintiff's Complaint, Mr. Simon is without knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies each and every allegation contained in said paragraphs.

13. Answering Paragraph 63 of Plaintiff's Complaint, Mr. Simon denies the allegations contained in said paragraph.

14. Answering Paragraph 64 through 70 of Plaintiff's Complaint, Mr. Simon is without knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies each and every allegation contained in said paragraphs.

15. Answering Paragraph 71 of Plaintiff's Complaint, Mr. Simon admits the allegations contained in said paragraph.

1 16. Answering Paragraph 72 through 74 of Plaintiff's Complaint, Mr. Simon is without
2 knowledge or information sufficient to form a belief as to the truth of the allegations and therefore
3 denies each and every allegation contained in said paragraph.

4 17. Answering Paragraph 75 of Plaintiff's Complaint, Mr. Simon denies each and every
5 allegation contained in said paragraph.

6 18. Answering Paragraph 76 through 82 of Plaintiff's Complaint, Mr. Simon is without
7 knowledge or information sufficient to form a belief as to the truth of the allegations and therefore
8 denies each and every allegation contained in said paragraph.

9 19. Answering Paragraph 83 of Plaintiff's Complaint, Mr. Simon admits that he signed
10 a promissory note presented to him. Mr. Simon is without knowledge or information sufficient to
11 form a belief as to the truth of the remaining allegations and therefore denies each and every
12 remaining allegation contained therein.

13 20. Answering Paragraph 84 through 88 of Plaintiff's Complaint, Mr. Simon is without
14 knowledge or information sufficient to form a belief as to the truth of the allegations and therefore
15 denies each and every allegation contained in said paragraph.

16 21. Answering Paragraph 89 of Plaintiff's Complaint, Mr. Simon states that these
17 allegations assert legal conclusions to which no response is required. To the extent deemed
18 otherwise by the Court, Mr. Simon is without knowledge or information sufficient to form a belief
19 as to the truth of the allegations and therefore denies each and every allegation contained in said
20 paragraph.

21 22. Answering Paragraph 90 of Plaintiff's Complaint, Mr. Simon is without knowledge
22 or information sufficient to form a belief as to the truth of the allegations and therefore denies each
23 and every allegation contained in said paragraph.

24 23. Answering Paragraph 91 of Plaintiff's Complaint, Mr. Simon admits that he was
25 informed that the certificate was suspended. Mr. Simon is without knowledge or information
26 sufficient to form a belief as to the remaining allegations and therefore denies each and every
27 remaining allegation contained therein.

1 24. Answering Paragraph 92 of Plaintiff's Complaint, Mr. Simon admits that the
2 Receivership Order was entered on February 27, 2019, appointing Barbara Richardson as the
3 Receiver, and is without knowledge or information sufficient to form a belief as to the truth of the
4 remaining allegations contained in said paragraph and therefore denies each and every remaining
5 allegation.

6 25. Answering Paragraph 93 through 112 of Plaintiff's Complaint, Mr. Simon is without
7 knowledge or information sufficient to form a belief as to the truth of the allegations and therefore
8 denies each and every allegation contained in said paragraphs.

9 26. Answering Paragraph 113 of Plaintiff's Complaint, Mr. Simon denies that he was
10 instructed not to cancel policies, and denies that he told anyone not to cancel policies. Mr. Simon
11 is without knowledge or information sufficient to form a belief as to the truth of the remaining
12 allegations and therefore denies each and every remaining allegation contained in said paragraph.

13 27. Answering Paragraph 114 through 128 of Plaintiff's Complaint, Mr. Simon is
14 without knowledge or information sufficient to form a belief as to the truth of the allegations and
15 therefore denies each and every allegation contained in said paragraphs.

16 28. Answering Paragraph 129 of Plaintiff's Complaint, Mr. Simon states that these
17 allegations assert legal conclusions to which no response is required. To the extent deemed
18 otherwise by the Court, Mr. Simon is without knowledge or information sufficient to form a belief
19 as to the truth of the allegations and therefore denies each and every allegation in said paragraph.

20 29. Answering Paragraph 130 and 131 of Plaintiff's Complaint, Mr. Simon is without
21 knowledge or information sufficient to form a belief as to the truth of the allegations and therefore
22 denies each and every allegation contained in said paragraphs.

23 30. Answering Paragraph 132 of Plaintiff's Complaint, Mr. Simon denies each and every
24 allegation contained in said paragraph.

25 31. Answering Paragraph 133 through 138 of Plaintiff's Complaint, Mr. Simon is
26 without knowledge or information sufficient to form a belief as to the truth of the allegations and
27 therefore denies each and every allegation contained in said paragraphs.

1 32. Answering Paragraph 139 of Plaintiff's Complaint, Mr. Simon denies the allegations
2 contained in said paragraphs.

3 33. Answering Paragraph 140 through 159 of Plaintiff's Complaint, Mr. Simon is
4 without knowledge or information sufficient to form a belief as to the truth of the allegations and
5 therefore denies each and every allegation contained in said paragraphs.

6 34. Answering Paragraph 160 of Plaintiff's Complaint, Mr. Simon denies the allegations
7 contained in said paragraphs.

8 35. Answering Paragraph 161 through 173 of Plaintiff's Complaint, Mr. Simon is
9 without knowledge or information sufficient to form a belief as to the truth of the allegations and
10 therefore denies each and every allegation contained in said paragraphs.

11 36. Answering Paragraph 174 of Plaintiff's Complaint, Mr. Simon states that these
12 allegations contain legal conclusions to which no response is required. To the extent deemed
13 otherwise by the Court, Mr. Simon is without knowledge or information sufficient to form a belief
14 as to the truth of the allegations and therefore denies each and every allegation contained in said
15 paragraph.

16 37. Answering Paragraph 175 through 196 of Plaintiff's Complaint, Mr. Simon is
17 without knowledge or information sufficient to form a belief as to the truth of the allegations
18 contained therein and therefore denies each and every allegation contained in said paragraphs.

19 38. Answering Paragraph 197 of Plaintiff's Complaint, Mr. Simon admits that he
20 became president of Spirit on June 29, 2018. Mr. Simon is without knowledge or information
21 sufficient to form a belief as to the truth of the allegations regarding other officers or directors of
22 Spirit and therefore denies those allegations. Mr. Simon denies each and every remaining allegation
23 contained in said paragraph.

24 39. Answering Paragraph 198 through 223 of Plaintiff's Complaint, Mr. Simon is
25 without knowledge or information sufficient to form a belief as to the truth of the allegations and
26 therefore denies each and every allegation contained in said paragraphs.

27 40. Answering Paragraph 224 of Plaintiff's Complaint, Mr. Simon denies the allegations
28 in said paragraph as it pertains to him. Mr. Simon is without knowledge or information sufficient

1 to form a belief as to the truth of the remaining allegations and therefore denies each and every
2 remaining allegation contained therein.

3 41. Answering Paragraphs 225 through 236 of Plaintiff's Complaint, Mr. Simon is
4 without knowledge or information sufficient to form a belief as to the truth of the allegations and
5 therefore denies each and every allegation contained in said paragraphs.

6 42. Answering Paragraph 237 and 238 of Plaintiff's Complaint, Mr. Simon denies each
7 and every allegation contained in said paragraphs.

8 43. Answering Paragraph 239 through 255 of Plaintiff's Complaint, Mr. Simon is
9 without knowledge or information sufficient to form a belief as to the truth of the allegations and
10 therefore denies each and every allegation contained in said paragraphs.

11 44. Answering Paragraph 256 of Plaintiff's Complaint, Mr. Simon denies the allegations
12 contained in subparagraph (e) of said paragraph. Mr. Simon is without knowledge or information
13 as to the remaining allegations in said paragraph and therefore denies each and every remaining
14 allegation.

15 45. Answering Paragraph 257 through 262 of Plaintiff's Complaint, Mr. Simon is
16 without knowledge of information sufficient to form a belief as to the truth of the allegations and
17 therefore denies each and every allegation contained in said paragraphs.

18 **FIRST CAUSE OF ACTION**

19 **(Breach of Contract as Against CTC)**

20 46. Answering Paragraph 263 of Plaintiff's Complaint, Mr. Simon repeats and
21 incorporates his answers to paragraphs 1 through 262 to the Complaint as though fully set forth
22 herein.

23 47. Answering Paragraphs 264 through 268 of Plaintiff's Complaint, Mr. Simon is
24 without knowledge or information sufficient to form a belief as to the truth of the allegations and
25 therefore denies each and every allegation contained in said paragraphs.

SECOND CAUSE OF ACTION

(Breach of Contract as Against Lexicon)

48. Answering Paragraph 269 of Plaintiff's Complaint, Mr. Simon repeats and incorporates his answers to paragraph 1 through 268 to the Complaint as though fully set forth herein.

49. Answering Paragraph 270 through 273 of Plaintiff's Complaint, Mr. Simon is without knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies each and every allegation contained in said paragraphs.

THIRD CAUSE OF ACTION

(Breach of Contract as Against Criterion)

50. Answering Paragraph 274 of Plaintiff's Complaint, Mr. Simon repeats and incorporates his answers to paragraphs 1 through 273 of the Complaint as though fully set forth herein.

51. Answering Paragraph 275 through 279 of Plaintiff's Complaint, Mr. Simon is without knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies each and every allegation contained in said paragraphs.

FOURTH CAUSE OF ACTION

(Breach of Contract as Against the Spirit Director Defendants)

52. Answering Paragraph 280 of Plaintiff's Complaint, Mr. Simon repeats and incorporates his answers to paragraphs 1 through 279 of the Complaint as though fully set forth herein.

53. Answering Paragraph 281 of Plaintiff's Complaint, Mr. Simon denies that he had an employment agreement with Spirit. Mr. Simon is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations and therefore denies each and every remaining allegation contained in said paragraph.

54. Answering Paragraph 282 through 285 of Plaintiff's Complaint, Mr. Simon is without knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies each and every allegation contained in said paragraphs.

FIFTH CAUSE OF ACTION

(Breach of Fiduciary Duty as Against CTC and Lexicon)

55. Answering Paragraph 286 of Plaintiff's Complaint, Mr. Simon repeats and incorporates his answers to paragraphs 1 through 285 of the Complaint as though fully set forth herein.

56. Answering Paragraph 287 through 292 of Plaintiff's Complaint, Mr. Simon is without knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies each and every allegation contained in said paragraphs.

SIXTH CAUSE OF ACTION

(Breach of Fiduciary Duty as Against the Spirit Director Defendants)

57. Answering Paragraph 293 of Plaintiff's Complaint, Mr. Simon repeats and incorporates his answers to paragraphs 1 through 292 of the Complaint as though fully set forth herein.

58. Answering Paragraph 294 of Plaintiff's Complaint, Mr. Simon is without knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies the allegations contained therein.

59. Answering Paragraph 295 through 299 of Plaintiff's Complaint, Mr. Simon denies the allegations as they pertain to him. Mr. Simon is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations and therefore denies each and every remaining allegation contained in said paragraphs.

SEVENTH CAUSE OF ACTION

(Breach of the Implied Covenant of Good Faith and Fair Dealing - Tortious as Against CTC and Lexicon)

60. Answering Paragraph 300 of Plaintiff's Complaint, Mr. Simon repeats and incorporates his answers to paragraphs 1 through 299 of the Complaint as though fully set forth herein.

1 61. Answering Paragraph 301 through 310 of Plaintiff's Complaint, Mr. Simon is
2 without knowledge or information sufficient to form a belief as to the truth of the allegations and
3 therefore denies each and every allegation contained in said paragraphs.

4 **EIGHTH CAUSE OF ACTION**

5 **(Breach of the Implied Covenant of Good Faith and Fair Dealing - Contract as Against**
6 **CTC and Lexicon)**

7 62. Answering Paragraph 311 of Plaintiff's Complaint, Mr. Simon repeats and
8 incorporates his answers to paragraphs 1 through 310 of the Complaint as though fully set forth
9 herein.

10 63. Answering Paragraph 312 through 319 of Plaintiff's Complaint, Mr. Simon is
11 without knowledge or information sufficient to form a belief as to the truth of the allegations and
12 therefore denies each and every allegation contained in said paragraphs.

13 **NINTH CAUSE OF ACTION**

14 **(Breach of the Implied Covenant of Good Faith and Fair Dealing - Contract as Against**
15 **Criterion)**

16 64. Answering Paragraph 320 of Plaintiff's Complaint, Mr. Simon repeats and
17 incorporates his answers to paragraphs 1 through 319 of the Complaint as though fully set forth
18 herein.

19 65. Answering Paragraph 321 through 326 of Plaintiff's Complaint, Mr. Simon is
20 without knowledge or information sufficient to form a belief as to the truth of the allegations and
21 therefore denies each and every allegation contained in said paragraphs.

22 **TENTH CAUSE OF ACTION**

23 **(Nevada RICO Claims as Against Mulligan, George, Simon, Guffey, McCrae, Kapelinkovs,**
24 **CTC, Lexicon, and Criterion)**

25 66. Answering Paragraph 327 through 342 of Plaintiff's Complaint, Mr. Simon denies
26 the allegations as they pertain to him. Mr. Simon is without knowledge or information sufficient
27 to form a belief as to the truth of the remaining allegations and therefore denies each and every
28 remaining allegation contained in said paragraphs.

ELEVENTH CAUSE OF ACTION

(Unjust Enrichment as Against All Defendants)

67. Answering Paragraph 343 of Plaintiff's Complaint, Mr. Simon repeats and incorporates his answers to paragraphs 1 through 342 of the Complaint as though fully set forth herein.

68. Answering Paragraphs 344 of Plaintiff's Complaint, Mr. Simon denies the allegations as they pertain to him. Mr. Simon is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations and therefore denies each and every remaining allegation contained in said paragraph.

69. Answering Paragraph 345 through 351 of Plaintiff's Complaint, Mr. Simon is without knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies each and every allegation contained in said paragraphs.

TWELFTH CAUSE OF ACTION

(Fraud as Against All Defendants)

70. Answering Paragraph 352 of Plaintiff's Complaint, Mr. Simon repeats and incorporates his answers to paragraphs 1 through 351 to the Complaint as though fully set forth herein.

71. Answering Paragraphs 353 to 370 of Plaintiff's Complaint, Mr. Simon states that, pursuant to the Court's "Order Granting in Part and Denying in Part Defendants Scott McCrae and Matthew Simon, Jr.'s Motion to Dismiss" filed on August 11, 2020, Plaintiff's claim was dismissed without prejudice as against Mr. Simon and therefore, no answer is required. To the extent deemed otherwise by the Court, Mr. Simon denies each and every allegation in said paragraphs.

THIRTEENTH CAUSE OF ACTION

(Civil Conspiracy as Against All Defendants)

72. Answering Paragraph 371 of Plaintiff's Complaint, Mr. Simon repeats and incorporates his answers to paragraphs 1 through 370 to the Complaint as though fully set forth herein.

1 73. Answering Paragraph 372 through 379 of Plaintiff's Complaint, Mr. Simon denies
2 each and every allegation as it pertains to him. Mr. Simon is without knowledge or information
3 sufficient to form a belief as to the truth of the remaining allegations and therefore denies each and
4 every remaining allegation contained in said paragraphs.

5 **FOURTEENTH CAUSE OF ACTION**

6 **(Alter Ego as Against Mulligan, George, Guffey, Simon and Pavel Kapelnikov)**

7 74. Answering Paragraph 380 of Plaintiff's Complaint, Mr. Simon repeats and
8 incorporates his answers to paragraphs 1 through 379 of the Complaint as though fully set forth
9 herein.

10 75. Answering Paragraph 381 to 384 of Plaintiff's Complaint, Mr. Simon states that,
11 pursuant to the Court's "Order Granting in Part and Denying in Part Defendant Scott McCrae and
12 Matthew Simon, Jr.'s Motion to Dismiss" filed on August 11, 2020, Plaintiff's claim was dismissed
13 with prejudice and no answer is required. To the extent deemed otherwise by the Court, Mr. Simon
14 denies each and every allegation in said paragraphs.

15 **FIFTEENTH CAUSE OF ACTION**

16 **(NRS 112 – Avoidance of Transfers as Against CTC and its Transferees)**

17 76. Answering Paragraph 385 of Plaintiff's Complaint, Mr. Simon repeats and
18 incorporates his answers to paragraphs 1 through 384 of the Complaint as though fully set forth
19 herein.

20 77. Answering Paragraph 386 through 391 of Plaintiff's Complaint, Mr. Simon is
21 without knowledge or information sufficient to form a belief as to the truth of the allegations and
22 therefore denies each and every allegation contained in said paragraphs.

23 78. Answering Paragraph 392 through 396 of Plaintiff's Complaint, Mr. Simon denies
24 each and every allegation as it pertains to him. Mr. Simon is without knowledge or information
25 sufficient to form a belief as to the truth of the remaining allegations and therefore denies each and
26 every remaining allegation contained in said paragraphs.

SIXTEENTH CAUSE OF ACTION

(NRS 696B – Voidable Transfers as Against CTC and its Transferees)

79. Answering Paragraph 397 of Plaintiff's Complaint, Mr. Simon repeats and incorporates his answers to paragraphs 1 through 396 of the Complaint as though fully set forth herein.

80. Answering Paragraph 398 through 403 of Plaintiff's Complaint, Mr. Simon is without knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies each and every allegation contained in said paragraphs.

81. Answering Paragraph 404 through 409 of Plaintiff's Complaint, Mr. Simon denies each and every allegation as it pertains to him. Mr. Simon is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations and therefore denies each and every remaining allegation contained in said paragraphs.

SEVENTEENTH CAUSE OF ACTION

(NRS 696B – Recovery of Distributions and Payments as Against CTC and its Transferees)

82. Answering Paragraph 410 of Plaintiff's Complaint, Mr. Simon repeats and incorporates his answers to paragraphs 1 through 409 of the Complaint as though fully set forth herein.

83. Answering Paragraph 411 through 415 of Plaintiff's Complaint, Mr. Simon is without knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies each and every allegation contained in said paragraphs.

84. Answering Paragraph 416 through 421 of Plaintiff's Complaint, Mr. Simon denies each and every allegation as it pertains to him. Mr. Simon is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations and therefore denies each and every remaining allegation contained in said paragraphs.

EIGHTEENTH CAUSE OF ACTION

(NRS 692C.402 - Recovery of Distributions and Payments as Against CTC and its Transferees)

85. Answering Paragraph 422 of Plaintiff's Complaint, Mr. Simon repeats and incorporates his answers to paragraphs 1 through 421 of the Complaint as though fully set forth herein.

86. Answering Paragraph 423 through 427 of Plaintiff's Complaint, Mr. Simon is without knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies each and every allegation contained in said paragraphs.

87. Answering Paragraph 428 through 434 of Plaintiff's Complaint, Mr. Simon denies each and every allegation as it pertains to him. Mr. Simon is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations and therefore denies each and every remaining allegation contained in said paragraphs.

NINETEENTH CAUSE OF ACTION

(NRS 78.300 - Recovery of Unlawful Distribution as Against the Spirit Director Defendants)

88. Answering Paragraph 435 of Plaintiff's Complaint, Mr. Simon repeats and incorporates his answers to paragraphs 1 through 434 of the Complaint as if fully set forth herein.

89. Answering Paragraph 436 through 441 of Plaintiff's Complaint, Mr. Simon is without knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies each and every allegation contained in said paragraphs.

90. Any allegation not specifically admitted herein, including any and all allegations contained in headings in the Complaint, are hereby denied.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

The Complaint fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Mr. Simon is shielded by the business judgment rule from personal liability for his decisions and actions while a director and/or officer.

THIRD AFFIRMATIVE DEFENSE

Plaintiff cannot establish that Mr. Simon falls within NRS 78.138(7) sufficient to impose liability pursuant to the standard announced in *Chur v. Eighth Judicial Dist. Ct.*, 136 Nev. Adv. Op. 7, 458 P.3d 336 (February 27, 2020).

FOURTH AFFIRMATIVE DEFENSE

Mr. Simon is entitled to indemnity for any actions in the course of his conduct as an officer and/or director.

FIFTH AFFIRMATIVE DEFENSE

Plaintiff has suffered no legally cognizable harm or damage as a result of the acts or omissions alleged in the Complaint.

SIXTH AFFIRMATIVE DEFENSE

To the extent that Plaintiff sustained damages in this matter, which Mr. Simon specifically denies, then said damages were caused by the conduct of other entities or parties over whom Mr. Simon had no control or right of control.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred due to comparative fault principles, and that negligence bars or limits recovery.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred for lack of consideration and/or failure of consideration.

NINTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred due to the lack of condition precedent.

TENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by the Statute of Frauds.

ELEVENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by the applicable statute of limitations and/or statute of repose.

TWELFTH AFFIRMATIVE DEFENSE

Plaintiff's claims fail for lack of causation.

THIRTEENTH AFFIRMATIVE DEFENSE

Plaintiff is barred by laches.

FOURTEENTH AFFIRMATIVE DEFENSE

The relief sought by Plaintiff is barred by the doctrine of waiver.

FIFTEENTH AFFIRMATIVE DEFENSE

The relief sought by Plaintiff is barred by the doctrine of unclean hands.

SIXTEENTH AFFIRMATIVE DEFENSE

By its own actions, Plaintiff is estopped from asserting any claim against Mr. Simon.

SEVENTEENTH AFFIRMATIVE DEFENSE

At all times, Mr. Simon acted in good faith.

EIGHTEENTH AFFIRMATIVE DEFENSE

At all times, Mr. Simon's conduct was justified and/or privileged.

NINETEENTH AFFIRMATIVE DEFENSE

The conduct of Mr. Simon was reasonable and/or Mr. Simon acted under a reasonable belief that his conduct was authorized.

TWENTIETH AFFIRMATIVE DEFENSE

Mr. Simon did not engage in a pattern of racketeering activity.

TWENTY-FIRST AFFIRMATIVE DEFENSE

Plaintiff's RICO claim fails for lack of predicate acts.

TWENTY- SECOND AFFIRMATIVE DEFENSE

Plaintiff's RICO claim fails because no enterprise existed separate and apart from the corporation.

TWENTY-THIRD AFFIRMATIVE DEFENSE

Plaintiff's claim for civil conspiracy is barred by the intra-corporate conspiracy doctrine. *Collins v. Union Federal Savings and Loan Association*, 99 Nev. 284, 662 P.2d 610 (1983).

TWENTY-FOURTH AFFIRMATIVE DEFENSE

Mr. Simon received any transfers in good faith and for reasonably equivalent value.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

Nevada does not recognize accessory liability for fraudulent transfer, *see Cadle Co. v. Woods & Erickson, LLP*, 131 Nev. Adv. Op. 15, 345 P.3d 1049 (2015), therefore Plaintiff's claims for fraudulent transfer fail.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

The Court's prior order bars the relief sought by Plaintiff.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

Plaintiff failed to mitigate her damages, if any.

TWENTY-EIGHTH AFFIRMATIVE DEFENSE

Plaintiff's damages, if any, were caused in whole or in part by acts of third parties over whom Mr. Simon had no control.

TWENTY-NINTH AFFIRMATIVE DEFENSE

Mr. Simon did not act with oppression, fraud or malice, and Plaintiff cannot demonstrate otherwise by clear and convincing evidence. Therefore, punitive damages are unavailable in this action.

THIRTIETH AFFIRMATIVE DEFENSE

Plaintiff is not entitled to attorneys' fees under any statute, rule, or contractual provision.

THIRTY-FIRST AFFIRMATIVE DEFENSE

Mr. Simon reserves the right to amend this Answer to add additional affirmative defenses in the event subsequent information or investigation warrants such amendment.

PRAYER FOR RELIEF

WHEREFORE, Mr. Simon prays for judgment as follows:

1. That Plaintiff take nothing by way of its Complaint and that this action be dismissed in its entirety with prejudice;
2. For costs incurred in defense of this action;
3. For reasonable attorneys' fees incurred in defense of this action; and

///

///

4. For such other relief as the Court may deem just and proper.

Dated this 25th day of August, 2020.

PETERSON BAKER, PLLC

By: /s/ Tamara Beatty Peterson

TAMARA BEATTY PETERSON, ESQ., Bar No. 5218

tpeterson@petersonbaker.com

NIKKI L. BAKER, ESQ., Bar No. 6562

nbaker@petersonbaker.com

DAVID E. ASTUR, ESQ., Bar No. 15008

dastur@petersonbaker.com

701 S. 7th Street

Las Vegas, NV 89101

Telephone: 702.786.1001

Facsimile: 702.786.1002

Attorneys for Defendants Matthew Simon Jr. and Scott McCrae

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Peterson Baker, PLLC, and pursuant to NRCP 5(b), EDCR 8.05, Administrative Order 14-2, and NEFCR 9, I caused a true and correct copy of the foregoing MATTHEW SIMON JR.'S ANSWER TO COMPLAINT to be submitted electronically for filing and service with the Eighth Judicial District Court via the Court's Electronic Filing System on the 25th day of August, 2020, to the following:

MARK E. FERRARIO, ESQ.
ferrariom@gtlaw.com
KARA B. HENDRICKS, ESQ.
hendricksk@gtlaw.com
KYLE A. EWING, ESQ.
ewingk@gtlaw.com
GREENBERG TRAURIG, LLP
10845 Griffith Peak Drive, Suite 600
Las Vegas, NV 89135

Attorneys for Plaintiff

KURT R. BONDS, ESQ.
kbonds@alversontaylor.com
ALVERSON TAYLOR & SANDERS
6605 Grand Montecito Parkway, Suite 200
Las Vegas, Nevada 89149

Attorneys for Defendant Brenda Guffey

THOMAS E. MCGRATH, ESQ.
tmcgrath@tysonmendes.com
CHRISTOPHER A. LUND, ESQ.
clund@tysonmendes.com
TYSON & MENDES LLP
3960 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169

*Attorneys for Defendants Pavel Kapelnikov;
Chelsea Financial Group, Inc., a New Jersey
corporation; Chelsea Financial Group, Inc. a
California corporation; Global Forwarding
Enterprises, LLC; Kapa Management
Consulting, Inc.; Kapa Ventures, Inc.*

ROBERT S. LARSEN, ESQ.
rlarsen@grsm.com
WING YAN WONG, ESQ.
wwong@grsm.com
GORDON REES SCULLY MANSUKHANI,
LLP
300 South Fourth Street, Suite 1550
Las Vegas, Nevada 89101

*Attorneys for Defendants Lexicon Insurance
Management LLC, Daniel George and ICAP
Management Solutions, LLC*

SHERI M. THOME, ESQ.
Sheri.Thome@wilsonelser.com
WILSON, ELSER, MOSKOWITZ,
EDELMAN & DICKER LLP
6689 Las Vegas Blvd. South, Ste. 200
Las Vegas, NV 89119

*Attorneys for Defendant
James Marx, Carlos Torres, Virginia Torres,
and John Maloney*

WILLIAM R. URGAS, ESQ.
wru@juwlaw.com
DAVID J. MALLEY, ESQ.
djm@juwlaw.com
MICHAEL R. ERNST, ESQ.
mre@juwlaw.com
JOLLEY URGAS WOODBURY &
HOLTHUS
330 S. Rampart Blvd., Suite 380
Las Vegas, NV 89145

Attorneys for Defendant Thomas Mulligan

L. CHRISTOPHER ROSE, ESQ.
lcr@h2law.com
KIRILL V. MIKHAYLOV, ESQ.
kvm@h2law.com
WILLIAM A. GONZALES, ESQ.
wag@h2law.com
HOWARD & HOWARD ATTORNEYS
PLLC
3800 Howard Hughes Parkway, Suite 1000
Las Vegas, Nevada 89169
*Attorneys for Defendants Six Eleven LLC;
Quote My Rig, LLC; New Tech Capital LLC;
195 Gluten Free LLC; 10-4 Preferred Risk
Managers, Inc.; Ironjab, LLC; Fourgorean
Capital LLC; and Chelsea Holding Company,
LLC*

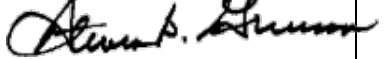
MATTHEW T. DUSHOFF, ESQ.
mdushoff@nvbusinesslaw.com
JORDAN D. WOLFF, ESQ.
jwolff@nvbusinesslaw.com
SALTZMAN MUGAN DUSHOFF
1835 Village Center Circle
Las Vegas, NV 89134

*Attorneys for Defendants CTC Transportation
Insurance Services of Missouri, LLC; CTC
Transportation Insurance Services, LLC; and
CTC Transportation Insurance Services of
Hawaii LLC*

JOHN R. BAILEY, ESQ.
JBailey@BaileyKennedy.com
JOSHUA M. DICKY, ESQ.
JDickey@BaileyKennedy.com
REBECCA L. CROOKER, ESQ.
RCrooker@BaileyKennedy.com
BAILEY KENNEDY
8984 Spanish Ridge Avenue
Las Vegas, Nevada 89148-1302.

*Attorneys for Defendant
Criterion Claim Solutions of Omaha, Inc.*

/s/ Erin Parcels
An employee of Peterson Baker, PLLC



1 ANSBU
2 TAMARA BEATTY PETERSON, ESQ., Bar No. 5218
3 tpeterson@petersonbaker.com
4 NIKKI L. BAKER, ESQ., Bar No. 6562
5 nbaker@petersonbaker.com
6 DAVID E. ASTUR, ESQ., Bar No. 15008
7 dastur@petersonbaker.com
8 PETERSON BAKER, PLLC
9 701 S. 7th Street
10 Las Vegas, NV 89101
11 Telephone: 702.786.1001
12 Facsimile: 702.786.1002

13 *Attorneys for Defendants Matthew Simon Jr.*
14 *and Scott McCrae*

15
16 **DISTRICT COURT**
17
18 **CLARK COUNTY, NEVADA**

19 BARBARA D. RICHARDSON IN HER
20 CAPACITY AS THE STATUTORY
21 RECEIVER FOR SPIRIT COMMERCIAL
22 AUTO RISK RETENTION GROUP, INC.,

23 Plaintiff,

24 v.

25 THOMAS MULLIGAN, an individual;
26 CTC TRANSPORTATION INSURANCE
27 SERVICES OF MISSOURI, LLC, a
28 Missouri Limited Liability Company; CTC
TRANSPORTATION INSURANCE
SERVICES LLC, a California Limited
Liability Company; CTC
TRANSPORTATION INSURANCE
SERVICES OF HAWAII LLC, a Hawaii
Limited Liability Company; CRITERION
CLAIMS SOLUTIONS OF OMAHA,
INC., a Nebraska Corporation; PAVEL
KAPELNIKOV, an individual; CHELSEA
FINANCIAL GROUP, INC., a California
Corporation; CHELSEA FINANCIAL
GROUP, INC., a Missouri Corporation;
CHELSEA FINANCIAL GROUP, INC., a
New Jersey Corporation d/b/a CHELSEA
PREMIUM FINANCE CORPORATION;
CHELSEA FINANCIAL GROUP, INC., a
Delaware Corporation; CHELSEA
HOLDING COMPANY, LLC, a Nevada
Limited Liability Company; CHELSEA
HOLDINGS, LLC, a Nevada Limited
Liability Company; FOURGOREAN

Case No.: A-20-809963-B
Dept. No.: XIII

**SCOTT MCCRAE'S ANSWER TO
COMPLAINT**

PETERSON BAKER, PLLC
701 S. 7th Street
Las Vegas, NV 89101
702.786.1001

CAPITAL, LLC, a New Jersey Limited Liability Company; KAPA MANAGEMENT CONSULTING, INC. a New Jersey Corporation; KAPA VENTURES, INC., a New Jersey Corporation; GLOBAL FORWARDING ENTERPRISES LIMITED LIABILITY COMPANY, a New Jersey Limited Liability Company; GLOBAL CAPITAL GROUP, LLC, a New Jersey Limited Liability Company; GLOBAL CONSULTING; NEW TECH CAPITAL, LLC, a Delaware Limited Liability Company; LEXICON INSURANCE MANAGEMENT LLC, a North Carolina Limited Liability Company; ICAP MANAGEMENT SOLUTIONS, LLC, a Vermont Limited Liability Company; SIX ELEVEN LLC, a Missouri Limited Liability Company; 10-4 PREFERRED RISK MANAGERS INC., a Missouri Corporation; IRONJAB LLC, a New Jersey Limited Liability Company; YANINA G. KAPELNIKOV, an individual; IGOR KAPELNIKOV, an individual; QUOTE MY RIG LLC, a New Jersey Limited Liability Company; MATTHEW SIMON, an individual; DANIEL GEORGE, an individual; JOHN MALONEY, an individual; JAMES MARX, an individual; CARLOS TORRES, an individual; VIRGINIA TORRES, an individual; SCOTT McCRAE, an individual; BRENDA GUFFEY, an individual; 195 GLUTEN FREE LLC, a New Jersey Limited Liability Company, DOE INDIVIDUALS I X; and ROE CORPORATE ENTITIES I-X,

Defendants.

Defendant Scott McCrae ("Mr. McCrae"), by and through his attorneys of record, the law firm of Peterson Baker, PLLC, hereby responds to the allegations of Plaintiff's Complaint as follows:

INTRODUCTION

1. Answering Paragraph 1 to 4 of Plaintiff's Complaint, Mr. McCrae denies the allegations to the extent that the allegations pertain to him. As to the remaining allegations, Mr.

McCrae is without knowledge or information sufficient to form a belief as to the truth of the allegations, and therefore denies each and every remaining allegation.

PARTIES AND JURISDICTION

2. Answering Paragraph 5 of Plaintiff's Complaint, Mr. McCrae admits that Plaintiff Barbara D. Richardson is the court-appointed Permanent Receiver of Spirit. Mr. McCrae is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations and therefore denies each and every remaining allegation.

3. Answering Paragraph 6 through 9 of Plaintiff's Complaint, Mr. McCrae is without knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies each and every allegation contained in said paragraphs.

4. Answering Paragraph 10 through 16 of Plaintiff's Complaint, Mr. McCrae is without knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies each and every allegation contained in said paragraphs.

5. Answering Paragraph 17 of Plaintiff's Complaint, Mr. McCrae affirmatively states that said paragraph does not contain allegations to which a response is required. To the extent deemed otherwise by the Court, Mr. McCrae is without knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies each and every allegation contained in said paragraph.

6. Answering Paragraph 18 through 20, Mr. McCrae is without knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies each and every allegation contained in said paragraphs.

7. Answering Paragraph 21 of Plaintiff's Complaint, Mr. McCrae affirmatively states that said paragraph does not contain allegations to which a response is required. To the extent deemed otherwise by the Court, Mr. McCrae is without knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies each and every allegation contained in said paragraph.

1 8. Answering Paragraphs 22 through 35 of Plaintiff's Complaint, Mr. McCrae is
2 without knowledge or information sufficient to form a belief as to the truth of the allegations and
3 therefore denies each and every allegation contained in said paragraphs.

4 9. Answering Paragraph 36 through 41 of Plaintiff's Complaint, Mr. McCrae is without
5 knowledge or information sufficient to form a belief as to the truth of the allegations and therefore
6 denies each and every allegation contained in said paragraphs.

7 10. Answering Paragraph 42 of Plaintiff's Complaint, Mr. McCrae admits that he
8 became President of CTC Transportation Services when Mr. Mulligan resigned, and Mr. McCrae
9 admits that he became President of Criterion when Mr. Mulligan stepped down from that role. Mr.
10 McCrae is without knowledge or information as to what Plaintiff refers to when alleging that Mr.
11 McCrae "likely had a leading role with other CTC entities" and therefore denies the same. Mr.
12 McCrae denies each and every remaining allegation contained in said paragraph.

13 11. Answering Paragraph 43 through 48 of Plaintiff's Complaint, Mr. McCrae is without
14 knowledge or information sufficient to form a belief as to the truth of the allegations and therefore
15 denies each and every allegation contained in said paragraphs.

16 12. Answering Paragraphs 49 through 51 of Plaintiff's Complaint, Mr. McCrae states
17 that the allegations contained in said paragraphs assert legal conclusions to which no response is
18 required. To the extent deemed otherwise by the Court, Mr. McCrae denies each and every
19 allegation contained in said paragraphs.

20 **FACTUAL ALLEGATIONS**

21 13. Answering Paragraphs 52 through 62 of Plaintiff's Complaint, Mr. McCrae is
22 without knowledge or information sufficient to form a belief as to the truth of the allegations and
23 therefore denies each and every allegation contained in said paragraphs.

24 14. Answering Paragraph 63 of Plaintiff's Complaint, Mr. McCrae denies the allegations
25 contained in said paragraph.

26 15. Answering Paragraph 64 through 70 of Plaintiff's Complaint, Mr. McCrae is without
27 knowledge or information sufficient to form a belief as to the truth of the allegations and therefore
28 denies each and every allegation contained in said paragraphs.

1 16. Answering Paragraph 71 of Plaintiff's Complaint, Mr. McCrae is without knowledge
2 or information sufficient to form a belief as to the truth of the allegation and therefore denies each
3 and every allegation contained in said paragraph.

4 17. Answering Paragraph 72 through 74 of Plaintiff's Complaint, Mr. McCrae is without
5 knowledge or information sufficient to form a belief as to the truth of the allegations and therefore
6 denies each and every allegation contained in said paragraph.

7 18. Answering Paragraph 75 of Plaintiff's Complaint, Mr. McCrae denies each and
8 every allegation contained in said paragraph.

9 19. Answering Paragraph 76 through 88 of Plaintiff's Complaint, Mr. McCrae is without
10 knowledge or information sufficient to form a belief as to the truth of the allegations and therefore
11 denies each and every allegation contained in said paragraph.

12 20. Answering Paragraph 89 of Plaintiff's Complaint, Mr. McCrae states that these
13 allegations assert legal conclusions to which no response is required. To the extent deemed
14 otherwise by the Court, Mr. McCrae is without knowledge or information sufficient to form a belief
15 as to the truth of the allegations and therefore denies each and every allegation contained in said
16 paragraph.

17 21. Answering Paragraph 90 of Plaintiff's Complaint, Mr. McCrae is without knowledge
18 or information sufficient to form a belief as to the truth of the allegations and therefore denies each
19 and every allegation contained in said paragraph.

20 22. Answering Paragraph 91 of Plaintiff's Complaint, Mr. McCrae is without knowledge
21 or information sufficient to form a belief as to the truth of the allegations and therefore denies each
22 and every allegation contained in said paragraph.

23 23. Answering Paragraph 92 of Plaintiff's Complaint, Mr. McCrae admits that the
24 Receivership Order was entered on February 27, 2019, appointing Barbara Richardson as the
25 Receiver, and is without knowledge or information sufficient to form a belief as to the truth of the
26 remaining allegations contained in said paragraph and therefore denies each and every remaining
27 allegation.
28

1 24. Answering Paragraph 93 through 128 of Plaintiff's Complaint, Mr. McCrae is
2 without knowledge or information sufficient to form a belief as to the truth of the allegations and
3 therefore denies each and every allegation contained in said paragraphs.

4 25. Answering Paragraph 129 of Plaintiff's Complaint, Mr. McCrae states that these
5 allegations assert legal conclusions to which no response is required. To the extent deemed
6 otherwise by the Court, Mr. McCrae is without knowledge or information sufficient to form a belief
7 as to the truth of the allegations and therefore denies each and every allegation in said paragraph.

8 26. Answering Paragraph 130 and 131 of Plaintiff's Complaint, Mr. McCrae is without
9 knowledge or information sufficient to form a belief as to the truth of the allegations and therefore
10 denies each and every allegation contained in said paragraphs.

11 27. Answering Paragraph 132 of Plaintiff's Complaint, Mr. McCrae denies each and
12 every allegation contained in said paragraph.

13 28. Answering Paragraph 133 through 146 of Plaintiff's Complaint, Mr. McCrae is
14 without knowledge or information sufficient to form a belief as to the truth of the allegations and
15 therefore denies each and every allegation contained in said paragraphs.

16 29. Answering Paragraph 147 of Plaintiff's Complaint, Mr. McCrae admits that he
17 attended claims committee meetings. Mr. McCrae denies the remaining allegations in said
18 paragraph as they pertain to him. Mr. McCrae is without knowledge or information sufficient to
19 form a belief as to the truth of the remaining allegations and therefore denies each and every
20 allegation contained therein.

21 30. Answering Paragraph 148 of Plaintiff's Complaint, Mr. McCrae is without
22 knowledge or information sufficient to form a belief as to the truth of the allegations and therefore
23 denies each and every allegation contained in said paragraphs.

24 31. Answering Paragraph 149 of Plaintiff's Complaint, Mr. McCrae denies the
25 allegations in said paragraph as they pertain to him. Mr. McCrae is without knowledge or
26 information sufficient to form a belief as to the truth of the remaining allegations and therefore
27 denies each and every remaining allegation contained therein.

1 32. Answering Paragraph 150 of Plaintiff's Complaint, Mr. McCrae is without
2 knowledge or information sufficient to form a belief as to the truth of the allegations and therefore
3 denies each and every allegation contained in said paragraphs.

4 33. Answering Paragraph 151 of Plaintiff's Complaint, Mr. McCrae denies the
5 allegations in said paragraph as they pertain to him. McCrae is without knowledge or information
6 sufficient to form a belief as to the truth of the remaining allegations and therefore denies each and
7 every remaining allegation contained therein.

8 34. Answering Paragraph 152 through 159 of Plaintiff's Complaint, Mr. McCrae is
9 without knowledge or information sufficient to form a belief as to the truth of the allegations and
10 therefore denies each and every allegation contained in said paragraphs.

11 35. Answering Paragraph 160 of Plaintiff's Complaint, Mr. McCrae denies the
12 allegations contained in said paragraphs.

13 36. Answering Paragraph 161 through 173 of Plaintiff's Complaint, Mr. McCrae is
14 without knowledge or information sufficient to form a belief as to the truth of the allegations and
15 therefore denies each and every allegation contained in said paragraphs.

16 37. Answering Paragraph 174 of Plaintiff's Complaint, Mr. McCrae states that these
17 allegations contain legal conclusions to which no response is required. To the extent deemed
18 otherwise by the Court, Mr. McCrae is without knowledge or information sufficient to form a belief
19 as to the truth of the allegations and therefore denies each and every allegation contained in said
20 paragraph.

21 38. Answering Paragraph 175 through 181 of Plaintiff's Complaint, Mr. McCrae is
22 without knowledge or information sufficient to form a belief as to the truth of the allegations
23 contained therein and therefore denies each and every allegation contained in said paragraphs.

24 39. Answering Paragraph 182 of Plaintiff's Complaint, Mr. McCrae denies the
25 allegations in said paragraph as they pertain to him. Mr. McCrae is without knowledge or
26 information sufficient to form a belief as to the truth of the remaining allegations and therefore
27 denies each and every remaining allegation contained therein.

1 40. Answering Paragraph 183 through 207 of Plaintiff's Complaint, Mr. McCrae is
2 without knowledge or information sufficient to form a belief as to the truth of the allegations and
3 therefore denies each and every allegation contained in said paragraphs.

4 41. Answering Paragraph 208 of Plaintiff's Complaint, Mr. McCrae denies the
5 allegations in said paragraph as they pertain to him. McCrae is without knowledge or information
6 sufficient to form a belief as to the truth of the remaining allegations and therefore denies each and
7 every remaining allegation contained therein.

8 42. Answering Paragraph 209 through 223 of Plaintiff's Complaint, Mr. McCrae is
9 without knowledge or information sufficient to form a belief as to the truth of the allegations and
10 therefore denies each and every allegation contained in said paragraphs.

11 43. Answering Paragraph 224 of Plaintiff's Complaint, Mr. McCrae denies the
12 allegations in said paragraph as it pertains to him. Mr. McCrae is without knowledge or information
13 sufficient to form a belief as to the truth of the remaining allegations and therefore denies each and
14 every remaining allegation contained therein.

15 44. Answering Paragraphs 225 through 227 of Plaintiff's Complaint, Mr. McCrae is
16 without knowledge or information sufficient to form a belief as to the truth of the allegations and
17 therefore denies each and every allegation contained in said paragraphs.

18 45. Answering Paragraphs 228 through 230 of Plaintiff's Complaint, Mr. McCrae denies
19 each and every allegation contained in said paragraphs.

20 46. Answering Paragraphs 231 through 236 of Plaintiff's Complaint, Mr. McCrae is
21 without knowledge or information sufficient to form a belief as to the truth of the allegations and
22 therefore denies each and every allegation contained in said paragraphs.

23 47. Answering Paragraph 237 through 255 of Plaintiff's Complaint, Mr. McCrae is
24 without knowledge or information sufficient to form a belief as to the truth of the allegations and
25 therefore denies each and every allegation contained in said paragraphs.

26 48. Answering Paragraph 256 of Plaintiff's Complaint, Mr. McCrae denies the
27 allegations contained in subparagraph (e) of said paragraph. Mr. McCrae is without knowledge or
28

1 information as to the remaining allegations in said paragraph and therefore denies each and every
2 remaining allegation.

3 49. Answering Paragraph 257 through 262 of Plaintiff's Complaint, Mr. McCrae is
4 without knowledge of information sufficient to form a belief as to the truth of the allegations and
5 therefore denies each and every allegation contained in said paragraphs.

6 **FIRST CAUSE OF ACTION**

7 **(Breach of Contract as Against CTC)**

8 50. Answering Paragraph 263 of Plaintiff's Complaint, Mr. McCrae repeats and
9 incorporates his answers to paragraphs 1 through 262 to the Complaint as though fully set forth
10 herein.

11 51. Answering Paragraphs 264 through 268 of Plaintiff's Complaint, Mr. McCrae is
12 without knowledge or information sufficient to form a belief as to the truth of the allegations and
13 therefore denies each and every allegation contained in said paragraphs.

14 **SECOND CAUSE OF ACTION**

15 **(Breach of Contract as Against Lexicon)**

16 52. Answering Paragraph 269 of Plaintiff's Complaint, Mr. McCrae repeats and
17 incorporates his answers to paragraph 1 through 268 to the Complaint as though fully set forth
18 herein.

19 53. Answering Paragraph 270 through 273 of Plaintiff's Complaint, Mr. McCrae is
20 without knowledge or information sufficient to form a belief as to the truth of the allegations and
21 therefore denies each and every allegation contained in said paragraphs.

22 **THIRD CAUSE OF ACTION**

23 **(Breach of Contract as Against Criterion)**

24 54. Answering Paragraph 274 of Plaintiff's Complaint, Mr. McCrae repeats and
25 incorporates his answers to paragraphs 1 through 273 of the Complaint as though fully set forth
26 herein.

1 55. Answering Paragraph 275 through 279 of Plaintiff's Complaint, Mr. McCrae is
2 without knowledge or information sufficient to form a belief as to the truth of the allegations and
3 therefore denies each and every allegation contained in said paragraphs.

4 **FOURTH CAUSE OF ACTION**

5 **(Breach of Contract as Against the Spirit Director Defendants)**

6 56. Answering Paragraph 280 of Plaintiff's Complaint, Mr. McCrae repeats and
7 incorporates his answers to paragraphs 1 through 279 of the Complaint as though fully set forth
8 herein.

9 57. Answering Paragraph 281 through 285 of Plaintiff's Complaint, Mr. McCrae is
10 without knowledge or information sufficient to form a belief as to the truth of the allegations and
11 therefore denies each and every allegation contained in said paragraphs.

12 **FIFTH CAUSE OF ACTION**

13 **(Breach of Fiduciary Duty as Against CTC and Lexicon)**

14 58. Answering Paragraph 286 of Plaintiff's Complaint, Mr. McCrae repeats and
15 incorporates his answers to paragraphs 1 through 285 of the Complaint as though fully set forth
16 herein.

17 59. Answering Paragraph 287 through 292 of Plaintiff's Complaint, Mr. McCrae is
18 without knowledge or information sufficient to form a belief as to the truth of the allegations and
19 therefore denies each and every allegation contained in said paragraphs.

20 **SIXTH CAUSE OF ACTION**

21 **(Breach of Fiduciary Duty as Against the Spirit Director Defendants)**

22 60. Answering Paragraph 293 of Plaintiff's Complaint, Mr. McCrae repeats and
23 incorporates his answers to paragraphs 1 through 292 of the Complaint as though fully set forth
24 herein.

25 61. Answering Paragraph 294 through 299 of Plaintiff's Complaint, Mr. McCrae is
26 without knowledge or information sufficient to form a belief as to the truth of the allegations and
27 therefore denies the allegations contained therein.

SEVENTH CAUSE OF ACTION

(Breach of the Implied Covenant of Good Faith and Fair Dealing - Tortious as Against CTC and Lexicon)

62. Answering Paragraph 300 of Plaintiff's Complaint, Mr. McCrae repeats and incorporates his answers to paragraphs 1 through 299 of the Complaint as though fully set forth herein.

63. Answering Paragraph 301 through 310 of Plaintiff's Complaint, Mr. McCrae is without knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies each and every allegation contained in said paragraphs.

EIGHTH CAUSE OF ACTION

(Breach of the Implied Covenant of Good Faith and Fair Dealing - Contract as Against CTC and Lexicon)

64. Answering Paragraph 311 of Plaintiff's Complaint, Mr. McCrae repeats and incorporates his answers to paragraphs 1 through 310 of the Complaint as though fully set forth herein.

65. Answering Paragraph 312 through 319 of Plaintiff's Complaint, Mr. McCrae is without knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies each and every allegation contained in said paragraphs.

NINTH CAUSE OF ACTION

(Breach of the Implied Covenant of Good Faith and Fair Dealing - Contract as Against Criterion)

66. Answering Paragraph 320 of Plaintiff's Complaint, Mr. McCrae repeats and incorporates his answers to paragraphs 1 through 319 of the Complaint as though fully set forth herein.

67. Answering Paragraph 321 through 326 of Plaintiff's Complaint, Mr. McCrae is without knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies each and every allegation contained in said paragraphs.

TENTH CAUSE OF ACTION

(Nevada RICO Claims as Against Mulligan, George, Simon, Guffey, McCrae, Kapelinkovs, CTC, Lexicon, and Criterion)

68. Answering Paragraph 327 through 342 of Plaintiff's Complaint, Mr. McCrae denies the allegations as they pertain to him. Mr. McCrae is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations and therefore denies each and every remaining allegation contained in said paragraphs.

ELEVENTH CAUSE OF ACTION

(Unjust Enrichment as Against All Defendants)

69. Answering Paragraph 343 of Plaintiff's Complaint, Mr. McCrae repeats and incorporates his answers to paragraphs 1 through 342 of the Complaint as though fully set forth herein.

70. Answering Paragraphs 344 of Plaintiff's Complaint, Mr. McCrae denies the allegations as they pertain to him. Mr. McCrae is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations and therefore denies each and every remaining allegation contained in said paragraph.

71. Answering Paragraph 345 through 351 of Plaintiff's Complaint, Mr. McCrae is without knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies each and every allegation contained in said paragraphs.

TWELFTH CAUSE OF ACTION

(Fraud as Against All Defendants)

72. Answering Paragraph 352 of Plaintiff's Complaint, Mr. McCrae repeats and incorporates his answers to paragraphs 1 through 351 to the Complaint as though fully set forth herein.

73. Answering Paragraphs 353 to 370 of Plaintiff's Complaint, Mr. McCrae states that, pursuant to the Court's "Order Granting in Part and Denying in Part Defendants Scott McCrae and Matthew Simon, Jr.'s Motion to Dismiss" filed on August 11, 2020, Plaintiff's claim was dismissed

1 without prejudice as against Mr. McCrae and therefore, no answer is required. To the extent
2 deemed otherwise by the Court, Mr. McCrae denies each and every allegation in said paragraphs.

3 **THIRTEENTH CAUSE OF ACTION**

4 **(Civil Conspiracy as Against All Defendants)**

5 74. Answering Paragraph 371 of Plaintiff's Complaint, Mr. McCrae repeats and
6 incorporates his answers to paragraphs 1 through 370 to the Complaint as though fully set forth
7 herein.

8 75. Answering Paragraph 372 through 379 of Plaintiff's Complaint, Mr. McCrae denies
9 each and every allegation as it pertains to him. Mr. McCrae is without knowledge or information
10 sufficient to form a belief as to the truth of the remaining allegations and therefore denies each and
11 every remaining allegation contained in said paragraphs.

12 **FOURTEENTH CAUSE OF ACTION**

13 **(Alter Ego as Against Mulligan, George, Guffey, Simon and Pavel Kapelnikov)**

14 76. Answering Paragraph 380 of Plaintiff's Complaint, Mr. McCrae repeats and
15 incorporates his answers to paragraphs 1 through 379 of the Complaint as though fully set forth
16 herein.

17 77. Answering Paragraph 381 to 384 of Plaintiff's Complaint, Mr. McCrae is without
18 knowledge or information sufficient to form a belief as to the truth of the allegations and therefore
19 denies each and every allegation contained in said paragraphs.

20 **FIFTEENTH CAUSE OF ACTION**

21 **(NRS 112 – Avoidance of Transfers as Against CTC and its Transferees)**

22 78. Answering Paragraph 385 of Plaintiff's Complaint, Mr. McCrae repeats and
23 incorporates his answers to paragraphs 1 through 384 of the Complaint as though fully set forth
24 herein.

25 79. Answering Paragraph 386 through 391 of Plaintiff's Complaint, Mr. McCrae is
26 without knowledge or information sufficient to form a belief as to the truth of the allegations and
27 therefore denies each and every allegation contained in said paragraphs.

1 80. Answering Paragraph 392 through 396 of Plaintiff's Complaint, Mr. McCrae denies
2 each and every allegation as it pertains to him. Mr. McCrae is without knowledge or information
3 sufficient to form a belief as to the truth of the remaining allegations and therefore denies each and
4 every remaining allegation contained in said paragraphs.

5 **SIXTEENTH CAUSE OF ACTION**

6 **(NRS 696B – Voidable Transfers as Against CTC and its Transferees)**

7 81. Answering Paragraph 397 of Plaintiff's Complaint, Mr. McCrae repeats and
8 incorporates his answers to paragraphs 1 through 396 of the Complaint as though fully set forth
9 herein.

10 82. Answering Paragraph 398 through 403 of Plaintiff's Complaint, Mr. McCrae is
11 without knowledge or information sufficient to form a belief as to the truth of the allegations and
12 therefore denies each and every allegation contained in said paragraphs.

13 83. Answering Paragraph 404 through 409 of Plaintiff's Complaint, Mr. McCrae denies
14 each and every allegation as it pertains to him. Mr. McCrae is without knowledge or information
15 sufficient to form a belief as to the truth of the remaining allegations and therefore denies each and
16 every remaining allegation contained in said paragraphs.

17 **SEVENTEENTH CAUSE OF ACTION**

18 **(NRS 696B – Recovery of Distributions and Payments as Against CTC and its Transferees)**

19 84. Answering Paragraph 410 of Plaintiff's Complaint, Mr. McCrae repeats and
20 incorporates his answers to paragraphs 1 through 409 of the Complaint as though fully set forth
21 herein.

22 85. Answering Paragraph 411 through 415 of Plaintiff's Complaint, Mr. McCrae is
23 without knowledge or information sufficient to form a belief as to the truth of the allegations and
24 therefore denies each and every allegation contained in said paragraphs.

25 86. Answering Paragraph 416 through 421 of Plaintiff's Complaint, Mr. McCrae denies
26 each and every allegation as it pertains to him. Mr. McCrae is without knowledge or information
27 sufficient to form a belief as to the truth of the remaining allegations and therefore denies each and
28 every remaining allegation contained in said paragraphs.

EIGHTEENTH CAUSE OF ACTION

(NRS 692C.402 - Recovery of Distributions and Payments as Against CTC and its Transferees)

87. Answering Paragraph 422 of Plaintiff's Complaint, Mr. McCrae repeats and incorporates his answers to paragraphs 1 through 421 of the Complaint as though fully set forth herein.

88. Answering Paragraph 423 through 427 of Plaintiff's Complaint, Mr. McCrae is without knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies each and every allegation contained in said paragraphs.

89. Answering Paragraph 428 through 434 of Plaintiff's Complaint, Mr. McCrae denies each and every allegation as it pertains to him. Mr. McCrae is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations and therefore denies each and every remaining allegation contained in said paragraphs.

NINETEENTH CAUSE OF ACTION

(NRS 78.300 - Recovery of Unlawful Distribution as Against the Spirit Director Defendants)

90. Answering Paragraph 435 of Plaintiff's Complaint, Mr. McCrae repeats and incorporates his answers to paragraphs 1 through 434 of the Complaint as if fully set forth herein.

91. Answering Paragraph 436 through 441 of Plaintiff's Complaint, Mr. McCrae is without knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies each and every allegation contained in said paragraphs.

92. Any allegation not specifically admitted herein, including any and all allegations contained in headings in the Complaint, are hereby denied.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

The Complaint fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Mr. McCrae is shielded by the business judgment rule from personal liability for his decisions and actions while a director and/or officer.

THIRD AFFIRMATIVE DEFENSE

Plaintiff cannot establish that Mr. McCrae falls within NRS 78.138(7) sufficient to impose liability pursuant to the standard announced in *Chur v. Eighth Judicial Dist. Ct.*, 136 Nev. Adv. Op. 7, 458 P.3d 336 (February 27, 2020).

FOURTH AFFIRMATIVE DEFENSE

Mr. McCrae is entitled to indemnity for any actions in the course of his conduct as an officer and/or director.

FIFTH AFFIRMATIVE DEFENSE

Plaintiff has suffered no legally cognizable harm or damage as a result of the acts or omissions alleged in the Complaint.

SIXTH AFFIRMATIVE DEFENSE

To the extent that Plaintiff sustained damages in this matter, which Mr. McCrae specifically denies, then said damages were caused by the conduct of other entities or parties over whom Mr. McCrae had no control or right of control.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred due to comparative fault principles, and that negligence bars or limits recovery.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred for lack of consideration and/or failure of consideration.

NINTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred due to the lack of condition precedent.

TENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by the Statute of Frauds.

ELEVENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by the applicable statute of limitations and/or statute of repose.

TWELFTH AFFIRMATIVE DEFENSE

Plaintiff's claims fail for lack of causation.

THIRTEENTH AFFIRMATIVE DEFENSE

Plaintiff is barred by laches.

FOURTEENTH AFFIRMATIVE DEFENSE

The relief sought by Plaintiff is barred by the doctrine of waiver.

FIFTEENTH AFFIRMATIVE DEFENSE

The relief sought by Plaintiff is barred by the doctrine of unclean hands.

SIXTEENTH AFFIRMATIVE DEFENSE

By its own actions, Plaintiff is estopped from asserting any claim against Mr. McCrae.

SEVENTEENTH AFFIRMATIVE DEFENSE

At all times, Mr. McCrae acted in good faith.

EIGHTEENTH AFFIRMATIVE DEFENSE

At all times, Mr. McCrae's conduct was justified and/or privileged.

NINETEENTH AFFIRMATIVE DEFENSE

The conduct of Mr. McCrae was reasonable and/or Mr. McCrae acted under a reasonable belief that his conduct was authorized.

TWENTIETH AFFIRMATIVE DEFENSE

Mr. McCrae did not engage in a pattern of racketeering activity.

TWENTY-FIRST AFFIRMATIVE DEFENSE

Plaintiff's RICO claim fails for lack of predicate acts.

TWENTY-SECOND AFFIRMATIVE DEFENSE

Plaintiff's RICO claim fails because no enterprise existed separate and apart from the corporation.

TWENTY-THIRD AFFIRMATIVE DEFENSE

Plaintiff's claim for civil conspiracy is barred by the intra-corporate conspiracy doctrine. *Collins v. Union Federal Savings and Loan Association*, 99 Nev. 284, 662 P.2d 610 (1983).

TWENTY-FOURTH AFFIRMATIVE DEFENSE

Mr. McCrae received any transfers in good faith and for reasonably equivalent value.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

Nevada does not recognize accessory liability for fraudulent transfer, *see Cadle Co. v. Woods & Erickson, LLP*, 131 Nev. Adv. Op. 15, 345 P.3d 1049 (2015), therefore Plaintiff's claims for fraudulent transfer fail.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

The Court's prior order bars the relief sought by Plaintiff.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

Plaintiff failed to mitigate her damages, if any.

TWENTY-EIGHTH AFFIRMATIVE DEFENSE

Plaintiff's damages, if any, were caused in whole or in part by acts of third parties over whom Mr. McCrae had no control.

TWENTY-NINTH AFFIRMATIVE DEFENSE

Mr. McCrae did not act with oppression, fraud or malice, and Plaintiff cannot demonstrate otherwise by clear and convincing evidence. Therefore, punitive damages are unavailable in this action.

THIRTIETH AFFIRMATIVE DEFENSE

Plaintiff is not entitled to attorneys' fees under any statute, rule, or contractual provision.

THIRTY-FIRST AFFIRMATIVE DEFENSE

Mr. McCrae reserves the right to amend this Answer to add additional affirmative defenses in the event subsequent information or investigation warrants such amendment.

PRAYER FOR RELIEF

WHEREFORE, Mr. McCrae prays for judgment as follows:

1. That Plaintiff take nothing by way of its Complaint and that this action be dismissed in its entirety with prejudice;
2. For costs incurred in defense of this action;
3. For reasonable attorneys' fees incurred in defense of this action; and

///

///

1 4. For such other relief as the Court may deem just and proper.

2 Dated this 25th day of August, 2020.

3 PETERSON BAKER, PLLC

4
5 By: /s/ Tamara Beatty Peterson

6 TAMARA BEATTY PETERSON, ESQ., Bar No. 5218

7 tpeterson@petersonbaker.com

8 NIKKI L. BAKER, ESQ., Bar No. 6562

9 nbaker@petersonbaker.com

10 DAVID E. ASTUR, ESQ., Bar No. 15008

11 dastur@petersonbaker.com

12 701 S. 7th Street

13 Las Vegas, NV 89101

14 Telephone: 702.786.1001

15 Facsimile: 702.786.1002

16 *Attorneys for Defendants Matthew Simon Jr. and Scott McCrae*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Peterson Baker, PLLC, and pursuant to NRCF 5(b), EDCR 8.05, Administrative Order 14-2, and NEFCR 9, I caused a true and correct copy of the foregoing SCOTT MCCRAE'S ANSWER TO COMPLAINT to be submitted electronically for filing and service with the Eighth Judicial District Court via the Court's Electronic Filing System on the 25th day of August, 2020, to the following:

MARK E. FERRARIO, ESQ.
ferrario@gtlaw.com
KARA B. HENDRICKS, ESQ.
hendricksk@gtlaw.com
KYLE A. EWING, ESQ.
ewingk@gtlaw.com
GREENBERG TRAURIG, LLP
10845 Griffith Peak Drive, Suite 600
Las Vegas, NV 89135

Attorneys for Plaintiff

KURT R. BONDS, ESQ.
kbonds@alversontaylor.com
ALVERSON TAYLOR & SANDERS
6605 Grand Montecito Parkway, Suite 200
Las Vegas, Nevada 89149

Attorneys for Defendant Brenda Guffey

THOMAS E. MCGRATH, ESQ.
tmcgrath@tysonmendes.com
CHRISTOPHER A. LUND, ESQ.
clund@tysonmendes.com
TYSON & MENDES LLP
3960 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169

*Attorneys for Defendants Pavel Kapelnikov;
Chelsea Financial Group, Inc., a New Jersey
corporation; Chelsea Financial Group, Inc. a
California corporation; Global Forwarding
Enterprises, LLC; Kapa Management
Consulting, Inc.; Kapa Ventures, Inc.*

ROBERT S. LARSEN, ESQ.
rlarsen@grsm.com
WING YAN WONG, ESQ.
wwong@grsm.com
GORDON REES SCULLY MANSUKHANI,
LLP
300 South Fourth Street, Suite 1550
Las Vegas, Nevada 89101

*Attorneys for Defendants Lexicon Insurance
Management LLC, Daniel George and ICAP
Management Solutions, LLC*

SHERI M. THOME, ESQ.
Sheri.Thome@wilsonelser.com
WILSON, ELSER, MOSKOWITZ,
EDELMAN & DICKER LLP
6689 Las Vegas Blvd. South, Ste. 200
Las Vegas, NV 89119

*Attorneys for Defendant
James Marx, Carlos Torres, Virginia Torres,
and John Maloney*

WILLIAM R. URGAS, ESQ.
wru@juwlaw.com
DAVID J. MALLEY, ESQ.
djm@juwlaw.com
MICHAEL R. ERNST, ESQ.
mre@juwlaw.com
JOLLEY URGAS WOODBURY &
HOLTHUS
330 S. Rampart Blvd., Suite 380
Las Vegas, NV 89145

Attorneys for Defendant Thomas Mulligan

L. CHRISTOPHER ROSE, ESQ.
lcr@h2law.com
KIRILL V. MIKHAYLOV, ESQ.
kvm@h2law.com
WILLIAM A. GONZALES, ESQ.
wag@h2law.com
HOWARD & HOWARD ATTORNEYS
PLLC
3800 Howard Hughes Parkway, Suite 1000
Las Vegas, Nevada 89169
*Attorneys for Defendants Six Eleven LLC;
Quote My Rig, LLC; New Tech Capital LLC;
195 Gluten Free LLC; 10-4 Preferred Risk
Managers, Inc.; Ironjab, LLC; Fourgorean
Capital LLC; and Chelsea Holding Company,
LLC*

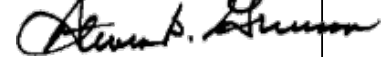
MATTHEW T. DUSHOFF, ESQ.
mdushoff@nvbusinesslaw.com
JORDAN D. WOLFF, ESQ.
jwolff@nvbusinesslaw.com
SALTZMAN MUGAN DUSHOFF
1835 Village Center Circle
Las Vegas, NV 89134

*Attorneys for Defendants CTC Transportation
Insurance Services of Missouri, LLC; CTC
Transportation Insurance Services, LLC; and
CTC Transportation Insurance Services of
Hawaii LLC*

JOHN R. BAILEY, ESQ.
JBailey@BaileyKennedy.com
JOSHUA M. DICKY, ESQ.
JDickey@BaileyKennedy.com
REBECCA L. CROOKER, ESQ.
RCrooker@BaileyKennedy.com
BAILEY KENNEDY
8984 Spanish Ridge Avenue
Las Vegas, Nevada 89148-1302.

*Attorneys for Defendant
Criterion Claim Solutions of Omaha, Inc.*

/s/ Erin Parcels
An employee of Peterson Baker, PLLC



1 L. CHRISTOPHER ROSE, ESQ.
Nevada Bar No. 7500
2 KIRILL V. MIKHAYLOV, ESQ.
Nevada Bar No. 13538
3 WILLIAM A. GONZALES, ESQ.
Nevada Bar No. 15230
4 **HOWARD & HOWARD ATTORNEYS PLLC**
3800 Howard Hughes Parkway, Suite 1000
5 Las Vegas, Nevada 89169
6 Telephone: 702.257.1483
7 Fax: 702.567.1568
8 lcr@h2law.com
9 kvm@h2law.com
wag@h2law.com

10 *Attorneys for Defendants, Six Eleven LLC; Quote My Rig, LLC;*
11 *New Tech Capital LLC; 195 Gluten Free LLC; 10-4 Preferred*
12 *Risk Managers, Inc.; Ironjab, LLC; Fourgorean Capital LLC;*
Chelsea Holding Company, LLC; and Chelsea Financial Group, Inc. (Missouri)

13 **DISTRICT COURT**

14 **CLARK COUNTY, NEVADA**

15
16 BARBARA D. RICHARDSON IN HER
CAPACITY AS THE STATUTORY RECEIVER
17 FOR SPIRIT COMMERCIAL AUTO
RETENTION GROUP, INC.,

18
19 Plaintiff,

20 vs.

21 THOMAS MULLIGAN, an individual; CTC
22 TRANSPORTATION INSURANCE SERVICES
OF MISSOURI, LLC, a Missouri Limited Liability
23 Company; CTC TRANSPORTATION
INSURANCE SERVICES, LLC, a California
24 Limited Liability Company; CTC
25 TRANSPORTATION INSURANCES SERVICES
OF HAWAII, LLC, a Hawaii Limited Liability
26 Company; CRITERION CLAIMS SOLUTIONS
27 OF OMAHA, INC., a Nebraska Corporation;
PAVEL KAPELNIKOV, an individual; CHELSEA
28 FINANCIAL GROUP, INC., a California
Corporation; CHELSEA FINANCIAL GROUP,

CASE NO.: A-20-809963-B
DEPT NO.: 13

**MOTION TO STAY PENDING
ARBITRATION**

[Hearing Requested]

Howard & Howard
3800 Howard Hughes Pkwy., Suite 1000
Las Vegas, NV 89169
(702) 257-1483

Howard & Howard
3800 Howard Hughes Pkwy., Suite 1000
Las Vegas, NV 89169
(702) 257-1483

INC., a Missouri Corporation; CHELSEA
FINANCIAL GROUP, INC., a New Jersey
Corporation d/b/a CHELSEA PREMIUM
FINANCE CORPORATION; CHELSEA
FINANCIAL GROUP, INC., a Delaware
Corporation; CHELSEA HOLDING COMPANY,
LLC, a Nevada Limited Liability Company;
CHELSEA HOLDINGS, LLC, a Nevada Limited
Liability Company, FOURGOREAN CAPITAL,
LLC, a New Jersey Limited Liability Company;
KAPA MANAGEMENT CONSULTING, INC., a
New Jersey Corporation, KAPA VENTURES,
INC., a New Jersey Corporation; GLOBAL
FORWARDING ENTERPRISES
LIMITED LIABILITY COMPANY, a New Jersey
Limited Liability Company; GLOBAL CAPITAL
GROUP, LLC, a New Jersey Limited Liability
Company; GLOBAL CONSULTING; NEW TECH
CAPITAL, LLC, a Delaware Limited Liability
Company; LEXICON INSURANCE
MANAGEMENT LLC, a North Carolina Limited
Liability Company; ICAP MANAGEMENT
SOLUTIONS, LLC, a Vermont Limited Liability
Company; SIX ELEVEN LLC, a Missouri Limited
Liability Company; 10-4 PREFERRED RISK
MANAGERS INC., a Missouri Corporation;
IRONJAB LLC, a New Jersey Limited Liability
Company; YANINA G. KAPELNIKOV, an
individual; IGOR KAPELNIKOV, an individual;
QUOTE MY RIG LLC, a New Jersey Limited
Liability Company; MATTHEW SIMON, an
individual; DANIEL GEORGE, an individual;
JOHN MALONEY, an individual; JAMES MARX,
an individual; CARLOS TORRES, an individual;
VIRGINIA TORRES, an individual; SCOTT
McCRAE, an individual; BRENDA GUFFEY, an
individual; 195 GLUTEN FREE LLC, a New
Jersey Limited Liability Company, DOE
INDIVIDUALS I- X; and ROE CORPORATE
ENTITIES I-X,

Defendants.

1 Defendants Six Eleven LLC; Quote My Rig, LLC; New Tech Capital LLC; 195 Gluten
2 Free LLC; 10-4 Preferred Risk Managers, Inc.; Ironjab, LLC; Fourgorean Capital LLC; Chelsea
3 Holding Company, LLC; and Chelsea Financial Group, Inc. (Missouri) (collectively
4 “Defendants,” “Filing Defendants,” or “Six Eleven Defendants”) by and through their counsel,
5 Howard & Howard Attorneys, PLLC, move this Court to stay all proceedings in this case pending
6 the resolution of the arbitrations recently ordered by this Court.

7 This Motion is made and based upon NRS 38.221, 9 U.S.C.A. § 3, the following
8 Memorandum of Points and Authorities, the pleadings and papers on file herein, and any
9 argument presented at the time of the hearing in this matter.

10 **I. INTRODUCTION**

11 On February 6, 2020, Plaintiff, Barbara D. Richardson, in her capacity as the statutory
12 receiver for Spirit Commercial Auto Risk Retention Group, Inc. (“Plaintiff” or “Spirit”) filed a
13 79-page Complaint asserting nineteen causes of action against a plethora of individuals and
14 entities. After a review of the Complaint, one characteristic of this case became abundantly clear:
15 the entirety of the allegations are based on two contracts: (1) the amended Program Administrator
16 Agreement between Spirit and Defendant, CTC Transportation Insurance Services of Missouri,
17 LLC (the “CTC Agreement”) and (2) the 2011 Claims Administration Agreement between Spirit
18 and Defendant, Criterion Claims Solutions of Omaha, Inc. (the “Criterion
19 Agreement”)(collectively, the “CTC/Criterion Agreements”). Importantly, the CTC/Criterion
20 Agreements contain arbitration provisions requiring arbitration for any dispute arising from the
21 CTC/Criterion Agreements.

22 On May 14, 2020, the CTC and Criterion Defendants filed Motions to Compel Arbitration
23 pursuant to the applicable arbitration provisions in their respective agreements. In its Oppositions
24 to the Motions to Compel Arbitration, Plaintiff argued among other things that all of its claims
25 were not subject to arbitration because the arbitration provisions in the CTC/Criterion Agreements
26 only encompassed the claims and parties intended in the original contracts and that the non-
27 contractual claims were not subject to the arbitration provisions. *See* Plaintiff’s Oppositions to
28 CTC and Criterion Motions to Compel Arbitration, filed herein on June 4, 2020. This Court

1 *disagreed* with Plaintiff's arguments and granted both motions, compelling arbitration between
2 the parties to the CTC/Criterion Agreements on *all* claims.

3 As mentioned above and discussed at length below, the remaining claims against the
4 Filing Defendants are fundamentally dependent on, intertwined with, and premised on the claims
5 now compelled to arbitration. If the instant proceeding is not stayed pending the resolution of the
6 arbitrations, there is a risk of inconsistent results under the same set of identical facts. Plaintiff
7 should not be allowed to burden the Court and the Filing Defendants with needless litigation. As
8 a result, the instant proceeding should be stayed as to the Filing Defendants pending the resolution
9 of the arbitration proceedings between Spirit and the CTC and Criterion Defendants. A stay is in
10 the best interests of this Court, the parties to the litigation, and judicial economy.

11 **II. STATEMENT OF FACTS**

12 **A. Spirit Commercial's Allegations in the Complaint.**

13 Spirit is a Nevada-domiciled associative captive insurance company that operated a
14 commercial auto-liability insurance business and specialized in providing insurance to
15 commercial truck owners. Complaint at ¶¶ 6, 52. Prior to Spirit's receivership, Defendant CTC
16 Transportation Insurance Services of Missouri, LLC ("CTC") served as the Program
17 Administrator for Spirit pursuant to the CTC Agreement signed on July 1, 2016. *Id.* at ¶ 12, 55.
18 Under the CTC Agreement, CTC was responsible for a multitude of responsibilities concerning
19 Spirit's insurance business, specifically, managing all funds received in connection with the CTC
20 Agreement. *Id.* at ¶¶ 86-88.

21 Additionally, Criterion Claims Solutions of Omaha, Inc ("Criterion") was a Third-Party
22 Administrator that provided claims administration services to Spirit. *Id.* at ¶ 14. Pursuant to the
23 Criterion Agreement, Criterion was responsible for establishing loss reserves, settling claims, and
24 issuing loss payments. *Id.* at ¶¶ 57, 141 - 42.

25 In general, Spirit alleges that CTC and Criterion collected funds under their respective
26 agreements and improperly distributed these funds to the other individuals and entity defendants,
27 which Spirit has labelled as the "Mulligan Enterprise". *See* Complaint generally; ¶¶ 256 – 257.

1 The causes of action included in the Complaint are abundant to say the least, however
2 only eight of the 19 causes of actions are relevant to the instant motion. The following causes of
3 action have been asserted against the Filing Defendants: Unjust Enrichment, Fraud, Civil
4 Conspiracy, Avoidance of Transfers under NRS 112, Voidable Transfers under NRS 696B,
5 Recovery of Distributions and Payments under NRS 696B, Recovery of Distributions and
6 Payments under NRS 692C.402, and Recovery of Unlawful Distributions under 78.300. *Id.* at ¶¶
7 343 – 379; 385 – 441, Eleventh, Twelfth, Thirteenth, Fifteenth, Sixteenth, Seventeenth and
8 Eighteenth Causes of Action.

9 The claims asserted against the Filing Defendants are identical and intertwined with the
10 claims asserted against CTC and Criterion. First, Plaintiff asserts that the Filing Defendants have
11 been unjustly enriched by receiving funds from CTC that were owed to Plaintiff. *See id.* at ¶¶
12 343-351. Second, Plaintiff asserts that the Filing Defendants are liable for fraud for being
13 implicated and a part of this alleged money transferring scheme under the CTC/Criterion
14 Agreements. *Id.* at ¶¶ 352-370. Third, Plaintiff asserts that the Filing Defendants acted in concert
15 with every other defendant (including CTC and Criterion) to siphon funds away from Plaintiff.
16 *Id.* at 371-379. Lastly, Plaintiff seeks to avoid transfers of funds and seeks recovery of the
17 distributions and payments that were allegedly paid to the Filing Defendants stemming from the
18 alleged scheme. *Id.* at ¶¶ 385-434. Consequently, these claims are entirely dependent on the
19 Filing Defendants allegedly receiving improper funds from CTC and Criterion. *See id.* at ¶¶ 343-
20 379; 385-434.

21 Based on Spirit’s allegations, one thing is evident: the allegations levied against the Filing
22 Defendants are dependent and premised on the alleged misconduct of CTC and/or Criterion under
23 their respective agreements. *Id.*; *see* Complaint, *generally*.

24 **B. This Court’s Enforcement of the Arbitration Provisions in the CTC and**
25 **Criterion Agreements.**

26 Pursuant to the arbitration provisions in the CTC/Criterion Agreements, CTC and
27 Criterion moved this Court to enforce the arbitration provisions and compel arbitration between
28 those parties. *See* CTC’s Motion to Compel Arbitration, filed herein on May 14, 2020; Criterion’s

1 Motion to Compel Arbitration, filed herein on May 14, 2020. As stated above, Plaintiff argued
2 that all of its claims were not subject to arbitration because the arbitration provisions in the
3 CTC/Criterion Agreements only encompassed the claims and parties intended in the original
4 contracts and that the non-contractual claims were not subject to the arbitration provisions. *See*
5 Plaintiff's Oppositions to CTC and Criterion Motions to Compel, filed herein on June 4, 2020.
6 However, this Court disagreed with Plaintiff's argument and ordered CTC and Criterion to
7 arbitrate **all** of Plaintiff's claims in Washington D.C. and Nebraska, respectively.

8
9 Following a hearing on the motions to compel, this Court entered an Order granting *both*
10 motions, containing the following findings: (1) the arbitration agreements in the CTC/Criterion
11 Agreements were valid and enforceable, (2) the arbitration agreements encompassed each of
12 Spirit's claims against CTC and Criterion; (3) the FAA applied to CTC/Criterion Agreements;
13 and (4) Spirit is bound by the arbitration agreements. *See* Order Granting CTC Defendants'
14 Motion to Compel Arbitration, filed herein on July 16, 2020; Order Granting Criterion
15 Defendant's Motion to Compel Arbitration, filed herein on July 22, 2020.

16 As a result of this Court's Orders, the claims asserted against CTC and Criterion, which
17 include the Filing Defendants and serve as the premise of the claims asserted against them, have
18 been removed from this proceeding and referred to arbitration.

19 **III. THIS COURT SHOULD GRANT A STAY PENDING ARBITRATION.**

20 **A. Case Law, the FAA, and the NUA All Support Staying the Proceedings** 21 **Against the Six Eleven Defendants Pending Plaintiff's Arbitrations with CTC** 22 **and Criterion.**

23 As a general proposition, the power to stay proceedings is incidental to the power inherent
24 in every court to control the disposition of the cases on its docket with economy of time and effort
25 for itself, for counsel, and for litigants. *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936). It is within
26 the court's sole discretion to grant and lift a stay of proceeding, and it can do so for any reason it
27 deems appropriate. *Id.* Courts have repeatedly found that when claims not subject to an arbitration
28 agreement arise out of the same conduct as claims subject to an arbitration agreement, staying the
former claims pending the conclusion of the arbitration is in the best interest of judicial economy.
Hansen v. Musk, 319CV00413LRHWGC, 2020 WL 4004800, at *1 (D. Nev. July 15, 2020). *See*

1 also *Hill v. G E Power Sys., Inc.*, 282 F.3d 343, 347 (5th Cir. 2002) (affirming order staying
2 claims against non-signatories to arbitration agreements pending completion of arbitration
3 between signatories, stating, “[w]e have long held that if a suit against a nonsignatory is based
4 upon the same operative facts and is inherently inseparable from the claims against a signatory,
5 the trial court has discretion to grant a stay if the suit would undermine the arbitration proceedings
6 and thwart the federal policy in favor of arbitration”); *Sharp Corp. v. Hisense USA Corp.*, 17-
7 CV-03341-YGR, 2017 WL 6017897, at *4 (N.D. Cal. Dec. 5, 2017) (where the Court stayed all
8 trial proceedings of the non-signatories to the arbitration agreement pending arbitration as the
9 facts, allegations, and claims asserted against the non-signatories were identical and intertwined
10 with the claims asserted against the signatory to the arbitration agreement); *CPB Contractors Pty*
11 *Ltd. v. Chevron Corp.*, C 16-5344 CW, 2017 WL 7310776, at *5 (N.D. Cal. Jan. 17, 2017) (where
12 the court stayed the court proceedings pending arbitration between signatories to arbitration
13 agreement as the “issues involved in the suit” were subject to arbitration); *Amisil Holdings Ltd.*
14 *v. Clarium Capital Mgmt.*, 622 F. Supp. 2d 825, 842 (N.D. Cal. 2007) (where the Court stayed
15 the proceedings pending arbitration because the claims asserted against non-signatories to the
16 arbitration agreement were based on the same facts as the claims asserted against the signatories
17 to the arbitration agreement).

18 Moreover, the Federal Arbitration Act (the “FAA”) also states that a court is to stay a
19 proceeding pending resolution of the issues that have been referred to arbitration. Specifically,
20 Section Three of the FAA states:

21 If any suit or proceeding be brought in any of the courts of the United States upon
22 any issue referable to arbitration under an agreement in writing for such
23 arbitration, the court in which such suit is pending, upon being satisfied that the
24 issue involved in such suit or proceeding is referable to arbitration under such an
25 agreement, *shall on application of one of the parties stay the trial of the action*
26 *until such arbitration has been had in accordance with the terms of the agreement,*
27 *providing the applicant for the stay is not in default in proceeding with such*
28 *arbitration.*

27 9 U.S.C.A. § 3 (emphasis added); *See also Hill*, 282 F.3d at 347 (relying on Section 3 of the FAA
28 to stay case against non-signatories to arbitration agreement pending arbitration between

1 signatories).. Nevada’s Uniform Arbitration Act (the “NUAA”), codified in NRS Chapter 38, also
2 explicitly allows this Court to stay any judicial proceeding pending resolution of claims subject
3 to arbitration. NRS 38.221(6)-(7) states:

4 6. If a party makes a motion to the court to order arbitration, the court on just
5 terms shall stay any judicial proceeding that involves a claim alleged to be subject
6 to the arbitration until the court renders a final decision under this section.

7 7. If the court orders arbitration, the court on just terms shall stay any judicial
8 proceeding that involves a claim subject to the arbitration. If a claim subject to the
9 arbitration is severable, the court may limit the stay to that claim.

10 Similarly, neighboring states such as California have codified that a stay be instituted in
11 the underlying proceeding pending resolution of the arbitration proceedings.

12 If a court of competent jurisdiction, whether in this State or not, has ordered
13 arbitration of a controversy which is an issue involved in an action or proceeding
14 pending before a court of this State, the court in which such action or proceeding
15 is pending shall, upon motion of a party to such action or proceeding, stay the
16 action or proceeding until an arbitration is had in accordance with the order to
17 arbitrate or until such earlier time as the court specifies.

18 Cal. Civ. Proc. Code § 1281.4.

19 The clear language of the statute compels the conclusion that any party to a judicial
20 proceeding, whether a party to an arbitration agreement or not, is entitled to a stay of those
21 proceedings whenever (1) the arbitration of a controversy has been ordered, and (2) that
22 controversy is also an issue involved in the pending judicial action. *Marcus v. Superior Court*,
23 141 Cal. Rptr. 890, 892 (Ct. App. 1977)(citing Cal. Civ. Proc. Code § 1281.4). It is irrelevant
24 whether the movant is a party to the arbitration agreement. *Id.*

25 Here, the FAA, which this Court explicitly held is applicable to this dispute, allows for
26 the implementation of a stay pending arbitration when one of the issues involved in the dispute is
27 referred to arbitration. *See* 9 U.S.C.A. § 3. As discussed herein and after a thorough analysis of
28 the Complaint, the issues and claims now referred to arbitration are inextricably intertwined with
the remaining causes of action asserted against the Filing Defendants. Accordingly, issuing a stay
pending resolution of the arbitration proceeding is proper under the FAA.

1 Further, the NUAA explicitly contemplates the institution of a stay when a claim is subject
2 to arbitration or involves a claim subject to arbitration. *See* NRS 38.221(6)-(7). Here, although
3 the Filing Defendants are not parties to the CTC/Criterion Agreements, the claims asserted against
4 them are wholly dependent upon claims that are involved and subject to the arbitrations.

5 Additionally, the neighboring states have accounted for and have even codified a solution
6 for this exact scenario. As seen in Cal. Civ. Proc. Code § 1281.4 and thoroughly explained in
7 *Marcus*, it is entirely reasonable (and proper) to stay a proceeding when arbitration has been
8 ordered and the controversy is also involved in a pending judicial action, regardless of whether
9 the party seeking a stay is a signatory to the arbitration agreement. *See* 141 Cal. Rptr. at 892.

10 Thus, under the controlling authority of the FAA and the NUAA, issuing a stay is proper
11 and explicitly allowed because the claims asserted against the Filing Defendants are intertwined
12 with and premised on the claims now subject to arbitration. Additionally, the persuasive authority
13 from our neighboring state of California is directly on-point and provides for the institution of a
14 stay for this exact scenario. Not only do these authorities empower the Court to stay the
15 proceedings, but a stay is the only sensible course of action given that Plaintiff's claims against
16 the Six Eleven Defendants are entirely dependent on the outcome of Plaintiff's claims in the CTC
17 and Criterion arbitrations. Accordingly, this Court should grant the instant motion and institute a
18 stay in this proceeding pending arbitration.

19 **B. This Court Should Stay the Proceedings Pending the Resolution of the**
20 **Arbitrations because the Claims Asserted Against the Filing Defendants are**
21 **Dependent, Intertwined, and Premised on the Claims Subject to the**
22 **Arbitrations.**

23 As stated above and at length in its Complaint, Plaintiff asserts that CTC and Criterion
24 mismanaged the funds, assets, and dues owed to Spirit by improperly using said funds to enrich
25 the entities included in the "Mulligan Enterprise" instead of using the funds to pay for the
26 operating expenses. The Filing Defendants are alleged to be part of this so-called "Enterprise"
27 and have allegedly received funds and payments from CTC and Criterion that Spirit claims is
28 owed to it. In short, the Filing Defendants' liability is inherently dependent upon, intertwined
with, and premised on the resolution of the claims recently ordered to arbitration.

1 First, in Plaintiff's Eleventh Cause of Action (Unjust Enrichment), Plaintiff asserts that
2 CTC improperly and fraudulently transferred funds, property, and reclassified debt rightfully
3 belonging to Spirit, for the benefit of the Defendants. *See* Complaint, ¶¶ 346-351, filed herein
4 on February 6, 2020. Whether or not Defendants were unjustly enriched is entirely dependent on
5 whether CTC's action were improper or fraudulent. Such a determination is now subject to an
6 arbitration proceeding, separate and apart from this proceeding.

7 Second, in Plaintiff's Twelfth and Thirteenth Causes of Action (Fraud and Civil
8 Conspiracy), Plaintiff asserts that every Defendant perpetrated fraud and worked in concert by,
9 among other assertions, siphoning money from Spirit for the benefit of the individual and entity
10 Defendants. *Id.* at ¶¶ 352-379. These claims are directly tied to and dependent upon the
11 determination as to whether CTC and Criterion Defendants improperly managed or siphoned said
12 funds allegedly belonging to Spirit. This determination is now subject to arbitration proceedings
13 separate and apart from this proceeding.

14 Third, Plaintiff's Fifteenth, Sixteenth, Seventeenth, and Eighteenth Causes of Action
15 (encompassing the allegedly fraudulent transfers of funds and recovery from the alleged
16 transferees) are, again, entirely dependent on whether CTC and/or Criterion made fraudulent
17 transfers, wrote off debts, reclassified debts, and transferred said funds to the Filing Defendants
18 and the rest of the "Mulligan Enterprise". *Id.* at ¶¶ 385-434. Again, this requires a determination
19 that is subject to arbitration proceedings separate and apart from this proceeding.

20 Thus, pursuant to *Hill*, and the scores of other cases cited above, because the resolution
21 of this proceeding and the causes of action asserted against the Filing Defendants are dependent
22 upon the resolution of the arbitration proceedings and premised on the *same set of facts*, these
23 proceedings must be stayed. *See Hill*, 282 F.3d at 347 (affirming order staying claims against
24 non-signatories to arbitration agreements pending completion of arbitration between signatories.

25 **C. Staying This Proceeding is in the Best Interest of this Court and the Parties**
26 **and Protects Against the Risk of Inconsistent Results.**

27 Staying these proceeding pending the outcome of the arbitration proceedings is in the best
28 interest of judicial economy and preserves the resources of every party and this Court. Allowing
this proceeding to continue while the foundational claims are proceeding in arbitrations will place

1 an unnecessary burden on this Court's docket and the parties. This is no ordinary dispute. This is
2 a complex business matter riddled with intricate legal and factual issues. Allowing this case to
3 continue will cause the Six Eleven Defendants to accrue an exorbitant amount of attorneys' fees
4 in a proceeding that is entirely dependent on the outcome of another. Instead, this Court should
5 stay these proceedings as to the Six Eleven Defendants to preserve judicial resources and relieve
6 the parties from litigating in this forum until the foundational and intertwined claims are
7 determined in the arbitration proceedings. A stay is the only way to conserve judicial resources
8 and avoid the inherent risk of inconsistent outcomes. *See Rose, LLC v. Treasure Island, LLC*, 135
9 Nev. 145, 159, 445 P.3d 860, 871 (Nev. App. 2019) (citing *Univ. of Nev. v. Tarkanian*, 95 Nev.
10 389, 397, 594 P.2d 1159, 1164 (1979) (stating the importance of preserving judicial resources,
11 reducing piecemeal litigation, and avoiding potentially inconsistent outcomes).

12 Stated another way, if it is determined at arbitration that the CTC and Criterion
13 Defendants *are not* liable for their alleged misconduct, that will be the end of the road for any
14 claims Plaintiff has alleged against the Six Eleven Defendants since those claims are dependent
15 on the claims alleged against CTC and Criterion. Thus, the results of the arbitration proceedings
16 and these proceedings could directly conflict with one another if both matters proceed
17 simultaneously.

18 Thus, similar to *Hansen and Hill*, although the Filing Defendants are not parties to the
19 CTC/Criterion Agreements, the claims asserted against them arise out of the same conduct that
20 are subject to the arbitrations recently ordered by this Court. Thus, staying these proceedings as
21 to the Six Eleven Defendants pending conclusion of the arbitration proceedings is in the best
22 interest of the parties and judicial economy.

23 **IV. CONCLUSION**

24 This Court should grant this Motion and stay all proceedings against the Six Eleven
25 Defendants because (1) the claims asserted against them are entirely dependent, intertwined, and
26 premised on the claims subject to arbitrations between Plaintiff, CTC, and Criterion, (2) a stay of
27 this proceeding is proper under the Nevada Uniform Arbitration Act and the FAA; and (3) staying
28 these proceedings is in the best interests of judicial economy and parties to this litigation, as it

1 will protect against the inherent risk of inconsistent results under an identical set of facts and
2 conserve judicial and the parties' resources.

3 DATED this 28th day of August, 2020.

4 **HOWARD & HOWARD ATTORNEYS PLLC**

5 /s/ L. Christopher Rose

6 L. CHRISTOPHER ROSE, ESQ.

7 KIRILL V. MIKHAYLOV, ESQ.

8 WILLIAM A. GONZALES, ESQ.

3800 Howard Hughes Parkway, Suite 1000

Las Vegas, Nevada 89169

9
10 *Attorneys for Defendants Six Eleven LLC; Quote My Rig,*
11 *LLC; New Tech Capital LLC; 195 Gluten Free LLC; 10-4*
12 *Preferred Risk Managers, Inc.; Ironjab, LLC; Fourgorean*
13 *Capital LLC; Chelsea Holding Company, LLC; and*
14 *Chelsea Financial Group, Inc. (Missouri)*

Howard & Howard
3800 Howard Hughes Pkwy., Suite 1000
Las Vegas, NV 89169
(702) 257-1483

CERTIFICATE OF SERVICE

I hereby certify that I am employed in the County of Clark, State of Nevada, am over the age of 18 years and not a party to this action. My business address is Howard & Howard Attorneys PLLC, 3800 Howard Hughes Parkway, Suite 1000, Las Vegas, Nevada 89169.

On this day, I served the **MOTION TO STAY PENDING ARBITRATION** in this action or proceeding electronically with the Clerk of the Court via the Odyssey E-File and Serve system, and e-served the same on all parties listed on the Court's Master Service List.

I certify under penalty of perjury that the foregoing is true and correct, and that I executed this Certificate of Service on August 28, 2020 at Las Vegas, Nevada.

/s/ Julia M. Diaz

An employee of HOWARD & HOWARD ATTORNEYS PLLC



1 **RIS**

2 **GREENBERG TRAURIG, LLP**

3 MARK E. FERRARIO, Bar No. 1625

4 KARA B. HENDRICKS, Bar No. 7743

5 KYLE A. EWING, Bar No. 14051

6 10845 Griffith Peak Drive, Suite 600

7 Las Vegas, NV 89135

8 Telephone: (702) 792-3773

9 Facsimile: (702) 792-9002

10 Email: ferrariom@gtlaw.com

11 hendricksk@gtlaw.com

12 ewingk@gtlaw.com

13 *Counsel for Plaintiff*

14 **DISTRICT COURT**

15 **CLARK COUNTY, NEVADA**

16 STATE OF NEVADA, EX REL.
17 COMMISSIONER OF INSURANCE,
18 BARBARA D. RICHARDSON, IN HER
19 OFFICIAL CAPACITY AS RECEIVER
20 FOR SPIRIT COMMERCIAL AUTO RISK
21 RETENTION GROUP, INC.,

22 Plaintiff,

23 v.

24 THOMAS MULLIGAN, et al.

25 Defendants.

26 **Case No.: A-20-809963-B**

27 **Dept. No.: XIII**

28 **REPLY IN SUPPORT OF PLAINTIFF'S
MOTION FOR RECONSIDERATION AND/OR
CLARIFICATION OF THE COURT'S JULY
22, 2020 ORDER REGARDING CRITERION
CLAIM SOLUTIONS OF OMAHA INC.'S
MOTION TO COMPEL ARBITRATION**

Date of Hearing: September 8, 2020

Time: 9:00 a.m.

29 COMES NOW, Plaintiff Barbara D. Richardson, in her capacity as the Statutory Receiver for
30 Spirit Commercial Auto Risk Retention Group, Inc., (hereafter "Receiver") by and through her attorneys
31 of record, the law firm of Greenberg Traurig, LLP, and hereby files this Reply in Support of Plaintiff's
32 Motion for Reconsideration and/or Clarification of the Court's July 22, 2020 Order Regarding Criterion
33 Claim Solutions of Omaha Inc.'s Motion to Compel Arbitration ("Reply").

1 This Reply is based upon the pleadings and papers on file herein, the following Memorandum of
2 Points & Authorities, and any and all oral arguments allowed by this Court at the time of hearing.


3 Dated this 1st day of September, 2020.

4
5 By: /s/ Kara B. Hendricks

6 MARK E. FERRARIO, Bar No. 1625
7 KARA B. HENDRICKS, Bar No. 7743
8 KYLE A. EWING, Bar No. 14051
9 GREENBERG TRAUIG, LLP
10 10845 Griffith Peak Drive, Suite 600
11 Las Vegas, NV 89135
12 *Counsel for Plaintiff*

13 MEMORANDUM OF POINTS & AUTHORITIES

14 I. INTRODUCTION

15 Reconsideration and/or clarification is necessary here. The attempt by Criterion Claim Solutions
16 of Omaha, Inc. ("Criterion") to minimize its role as claims manager and the impact that role has on the
17 analysis  Court was asked to make regarding arbitration, demonstrates the flaws in the current order
18 and the clear error that needs to be corrected. Criterion now boldly claims that the Receiver waived the
19 argument that Spirit's contractual relationship with Criterion is important to the analysis the Court must
20 conduct because it was not raised in the Opposition to Motion to Compel. However, in opposing
21 Criterion's Motion to Compel, the issue was repeatedly raised and the Receiver's brief clearly stated:

22 Similarly, because Criterion served as the program administrator or manager of
23 Spirit's claims, jurisdiction is proper pursuant to NRS 696B.200(c) which provides courts
24 in the state in which an order of rehabilitation or liquidation is entered jurisdiction over
25 persons and entities served as managers, trustees, directors, organizers and promoters of
26 the insurer or others with similar positions and responsibilities. *See* NRS 696B.200(c).
Accordingly, this Court is the proper forum to resolve the dispute.

27 Opposition to Motion Criterion's Motion to Compel Arbitration ("Opposition to Motion to Compel"),
28 15: 21-26. There can be no doubt that the importance of the underlying nature of the Criterion contract
and Criterion's role as Spirit's claims manager are necessary to the Court's analysis and must be
evaluated. Such issues were not waived by the Receiver.

1 Because of its role as Spirit's claims manager, there are direct statutory implications that must be
2 evaluated by this Court as part of its ruling on Criterion's Motion to Compel Arbitration. Similar issues
3 were never considered in the Writ or underlying district court decision by Judge Delaney in the Nevada
4 Co-Op/Milliman. Accordingly, clear grounds exist for reconsideration and/or clarification.

5 **II. RELEVANT FACTS**

6 The Court is familiar with the claims asserted by the Receiver and the vast scheme that was
7 orchestrated to siphon money away from Spirit leaving it insolvent. What is critical to the current motion
8 is Criterion's part in the scheme. Indeed, Criterion, as Spirit's claims manager, was to establish loss
9 reserves, settle claims, and issue loss payments, on behalf of Spirit and was critical to Spirit's ongoing
10 operations and viability. Additionally, Criterion was also a part of an insurance holding company
11 structured by Defendant Mulligan. Criterion's activities implicate Nevada insurance law and the Court's
12 analysis of the arbitration provision that Criterion sought to enforce.

13 **III. LEGAL ARGUMENT**

14 **A. Reconsideration and/or Clarification is Warranted.**

15 Criterion's claim that there are insufficient grounds for reconsideration lacks merit and also
16 ignores the case law cited by the Receiver, as well as EDCR 2.24, NRCP 60(b)(1) and the July Minute
17 Order,¹ all of which provide a basis for the relief sought. Here, there was clear error in the order submitted
18 by counsel for Criterion ("Criterion Order to Compel") because an analysis of the role of an insurance
19 claims manager and related implications under Nevada law was not conducted. Notably, wholesale
20 reliance on the Writ issued by the Nevada Supreme Court in the Nevada Co-Op/Milliman matter, is not
21 warranted because the facts of this matter are different, which changes the analysis and outcome. Here,
22 the Court must look at the factual differences and the applicable law before simply sending the claims to
23 an arbitrator. Because such issues were not addressed in the Criterion Order to Compel, reconsideration
24 and/or clarification is necessary.

25
26 _____
27 ¹ "July Minute Order" as used herein refers to the July 6, 2020 Minute order issues in relation to the Motion to
28 Compel Arbitration filed by Criterion.

1 **B. The Criterion Order to Compel Goes Far Beyond the Direction Provided by the**
2 **Court.**

3 The July Minute Order provides the only specific insight regarding the scope of the Court's
4 decision, as the parties did not get the benefit of any comments from the Court because the scheduled
5 hearing was vacated due to COVID-19. The July Minute Order itself references only the Writ and
6 provides no guidance regarding the purported similarities between the instant matter and the issues
7 presented in the Nevada Co-Op case relating to an agreement with Milliman Inc. ("Milliman), an outside
8 actuary. Notwithstanding the Court's direction to submit a proposed order consistent with the July
9 Minute Order, what was submitted for signature was a document that included case law and analysis
10 regarding Criterion's opinions of the case, which was not consistent with the issues actually addressed in
11 the Writ. As such, the Order to Compel does not comport with the "herewith" language in the actual
12 July Minute Order warranting reconsideration and/or clarification.


13 As detailed in the Motion to Reconsider (and not addressed in the Opposition), the Writ itself was
14 only two pages and limited in scope. Notably, the Supreme Court did not issue an opinion that foreclosed
15 the ability of a statutory receiver to challenge an arbitration clause when the regulation of insurance is
16 impaired, or the provision at issue is part of a criminal scheme or fraud as is alleged here, or where the
17 party seeking arbitration is subject to regulation under Nevada law. Additionally, when upholding the
18 lower court's decision, the Supreme Court indicated its basis for doing so was in part because the issues
19 considered at the district court level involved claims that were contractual and tort based, rather than a
20 creditor's claim--and did not implicate Nevada Insurance law. The facts of this case are different than
21 the claims asserted against Milliman. Here, Criterion's managerial role, relationship with the CTC
22 Defendants, and its being part of an insurance holding company must all be evaluated.

23 **1. Criterion's role as claims manager and part in an insurance holding company**
24 **provides independent ground for the Court to retain jurisdiction.**

25 In an attempt to distance itself from Nevada Insurance Law and the fraudulent scheme utilized to
26 defraud Spirit and its policyholders that Criterion and affiliated entities perpetuated, Criterion tries to
27 minimize its actions by contending that any duties Criterion owed to Spirit were solely based on the
28

1 management agreement it entered with Spirit. (“Criterion Management Agreement”). However,
2 reference to the breach of contract claim in the Complaint misses the point. As detailed in the subject
3 Motion, Criterion was directly responsible for setting Spirit’s insurance reserves in a manner that would
4 ensure that sufficient funds were available to pay claims made by someone in an automobile accident
5 involving an entity or person who purchased insurance from Spirit. The deliberate underreporting of
6 claim reserves by Criterion enabled Spirit to stay in business longer than it should have, resulted in even
7 more claim liabilities for Spirit, enriched corporate insiders (*i.e.*, Criterion) with more fees, and assisted
8 in prolonging the existence of Spirit so that more money could be siphoned off and paid to corporate
9 insiders, affiliates, management, and those with close personal ties to Thomas Mulligan. The importance
10 of Criterion’s role as an affiliated claims manager of the party that controls Spirit (*i.e.*, Thomas Mulligan),
11 and the regulated nature of this key role, is further illustrated by NRS 692C.370 (1), (7), (8), and (9),
12 which also was not addressed by Criterion. This court has express jurisdiction over Criterion under NRS
13 696B.200(c) of the receivership statute governing Spirit’s affairs due to Criterion being a claims manager
14 of Spirit, which warrants this Court retaining jurisdiction to hear the claims asserted against Spirit’s
15 claims manager. The Order to Compel and Judge Delaney’s evaluation in the Nevada CO-OP Milliman
16 did not consider such issues, and Milliman, in the Nevada CO-OP, case did not perform the role of a
17 manager prior to the receivership.

18 **2. Criterion’s Role in Fraud Invalidates Purported Need for Arbitration.**

19 Criterion’s argument that the Receiver is bound by the arbitration provision in the  Criterion
20 management agreement ignores its own role in a fraudulent scheme that led to Spirit’s insolvency. As
21 Spirit’s claims manager, Criterion not only mishandled claims and artificially set reserves in a manner
22 that resulted in Spirit wrongfully reporting a solid financial condition, but Criterion also conspired with
23 affiliated CTC entities and others to hide Spirit’s true financial condition and prolong the existence of
24 Spirit so that management, corporate insiders, and the ultimate controlling party could abscond, loot, or
25 misallocate Spirit’s assets for their own financial gain. The arbitration provision at issue furthers the
26 scheme and allows Criterion to hide from the public the wrongdoings it facilitated that left Spirit unable
27
28

1 to meet its financial obligations. Here, the Receiver is burdened with trying to recover squandered assets
2 of Spirit and to pay steep claim liabilities that were left by Criterion and the other defendants who raided
3 Spirit's coffers and left it insolvent, and grounds exist to reject the arbitration provision and for the Court
4 to hear the claims asserted. *See* NRS 696B.200(c)(providing express jurisdiction over Criterion as a
5 former claims manager of Spirit). *See also, Janvey v. Alguire*, 847 F.3d 231, 246 (5th Cir. 2017)
6 (concurring opinion).

7 **3. Applicability of FAA & McCarran-Ferguson Act is Not Fully Addressed in the**
8 **Criterion Order to Compel.**

9 Criterion has misconstrued the Receiver's arguments relating to the Federal Arbitration Act
10 ("FAA") and the analysis requesting exemption under the McCarran-Ferguson Act. Reconsideration
11 and/or clarification of the Criterion Order to Compel is warranted because the July Minute Order did not
12 indicate the Court conducted the required analysis. Indeed, adopting portions of Criterion's briefs into
13 the Order to Compel did not resolve the unique issues of this case and specifically did not address
14 Criterion's role as Spirit's claims manager and Criterion's membership in an insurance holding company.
15 The claims asserted against Criterion directly implicate the business of insurance and interfere with the
16 liquidator's statutory function, and the dislocation of this Court's jurisdiction over Criterion will have a
17 direct bearing on the administration and allocation of Spirit's property. Reconsideration and/or
18 clarification is needed along with analysis of the FAA and the McCarran-Ferguson Act to this case, with
19 specific consideration as to Criterion's duties as Spirit's claims manager and this Court's resulting
20 jurisdiction over Criterion under the receivership statute.

21 As detailed in the Motion, if the Court contends the FAA is applicable, it would still be required
22 to analyze the applicability of the McCarran-Ferguson Act set forth in 15 U.S.C. §§ 1011-1015 to the
23 facts of this matter. The fact that Judge Delaney was provided with similar case law and standards to
24 evaluate does not provide a basis for the Court here to summarily adopt her decision without applying
25 the facts of this case to the applicable legal standards. The Supreme Court created a three-part test to
26 determine whether reverse-preemption of federal law through McCarran-Ferguson occurs. Specifically,

1 a court is to examine whether: 1) the state statute was enacted for the purpose of regulating the business
2 of insurance; 2) the federal statute involved “does not specifically relat[e] to the business of insurance”;
3 and 3) the application of the federal statute to the facts of the case would “invalidate, impair, or
4 supersede” the state statute regulating insurance. *Humana Inc. v. Forsyth*, 525 U.S. 299, 307, 119 S.Ct.
5 710, 142 L.Ed.2d 753 (1999). Such factors are not adequately addressed in the Criterion Order to
6 Compel. Furthermore, when the Supreme Court test is applied, a different result is reached as each
7 prong of the test is met for reverse-preemption because Criterion managed Spirit’s claims and set
8 insurance reserves for policies Spirit issued. The importance of such tasks are recognized in NRS
9 692C.370 (1), (7), (8), and (9) and the Court’s inherent jurisdiction over such claims set forth in NRS
10 696B.200(c).

11 Notably, the cases relied on by Criterion all have one thing in common that is not present here.
12 In each case, a fact specific analysis was conducted before determining the applicability of the FAA.
13 Failure to conduct such an analysis is clear error.

14 Furthermore, Criterion’s reliance on Judge Delaney’s decision in the Nevada Co-Op/Milliman
15 matter and subsequent Writ is not sufficient. There are clear distinctions between the two cases that
16 must be analyzed. Notably, when Judge Delaney concluded the standard for reverse preemption was
17 not satisfied, her decision was based on fact specific analysis of the claims asserted against Milliman.
18 Indeed, in finding that against reverse preemption, she did so after looking at the claims asserted and
19 determining the claims asserted against Milliman did not implicate the business of insurance or interfere
20 with the liquidator’s statutory function. Judge Delaney also found that the receiver’s action against
21 Milliman had no bearing on the administration, allocation or ownership of Nevada Co-Op’s property or
22 assets, which is the province of the Receivership Action. In this case, however, the administration,
23 allocation and ownership of Spirit’s property are all at issue. Further, the administration of the
24 receivership is being threatened as other Defendants in this matter are now seeking a stay of the
25 underlying action pending the completion of arbitration with Criterion.² Any such stay threatens the

26 ² Defendants Six Eleven LLC, Quote My Rig, LLC, New Tech Capital, LLC, 195 Gluten Free LLC, 10-4
27 Preferred Risk Managers, Inc., Ironjab LLC, Fourgorean Capital LLC, Chelsea Holdings Company, LLC, and

1 Receiver's ability to timely recover for the benefit of Spirit's creditors. Accordingly, clarification and/or
2 reconsideration is warranted.

3 **4. Not All Claims Arise from a Contractual Relationship.**

4 In an attempt to try and get around the fact that Plaintiff's claims for fraud, RICO, and conspiracy
5 are not contractual, Criterion seeks to diminish the clear language in the Criterion Management
6 Agreement that specifies that dispute "concerning the terms of this agreement" are subject to arbitration.
7 As detailed in the Subject Motion, many of the claims made by the Receiver have nothing to do with the
8 terms or performance of the Agreement and thus fall outside of the arbitration provision. *See, e.g.*, Comp.
9 ¶¶ 147–56. Indeed, contending that Criterion's intentional acts in conspiring with other defendants to
10 defraud Spirit and its insureds are purely contractual is disingenuous. Criterion was a part of an elaborate
11 scheme to fleece Spirit which included, among other things, accepting a \$2.8 million "loan" from CTC—
12 all while knowing that such funds belonged to Spirit. Such actions are not a part of the Spirit contract
13 and are not required to be arbitrated.

14 The prejudice to the Receiver should such claims against Criterion be compelled to arbitration is
15 demonstrated by a Motion to Stay Pending Arbitration that was filed in this matter just days ago, on
16 August 28, 2020. Therein, a group of nine other Defendants named in this action (all of whom are
17 controlled by Defendant Mulligan) argue that the claims the Receiver brought against Criterion "are
18 inextricably intertwined with the remaining causes action asserted" against them.³ This creates a new
19 issue for the Court to consider. Indeed, any stay of the current proceeding because the Criterion non-
20 contract claims are parsed out would greatly interfere with the Receiver's ability to timely recover funds
21 siphoned from Spirit that are needed to pay Spirit's insureds and creditors.

22 The reason the legislature conferred express jurisdiction over managers under NRS 696B.200(c)
23 is very clear, as it unjustifiably drains the resources of a receivership and results in recovery delays for
24 policyholders if the Receiver is required to pursue litigation in multiple forums (*i.e.*, litigation and
25

26 Chelsea Financial Group, Inc. (MO) (collectively Six Eleven Defendants") filed a Motion to Stay on August 28,
2020 and other defendants have indicated they intend to file joinders to the same.

27 ³ Page 8, Motion to Stay Pending Arbitration filed by Defendants Six Eleven Defendants.

1 arbitration proceedings). Criterion and its owner, Thomas Mulligan, were well aware that Spirit was an
2 insurance company, that Spirit and its affiliates (including Criterion) operated in a regulated insurance
3 industry and were part of an insurance holding company system, that there would be receivership laws
4 governing jurisdiction over former managers and management of Spirit, and creditor protections
5 governing Spirit's receivership if it failed. Criterion and corporate insiders did business with Spirit with
6 full knowledge that if they accepted Spirit engagements and payments from Spirit, receivership laws
7 would confer jurisdiction over them for actionable claims if the company failed. Now that Spirit has been
8 placed in receivership and actionable claims are evident against Criterion and its former managers, they
9 have no basis for complaining when this Court exercises the very jurisdiction provided by the legislature.
10 Notably, NRS 696B.200(c) does not provide any exception or "carve out language" to preserve pre-
11 receivership arbitration provisions that may have existed between the insurer and its former manager.

12 **C. There is no basis for an award of attorney fees.**

13 Notwithstanding this Court's direction in the July Minute Order that any dispute regarding the
14 Criterion Order to Compel be brought *via* motion practice and that authority cited in the Subject Motion
15 that provides ample grounds for the same, Criterion seeks to sanction the Receiver for filing the Subject
16 Motion. However, there is no bad faith here and no basis under NRS 180.010(2)(b) for the sanctions
17 requested. The Motion for Reconsideration and/or Clarification was brought in good faith in an attempt
18 to ensure that the final Order entered by the Court on the issues raised herein is accurate and complete in
19 reflecting your Honor's decision on the specific facts presented. The request for sanctions should be
20 denied.

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Dated this 1st day of September, 2020.

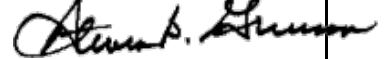
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CERTIFICATE OF SERVICE

I hereby certify that on the 1st day of September, 2020, a true and correct copy of the foregoing ***Reply In Support of Plaintiff's Motion for Reconsideration and/or Clarification of the Court's July 22, 2020 Order Regarding Criterion Claim Solutions of Omaha Inc.'s Motion to Compel Arbitration*** was served electronically using the Odyssey eFileNV Electronic Filing system upon all parties with an email address on record, pursuant to Administrative Order 14-2 and Rule 9 of the N.E.F.C.R. The date and time of the electronic proof of service is in place of the date and place of deposit in the U.S. Mail.

/s/ Andrea Lee Rosehill

An employee of Greenberg Traurig, LLP



1 **JMOT**

2 Sheri M. Thome, Esq.
3 Nevada Bar No. 008657

4 Rachel L. Wise, Esq.
5 Nevada Bar No. 12303

6 **WILSON, ELSE, MOSKOWITZ,**
7 **EDELMAN & DICKER LLP**

8 6689 Las Vegas Blvd., Suite 200
9 Las Vegas, NV 89119

10 Telephone: 702.727.1400

11 Facsimile: 702.727.1401

12 Email: Sheri.Thome@wilsonelser.com

13 *Attorneys for Defendant James Marx,*
14 *John Maloney, Virginia Torres, and*
15 *Carlos Torres*

16 **DISTRICT COURT**

17 **CLARK COUNTY, NEVADA**

18 BARBARA D. RICHARDSON IN HER
19 CAPACITY AS THE STATUTORY
20 RECEIVER FOR SPIRIT COMMERCIAL
21 AUTO RISK RETENTION GROUP, INC.

22 Plaintiff,

23 vs.

24 THOMAS MULLIGAN, an individual; CTC
25 TRANSPORTATION INSURANCE
26 SERVICES OF MISSOURI, LLC, a Missouri
27 Limited Liability Company; CTC
28 TRANSPORTATION INSURANCE
29 SERVICES LLC, a California Limited Liability
30 Company; CTC TRANSPORTATION
31 INSURANCE SERVICES OF HAWAII LLC,
32 a Hawaii Limited Liability Company;
33 CRITERION CLAIMS SOLUTIONS OF
34 OMAHA, INC., a Nebraska Corporation;
35 PAVEL KAPELNIKOV, an individual;
36 CHELSEA FINANCIAL GROUP, INC., a
37 California Corporation; CHELSEA
38 FINANCIAL GROUP, INC., a Missouri
39 Corporation; CHELSEA FINANCIAL
40 GROUP, INC., a New Jersey Corporation d/b/a
41 CHELSEA PREMIUM FINANCE
42 CORPORATION; CHELSEA FINANCIAL
43 GROUP, INC., a Delaware Corporation;
44 CHELSEA HOLDING COMPANY, LLC, a
45 Nevada Limited Liability Company;
46 CHELSEA HOLDINGS, LLC, a Nevada
47 Limited Liability Company; FOURGOREAN
48 CAPITAL, LLC, a New Jersey Limited
49 Liability Company; KAPA MANAGEMENT
50 CONSULTING, INC. a New Jersey
51 Corporation; KAPA VENTURES, INC., a New

Case No. A-20-809963-B
Dept. No.: 11

**JOINDER TO MOTION TO STAY
PENDING ARBITRATION**

Hearing Date: September 28, 2020
Time of Hearing: 9:00 a.m.

Jersey Corporation; GLOBAL FORWARDING ENTERPRISES LIMITED LIABILITY COMPANY, a New Jersey Limited Liability Company; GLOBAL CAPITAL GROUP, LLC, a New Jersey Limited Liability Company; GLOBAL CONSULTING; NEW TECH CAPITAL, LLC, a Delaware Limited Liability Company; LEXICON INSURANCE MANAGEMENT LLC, a North Carolina Limited Liability Company; ICAP MANAGEMENT SOLUTIONS, LLC, a Vermont Limited Liability Company; SIX ELEVEN LLC, a Missouri Limited Liability Company; 10-4 PREFERRED RISK MANAGERS INC., a Missouri Corporation; IRONJAB LLC, a New Jersey Limited Liability Company; YANINA G. KAPELNIKOV, an individual; IGOR KAPELNIKOV, an individual; QUOTE MY RIG LLC, a New Jersey Limited Liability Company; MATTHEW SIMON, an individual; DANIEL GEORGE, an individual; JOHN MALONEY, an individual; JAMES MARX, an individual; CARLOS TORRES, an individual; VIRGINIA TORRES, an individual; SCOTT McCRAE, an individual; BRENDA GUFFEY, an individual; 195 GLUTEN FREE LLC, a New Jersey Limited Liability Company, DOE INDIVIDUALS I-X; and ROE CORPORATE ENTITIES I-X,

Defendants.

JOINDER TO MOTION TO STAY PENDING ARBITRATION

Defendants, James Marx (“Dr. Marx”), John Maloney (“Mr. Maloney”), Virginia Torres (“Ms. Torres”), and Carlos Torres (“Mr. Torres” and collectively, “ Director Defendants”), by and through their undersigned attorneys of record, hereby submit the following Joinder to Motion to Stay Pending Arbitration (“Joinder”) under Eighth Judicial District Court Local Rule 2.20(e).

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1 This Joinder is made and based upon the following Memorandum of Points and Authorities
2 submitted herewith and all arguments and evidence permitted at the hearing of this matter.

3 DATED this 2nd day of September, 2020.

4 WILSON, ELSER, MOSKOWITZ, EDELMAN
5 & DICKER LLP

6 By: /s/ Sheri Thome
7 Sheri M. Thome, Esq.
8 Nevada Bar No. 008657
9 Rachel L. Wise, Esq.
10 Nevada Bar No. 12303
6689 Las Vegas Blvd., Suite 200
Las Vegas, NV 89119
Attorneys for Defendant James Marx,
John Maloney, Virginia Torres, and
Carlos Torres

11 **MEMORANDUM OF POINTS AND AUTHORITIES**

12 **I. INTRODUCTION**

13 Defendants hereby join in the Motion to Stay Pending Arbitration (“Motion”) and
14 respectfully request this Court stay discovery pending arbitration. Three of the six claims alleged
15 against the Director Defendants are already consigned to arbitration. Proceeding with the remaining
16 three claims would result in duplicative, costly, and piecemeal litigation. Here, Plaintiff must prove
17 the Director Defendants acted in a manner that “involved intentional misconduct, fraud or a knowing
18 violation of law.” But the fraud and conspiracy claims are already progressing in arbitration.
19 Proceeding against the Director Defendants would only result in piecemeal litigation and possibly
20 duplicative results. Further, Plaintiff cannot be harmed by avoiding costly litigation on two battle
21 grounds. A stay preserves the judicial economy and prevents undue harm.

22 **II. BACKGROUND**

23 **A. Statement of Facts**

24 The facts are those set forth in Defendants Six Eleven LLC; Quote My Rig, LLC; New Tech
25 Capital LLC; 195 Gluten Free LLC; 10-4 Preferred Risk Managers, Inc.; Ironjab, LLC; Fourgorean
26 Capital LLC; Chelsea Holding Company, LLC; and Chelsea Financial Group, Inc. (Missouri)
27 (collectively “Defendants” or “Six Eleven Defendants”) motion, which is incorporated by reference
28 here.

1 In her 441 paragraph complaint, Plaintiff alleges six claims against the Director Defendants,
2 which are: (1) breach of contract (Fourth Cause of Action); (2) breach of fiduciary duty (Sixth Cause
3 of Action); (3) unjust enrichment (Eleventh Cause of Action); (4) fraud (Twelfth Cause of Action);
4 (5) Civil Conspiracy (Thirteenth Cause of Action); and (6) NRS 78.300 (Nineteenth Cause of
5 Action). Three of these causes of action are being relegated to arbitration (Eleventh, Twelfth, and
6 Thirteenth Causes of Action). The majority of these claims against the Director Defendants allege
7 mismanagement of funds; ineptitude in reading and entering into contractual relationships –
8 including the contracts with CTC and Criterion; ignoring or actively engaging in fraud which, in
9 part, allowed CTC and Criterion to obtain their program administrator contracts; and conspiring
10 with CTC and Criterion (amongst others) to allow CTC and Thomas Mulligan to embezzle or
11 otherwise gain a monetary gain which harmed Spirit. These claims and allegations are intertwined
12 with the causes of action proceeding to arbitration.

13 **B. Procedural Posture**

14 On May 14, 2020, Defendants CTC Transportation Services of Missouri, LLC (“CTC MO”);
15 CTC Transportation Services, LLC (“CTC”); and CTC Transportation Services of Hawaii, LLC
16 (“CTC HI” and collectively the “CTC Defendants”); filed their Motion to Compel Arbitration (the
17 “CTC Motion”). The CTC Defendants argue that the relationship between Spirit Commercial Auto
18 Risk Retention Group, Inc. (“Spirit”) is governed by the Program Administration Agreement,
19 effective July 1, 2016 (the “CTC Agreement”). (CTC Mot., Ex. C). Section 17 of the CTC
20 Agreement sets forth a mandatory arbitration provision. (CTC Mot., 5:12-28, Ex. C). CTC
21 Defendants successfully proved that the arbitration provision — as to the breach of contract (First
22 Cause of Action), breach of fiduciary duty (Fifth Cause of Action), breach of the implied covenant
23 of good faith and fair dealing (Seventh and Eighth Causes of Action), Nevada RICO claims (Tenth
24 Cause of Action), unjust enrichment (Eleventh Cause of Action),¹ fraud (Twelfth Cause of Action),²
25 and civil conspiracy (Thirteenth Cause of Action),³ — is controlling.

26 On the same day, Defendant Criterion Clam Solutions of Omaha, Inc. (“Criterion”) also filed

27

¹ This Eleventh Cause of Action is also alleged against the Director Defendants.

28 ² This Twelfth Cause of Action is also alleged against the Director Defendants.

³ This Thirteenth Cause of Action is also alleged against the Director Defendants.

1 a Motion to Compel Arbitration (“Criterion Motion”) arguing that Spirit and the Receiver, who is
2 standing in Spirit’s shoes, are bound by the “Criterion/Spirit Agreement” (the “Criterion
3 Agreement”). (Criterion Mot., 5:1-2). Plaintiff stated the following ten claims against Criterion:
4 breach of contract (Third Cause of Action); breach of the implied covenant of good faith and fair
5 dealing (Ninth Cause of Action); Nevada RICO (Tenth Cause of Action); unjust enrichment
6 (Eleventh Cause of Action); fraud (Twelfth Cause of Action); civil conspiracy (Thirteenth Cause of
7 Action); avoidance of transfer (Fifteenth Cause of Action); NRS 696B recovery of distributions and
8 payments (Seventeenth Cause of Action); NRS 692C.402 recovery of distribution and payments
9 (Eighteenth Cause of Action). Plaintiff filed her opposition to both Motions (the CTC Motion and
10 the Criterion Motion) on June 4, 2020.

11 On June 18, 2020, this Court granted the CTC and the Criterion Motions over the opposition
12 of Barbara D. Richardson, in her capacity as the Statutory Receiver for Spirit Commercial Auto
13 Risk Retention Group, Inc. (“Plaintiff” or “Receiver”).

14 In response, Plaintiff filed a Motion for Reconsideration on July 30, 2020, arguing that the
15 CTC Order went beyond the direction provided by the Court in its minute order. (“Reconsideration
16 Motion”). The Reconsideration Motion is currently pending.

17 On August 28, 2020, the Six Eleven Defendants filed a Motion to Stay Arbitration with this
18 Court accurately arguing the remaining claims against the Six Eleven Defendants, “[a]re
19 fundamentally dependent on, intertwined with, and premised on the claims now compelled to
20 arbitration.” (“Compel Motion,” 4:4-5). Similarly, the Director Defendants join the Motion because
21 the claims against the Director Defendants are also, “fundamentally dependent on, intertwined with,
22 and premised on the claims now compelled to arbitration” as further stated in this Joinder.

23 **III. ARGUMENT**

24 **A. Legal Standard**

25 EDCR 2.20 defines the procedure for motion practice and joinders in our jurisdiction. If the
26 supporting motion is withdrawn, the joinder because a stand-alone motion “and the court shall
27 consider its points and authorities.” EDCR 2.20(d).

28 “[T]he power to stay proceedings is incidental to the power inherent in every court to control

1 the disposition of the causes on its docket with economy of time and effort for itself, for counsel,
2 and for litigants.” *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936); *accord Rohan ex rel. Gates v.*
3 *Woodford*, 334 F.3d 803, 817 (9th Cir. 2003). In deciding whether to stay an action, the Court must
4 weigh the competing interests of those affected by the granting or refusal of a stay. These interests
5 include “the possible damage that may result from the granting of a stay, the hardship or inequity
6 which a party may suffer in being required to go forward, and the orderly course of justice measured
7 in terms of the simplifying or complicating of issues, proof, and questions of law which could be
8 expected to result from a stay.” *Howard v. Skolnik*, 2010 WL 5102251 (D. Nev. 2010), *citing CMAX,*
9 *Inc. v. Hall*, 300 F.2d 265, 268 (9th Cir. 1962). Factors relevant to whether a stay should be ordered
10 include: (1) the judicial resources saved by avoiding duplicative litigation; (2) potential prejudice
11 to the non-moving party; and (3) hardship to the moving party if a stay is not granted. *Rivers v. Walt*
12 *Disney Co.*, 980 F. Supp. 1358, 1362 (C.D. Cal. 1997). Here, judicial resources are saved by
13 avoiding duplicative litigation as half of the allegations against the Director Defendants are already
14 set to be heard in arbitration. Further, the only hardship is if the parties are required to split litigation
15 and exhaust expenses defending against Plaintiff’s claims in both, trial court and before the selected
16 arbitrator(s).

17 **B. A Stay Will Conserve Judicial Resources and Avoid Piecemeal Litigation**

18 Plaintiff’s allegations against the Director Defendants expressly rely on their interactions
19 with and their ratification of CTC, Criterion, and their respective agreements. Indeed, three of the
20 six claims against the Director Defendants are already remitted to arbitration. The Director
21 Defendant’s liability under the remaining claims, breach of contract (Fourth Cause of Action),
22 breach of fiduciary duty (Sixth Cause of Action), and NRS 78.300 (Nineteenth Cause of Action) is
23 wholly contingent upon the decisions rendered by the arbitrator(s).

24 Plaintiff’s allegations against the Director Defendants rely on a singular thread: the theory
25 that the Director Defendants failed to exercise due care or institute appropriate safeguards to prevent
26 CTC and Criterion from enriching the Mulligan Enterprises with funds rightfully due to Spirit.
27 Plaintiff specifically alleges that the Director Defendants breach is the failure to “operate in a
28 fiduciary manner,” and the failure to “exercise the utmost good faith in all transactions involving

1 their duties and to refrain from conflicts of interest.” (Compl., ¶ 281). Plaintiff includes the CTC
2 and Criterion Agreements as two of the main “transactions” in which the Director Defendants
3 allegedly acted without good faith or within a conflict of interest. (Compl. ¶¶ 55; 80; 200-254).
4 Plaintiff attributes the Director Defendant’s lack of good faith to their association with CTC,
5 Criterion, and Mulligan. Finally, and quite derivatively, Plaintiff again ascribes the Director
6 Defendant’s conflict of interest to specific financial interactions and approval of financial
7 transactions by and with CTC and Criterion, amongst other entities. Further, Plaintiff contends that
8 Thomas Mulligan was the grand mastermind orchestrating this breach, and *improperly influencing*
9 *the Director Defendants in all decisions*. (Compl., ¶¶ 75, 130, 132, 227, 381).

10 The arbitration directly impacts the issues in this litigation, justifying a stay. *See, for*
11 *example, Stern v. United States*, 563 F.Supp. 484 (D. Nev. 1983) (court stayed federal action
12 pending appeal in Tax Court, reasoning that outcome of appeal could have a profound effect on the
13 federal action). The resolution of the issues that are relegated to arbitration “would be determinative
14 of the issues in the lawsuit.” *Lockyer v. Mirant Corp.*, 398 F.3d 1098, 111 (9th Cir. 2005).
15 Therefore, a stay is the only way to conserve judicial resources and avoid the inherent risk of
16 inconsistent outcomes. *Rose, LLC v. Treasure Island, LLC*, 135 Nev. 145, 159, 445 P.3d 860, 871
17 (Nev. App. 2019) (*citing Univ. of Nev. v. Tarkanian*, 95 Nev. 389, 397, 594 P.2d 1159, 1164 (1979)
18 (stating the importance of preserving judicial resources, reducing piecemeal litigation, and avoiding
19 potentially inconsistent outcomes).

20 First, Plaintiff’s breach of contract claim is predicated on the assumption that all the Director
21 Defendants entered into some sort of management agreement and that the management agreement
22 included an ethics provision. Otherwise, Plaintiff’s breach of contract claim relies on the Code of
23 Ethics and Corporate Governances Standards adopted by the board. (Compl., ¶ 199; 281). In both
24 arguments, Plaintiff must show bad faith. Because fraud and conspiracy allegations are proceeding
25 to arbitration, bad faith will be an issue on which all parties will seek discovery.

26 Second, Plaintiff’s breach of fiduciary duty claim against the Director Defendants are reliant
27 upon the Plaintiff’s ability to prove that the Director Defendants intentionally or knowingly acted
28 in a manner that harmed Spirit. *Chur v. Eighth Judicial Dist. Court of Nev.*, 458 P.3d 336, 337

1 (Nev. 2020). Certainly the resolution of the fraud and conspiracy claims (in which the Director
2 Defendants are also named) will also determine whether the Director Defendants *intentionally*
3 prevented oversight or *knowingly* skirted the use or implementation of internal controls.

4 In 2020, the Nevada Supreme Court held that Plaintiff must show a *knowing* or *intentional*
5 act by the Director Defendants to hold a director “*individually liable* to the corporation or its
6 stockholders or creditors *for any damages as a result of any act or failure to act in his or her capacity*
7 *as a director or officer.*” NRS 78.138(7)(a)-(b) (emphasis added); *see also Chur*, 458 P.3d 336.
8 One way to hold a director individually liable *is to prove the director engaged in fraud*. A claim
9 that is currently pending before an arbitrator(s). Further, if Plaintiff fails to prove fraud or
10 conspiracy, she is most likely incapable of proving an intentional or knowing breach of the Director
11 Defendant’s fiduciary duties. Even so, any decision rendered regarding fraud or conspiracy is
12 determinative relative to the breach of fiduciary duty claim.

13 Third, litigating the Plaintiff’s claim for breach of NRS 78.300 (Nineteenth Cause of Action)
14 alone would require this court to determine issues in a piecemeal manner and create a “multiplicity
15 of suits.” *Investment Co. v. Reno Club*, 66 Nev. 216, 222, 208, P.2d 297 (1949). This final allegation
16 appears to be pled in the alternative to the fraud claim. Fundamentally, resolution of the fraud claim
17 would most likely be determinative of this claim. To try these matters individually and piecemeal
18 would most certainly result in inconsistent outcomes. Judicial economy thus counsels strongly
19 against further investment of this Court’s time in pretrial proceedings before the arbitration is
20 determined.

21 **C. A Stay Will Prevent Prejudice To All Parties and Will Not Unduly Harm**
22 **Plaintiff.**

23 Duplicative litigation wastes the parties’ resources as well. Absent a stay of proceedings in
24 this action - including pretrial discovery - the parties will litigate complex issues before this Court,
25 including significant discovery regarding the underlying case. This case will involve of number of
26 witnesses which will alleviate the costs of this matter significantly. *Am. Seafood v. Magnolia*
27 *Processing*, 1992 WL 102762 (E.D. Pa. 1992), at *2 (“duplicative motion practice and discovery
28 proceedings demonstrate that judicial economy and prejudice to the defendants weigh heavily in

1 favor of the stay”). As other courts have noted, “even if a temporary stay can be characterized as a
2 delay prejudicial to plaintiff, there are considerations of judicial economy and hardship to
3 defendants which are compelling enough to warrant such a delay.” *Egon v. Del-Val Fin. Corp.*,
4 1991 WL 13726, at *1 (D.N.J. Feb 1, 1991). Because the Plaintiff will not be unduly prejudiced by
5 a stay, Defendant submits that one is appropriate in this matter.

6 **IV. CONCLUSION**

7 Director Defendants respectfully request a stay of all proceedings in this action, including
8 pre-trial discovery and pending and future motion practicing, pending the resolution of the
9 arbitration.

10 DATED this 2nd day of September, 2020.

11 WILSON, ELSER, MOSKOWITZ, EDELMAN
12 & DICKER LLP

13 By: /s/ Sheri Thome
14 Sheri M. Thome, Esq.
15 Nevada Bar No. 008657
16 Rachel L. Wise, Esq.
17 Nevada Bar No. 12303
18 6689 Las Vegas Blvd., Suite 200
19 Las Vegas, NV 89119
20 Attorneys for Defendant James Marx,
21 John Maloney, Virginia Torres, and
22 Carlos Torres
23
24
25
26
27
28

CERTIFICATE OF SERVICE

Pursuant to NRCP 5, I certify that I am an employee of WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP and that on this 2nd day of April, 2020, I served a true and correct copy of the foregoing **JOINDER TO MOTION TO STAY PENDING ARBITRATION** as follows:

- ☐ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada;
- ☒ via electronic means by operation of the Court's electronic filing system, upon each party in this case who is registered as an electronic case filing user with the Clerk;
- ☐ via hand-delivery to the addressees listed below;
- ☐ via facsimile;
- ☐ by transmitting via email the document listed above to the email address set forth below on this date before 5:00 p.m.

Mark E. Ferrario, Esq.
Kara B. Hendricks, Esq.
Kyle A. Ewing, Esq.
GREENBERG TRAURIG, LLP
10845 Griffith Peak Drive, Suite 600
Las Vegas, NV 89135
Telephone: (702) 792-3773
Facsimile: (702) 792-9002
Email: ferrariom@gtlaw.com
hendricksk@gtlaw.com
ewingk@gtlaw.com
Attorneys for the Plaintiff

Kurt R. Bonds, Esq.
Trevor R. Waite, Esq.
ALVERSON, TAYLOR & SANDERS
6605 Grand Montecito Pkwy., Suite 200
Las Vegas, NV 89149
Telephone: (702) 384-7000
Email: efile@alversontaylor.com
Attorneys for Defendant Brenda Guffey

Thomas E. McGrath, Esq.
Christopher A. Lund, Esq.
TYSON & MENDES LLP
3960 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169
Tel: (702) 724-2648
Fax: (702) 938-1048
Email: tmcgrath@tysonmendes.com
Email: clund@tysonmendes.com
*Attorneys for Defendants Pavel Kapelnikov;
Chelsea Financial Group, Inc., a New Jersey
corporation; Chelsea Financial Group, Inc. a
California corporation; Global Forwarding
Enterprises, LLC; Kapa Management
Consulting, Inc.; Kapa Ventures, Inc.*

John R. Bailey, Esq.
Joshua M. Dickey, Esq.
Rebecca L. Crooker, Esq.
BAILEY KENNEDY
8984 Spanish Ridge Avenue
Las Vegas, Nevada 89148-1302
Telephone: 702.562.8820
Facsimile: 702.562.8821
JBailey@BaileyKennedy.com
JDickey@BaileyKennedy.com
RCrooker@BaileyKennedy.com
*Attorneys for Defendant
Criterion Claim Solutions of Omaha, Inc.*

1 Robert S. Larsen, Esq.
2 Wing Yan Wong, Esq.
3 GORDON REES SCULLY
4 MANSUKHANI, LLP
5 300 South Fourth Street
6 Suite 1550
7 Las Vegas, Nevada 89101
8 rlarsen@grsm.com
9 wwong@grsm.com
10 *Attorneys for Defendants Lexicon Insurance*
11 *Management LLC; Daniel George; and ICAP*
12 *Management Solutions, LLC*

7 L. Christopher Rose, Esq.
8 Kirill V. Mikhaylov, Esq.
9 William A. Gonzales, Esq.
10 HOWARD & HOWARD
11 ATTORNEYS PLLC
12 3800 Howard Hughes Parkway, Suite 1000
13 Las Vegas, Nevada 89169
14 lcr@h2law.com
15 kvm@h2law.com
16 wag@h2law.com
17 *Attorneys for Defendants Six Eleven LLC;*
18 *Quote My Rig, LLC; New Tech Capital LLC;*
19 *195 Gluten Free LLC; 10-4 Preferred Risk*
20 *Managers, Inc.; Ironjab, LLC; Fourgorean*
21 *Capital LLC; Chelsea Holding Company, LLC;*
22 *and Chelsea Financial Group, Inc. (Missouri)*

Matthew T. Dushoff, Esq.
Jordan D. Wolff, Esq.
SALTZMAN MUGAN DUSHOFF
1835 Village Center Circle
Las Vegas, Nevada 89134
mdushoff@nvbusinesslaw.com
jwolff@nvbusinesslaw.com
Attorneys for Defendants CTC Transportation
Insurance Services of Missouri, LLC; CTC
Transportation Insurance Services LLC; and
CTC Transportation Insurance Services of
Hawaii LLC

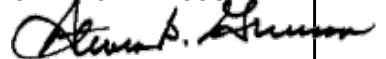
Tamara Beatty Peterson, Esq.
Nikki L. Baker, Esq.
David E. Astur, Esq.
PETERSON BAKER, PLLC
701 South 7th Street
Las Vegas, Nevada 89101
tpeterson@petersonbaker.com
nbaker@petersonbaker.com
dastur@petersonbaker.com
Attorneys for Defendants Matthew Simon
Jr. and Scott McCrae

BY: /s/ Lani Maile

An Employee of
WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP

ALVERSON TAYLOR & SANDERS
LAWYERS
6605 GRAND MONTECITO PKWY STE 200
LAS VEGAS, NV 89149
(702) 384-7000

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Steven D. Grierson
CLERK OF THE COURT



1 ALVERSON, TAYLOR & SANDERS
2 KURT R. BONDS, ESQ.
3 Nevada Bar #6228
4 TREVOR R. WAITE, ESQ.
5 Nevada Bar #13779
6 6605 Grand Montecito Pkwy, Ste 200
7 Las Vegas, NV 89149
8 (702) 384-7000
9 efile@alversontaylor.com
10 *Attorneys for Defendant*
11 *Brenda Guffey.*

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

10 BARBARA D. RICHARDSON IN HER
11 CAPACITY AS THE STATUTORY
12 RECEIVER FOR SPIRIT COMMERCIAL
13 AUTO RETENTION GROUP, INC.,

13 Plaintiff,

14 vs.

15
16 THOMAS MULLIGAN, an individual; CTC
17 TRANSPORTATION INSURANCE
18 SERVICES OF MISSOURI, LLC, a Missouri
19 Limited Liability Company; CTC
20 TRANSPORTATION INSURANCE
21 SERVICES, LLC, a California Limited Liability
22 Company; CTC TRANSPORTATION
23 INSURANCES SERVICES OF HAWAII, LLC,
24 a Hawaii Limited Liability Company;
25 CRITERION CLAIMS SOLUTIONS OF
26 OMAHA, INC., a Nebraska Corporation;
27 PAVEL KAPELNIKOV, an individual;
28 CHELSEA FINANCIAL GROUP, INC., a
California Corporation; CHELSEA
FINANCIAL GROUP, INC., a Missouri
Corporation; CHELSEA FINANCIAL GROUP,
INC., a New Jersey Corporation d/b/a
CHELSEA PREMIUM FINANCE

CASE NO.: A-20-809963-B
DEPT NO.: 13

**DEFENDANT BRENDA GUFFEY'S
JOINDER TO THE "SIX ELEVEN
DEFENDANTS" MOTION TO
STAY PENDING ARBITRATION**

[HEARING REQUESTED]

KRB/26611

CORPORATION; CHELSEA FINANCIAL GROUP, INC., a Delaware Corporation; CHELSEA HOLDING COMPANY, LLC, a Nevada Limited Liability Company; CHELSEA HOLDINGS, LLC, a Nevada Limited Liability Company, FOURGOREAN CAPITAL, LLC, a New Jersey Limited Liability Company; KAPA MANAGEMENT CONSULTING, INC., a New Jersey Corporation, KAPA VENTURES, INC., a New Jersey Corporation; GLOBAL FORWARDING ENTERPRISES LIMITED LIABILITY COMPANY, a New Jersey Limited Liability Company; GLOBAL CAPITAL GROUP, LLC, a New Jersey Limited Liability Company; GLOBAL CONSULTING; NEW TECH CAPITAL, LLC, a Delaware Limited Liability Company; LEXICON INSURANCE MANAGEMENT LLC, a North Carolina Limited Liability Company; ICAP MANAGEMENT SOLUTIONS, LLC, a Vermont Limited Liability Company; SIX ELEVEN LLC, a Missouri Limited Liability Company; 10-4 PREFERRED RISK MANAGERS INC., a Missouri Corporation; IRONJAB LLC, a New Jersey Limited Liability Company; YANINA G. KAPELNIKOV, an individual; IGOR KAPELNIKOV, an individual; QUOTE MY RIG LLC, a New Jersey Limited Liability Company; MATTHEW SIMON, an individual; DANIEL GEORGE, an individual; JOHN MALONEY, an individual; JAMES MARX, an individual; CARLOS TORRES, an individual; VIRGINIA TORRES, an individual; SCOTT McCRAE, an individual; BRENDA GUFFEY, an individual; 195 GLUTEN FREE LLC, a New Jersey Limited Liability Company, DOE INDIVIDUALS I- X; and ROE CORPORATE ENTITIES I-X,

Defendants.

**DEFENDANT BRENDA GUFFEY'S
JOINDER TO THE "SIX ELEVEN
DEFENDANTS" MOTION TO
STAY PENDING ARBITRATION**

KRB/26611

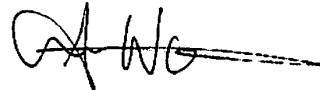
**DEFENDANT BRENDA GUFFEY'S JOINDER TO THE "SIX ELEVEN
DEFENDANTS" MOTION TO STAY PENDING ARBITRATION**

COMES NOW, Defendant Brenda Guffey, by and through her attorneys of record,
ALVERSON TAYLOR & SANDERS, and hereby joins in, adopts, and affirms, the legal
argument, any and all exhibits/agreements in support of the "Six Eleven Defendants" Motion to
Stay Pending Arbitration ("Motion"), and affirms and declares that the same are equally
applicable to her.

Ms. Guffey further adopts the arguments and grounds as stated in the filed Motion, in
support of said Motion, and incorporating all exhibits filed in support of said Motion, as well as
any argument the Court may entertain

DATED this 1st day of September, 2020.

ALVERSON TAYLOR & SANDERS



KURT R. BONDS, ESQ.
Nevada Bar #6228
TREVOR R. WAITE, ESQ.
Nevada Bar#13779
6605 Grand Montecito Pkwy, Ste 200
Las Vegas, NV 89149
(702) 384-7000
Attorneys for Defendant Brenda Guffey

CERTIFICATE OF SERVICE VIA CM/ECF

I hereby certify that I am employed in the County of Clark, State of Nevada, am over the
age of 18 years and not a party to this action. My business address is Alverson, Taylor & Sanders
6605 Grand Montecito Pkwy. #200 Las Vegas, NV 89149.

On this day, I served the **DEFENDANT BRENDA GUFFEY'S JOINDER TO THE
"SIX ELEVEN DEFENDANTS" MOTION TO STAY PENDING ARBITRATION** in this

KRB/26611

ALVERSON TAYLOR & SANDERS

LAWYERS
6605 GRAND MONTECITO PKWY STE 200
LAS VEGAS, NV 89149
(702) 384-7000

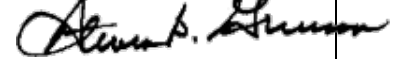
1 action or proceeding electronically with the Clerk of the Court via the Odyssey E-File and Serve
2 system, and e-served the same on all parties listed on the Court's Master Service List. I certify
3 under penalty of perjury that the foregoing is true and correct, and that I executed this Certificate
4 of Service on September 2, 2020 in Las Vegas, Nevada.

5
6 

7 An Employee of ALVERSON TAYLOR
8 & SANDERS

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KRB/26611



JOIN

WILLIAM R. URGA, ESQ.

Nevada Bar #1195

DAVID J. MALLEY, ESQ.

Nevada Bar #8171

MICHAEL R. ERNST, ESQ.

Nevada Bar #11957

JOLLEY URGA WOODBURY & HOLTHUS

330 S. Rampart Blvd., Suite 380

Las Vegas, NV 89145

Telephone: (702) 699-7500

Facsimile: (702) 699-7555

Email: wru@juwlaw.com; djm@juwlaw.com; mre@juwlaw.com

Attorneys for Defendant Thomas Mulligan

DISTRICT COURT

CLARK COUNTY, NEVADA

BARBARA D. RICHARDSON IN HER
CAPACITY AS STATUTORY RECEIVER
FOR SPIRIT COMMERCIAL AUTO RISK
RETENTION GROUP, INC.,

Plaintiff,

vs.

THOMAS MULLIGAN, an individual; CTC
TRANSPORTATION INSURANCE
SERVICES OF MISSOURI, LLC, a Missouri
Limited Liability Company; CTC
TRANSPORTATION INSURANCE
SERVICES LLC, a California Limited
Liability Company; CTC
TRANSPORTATION INSURANCE
SERVICES OF HAWAII LLC, a Hawaii
Limited Liability Company; CRITERION
CLAIMS COLUTIONS OF OMAHA, INC., a
Nebraska Corporation; PAVEL
KAPELNIKOV, an individual; CHELSEA
FINANCIAL GROUP, INC., a California
Corporation; CHELSEA FINANCIAL
GROUP, INC., a Missouri Corporation;
Chelsea financial group, Inc., a New Jersey
Corporation d/b/a CHELSEA PREMIUM
FINANCE CORPORATION; CHELSEA
FINANCIAL GROUP, INC., a Delaware

CASE NO.: A-20-809963-B

DEPT. NO.: 13

**DEFENDANT THOMAS MULLIGAN'S
JOINDER TO MOTION TO STAY
PENDING ARBITRATION**

Date of Hearing: September 21, 2020

Time of Hearing: 9:00 a.m.

Corporation; CHELSEA HOLDING COMPANY, LLC, a Nevada Limited Liability Company; CHELSEA HOLDINGS, LLC, a Nevada Limited Liability Company; FOURGOREAN CAPITAL, LLC, a New Jersey Limited Liability Company; KAPA MANAGEMENT CONSULTING, INC. a New Jersey Corporation; KAPA VENTURES, INC., a New Jersey Corporation; GLOBAL FORWARDING ENTERPRISES LIMITED LIABILITY COMPANY, a New Jersey Limited Liability Company; GLOBAL CAPITAL GROUP, LLC, a New Jersey Limited Liability Company; GLOBAL CONSULTING; NEW TECH CAPITAL, LLC, a Delaware Limited Liability Company; LEXICON INSURANCE MANAGEMENT LLC, a North Carolina Limited Liability Company; ICAP MANAGEMENT SOLUTIONS, LLC, a Vermont Limited Liability Company; SIX ELEVEN LLC, a Missouri Limited Liability Company; 10-4 PREFERRED RISK MANAGERS INC., a Missouri Corporation; IRONJAB LLC, a New Jersey Limited Liability Company; YANINA G. KAPELNIKOV, an individual; IGOR KAPELNIKOV, an individual; QUOTE MY RIG LLC, a New Jersey Limited Liability Company; MATTHEW SIMON, an individual; CARLOS TORRES, an individual; VIRGINIA TORRES, an individual; SCOTT McCRAE, an individual; BRENDA GUFFEY, an individual; 195 GLUTEN FREE LLC, a New Jersey Limited Liability Company, DOE INDIVIDUALS I-X; and ROE CORPORATE ENTITIES I-X,

Defendants.

Defendant Thomas Mulligan (“Mulligan”), by and through his attorneys, Jolley Urga Woodbury & Holthus, hereby joins in Defendants Six Eleven LLC; Quote My Rig, LLC; New Tech Capital LLC; 195 Gluten Free LLC; 10-4 Preferred Risk Managers, Inc.; Ironjab, LLC; Fourgorean Capital LLC; Chelsea Holding Company, LLC; and Chelsea Financial Group, Inc. (Missouri) (collectively the “Six Eleven Defendants”) Motion to Stay Pending Arbitration (the

1 “Motion”). This Joinder is made and based on the pleadings and papers on file herein, the points
2 and authorities set forth below, and any argument presented at the time of the hearing in this
3 matter.

4 INTRODUCTION

5 The rhetoric in Plaintiff’s Complaint paints a picture of Mulligan as the centerpiece of
6 this case. But the actual allegations show otherwise, as do Plaintiff’s repeated statements that it
7 was the CTC Defendants that allegedly misappropriated in excess of \$43 million from Spirit
8 Commercial Auto Risk Retention Group, Inc. (“Spirit”). Complaint, ¶ 110.¹ Indeed, in her
9 Opposition to the CTC Defendants’ Motion to Compel Arbitration, Plaintiff asserts that “[t]he
10 allegations in the Complaint arise from a vast fraudulent enterprise and **CTC, like a hub of a**
11 **wheel, was at the center of the scheme that caused the insolvency of Spirit....**” Opposition to
12 CTC Defendants’ Motion to Compel Arbitration, filed June 4, 2020, 3:3-4 (emphasis added).

13 As to Mulligan, the allegations in the Complaint are that he participated in devising the
14 scheme that led to the CTC Defendants’ alleged wrongdoing and/or that he was a recipient of
15 CTC’s ill-gotten gains.² Of course, before liability can attach to Mulligan for devising a scheme
16 or benefitting from it, there must be a determination that there was such a wrongful scheme in
17 the first place.

18 Here, this Court has already ordered Plaintiff to arbitrate all of its claims against the CTC
19 Defendants and Criterion. *See* Order Granting the CTC Defendants’ Motion to Compel
20 Arbitration filed July 16, 2020 and Order Granting Criterion Claim Solutions of Omaha Inc.’s
21 Motion to Compel Arbitration filed July 22, 2020. The threshold questions of whether CTC
22 and/or Criterion engaged in a wrongful scheme to misappropriate Spirit’s money will be
23 answered in those arbitrations. Because the remaining matters to be decided in this case are so
24 inextricably intertwined with and dependent upon the result of those arbitrations, justice

25 ¹ *See also* Plaintiff’s Motion for Reconsideration and/or Clarification of the Court’s July 17, 2020 Order Regarding
26 CTC Defendants’ Motion to Compel Arbitration filed July 30, 2020, 2:11-13 (alleging that the CTC Defendants
owe Spirit more than \$43 million that they siphoned to related entities and company principals).

27 ² This “scheme” also includes allegations related to Criterion Claims Solutions of Omaha, Inc. (“Criterion”), which
28 is alleged to have under-reserved claims in an effort to keep Spirit in business by under-reporting liabilities and
mislead regulators. *See e.g.*, Plaintiff’s Opposition to Criterion Claim Solutions of Omaha Inc.’s Motion to Compel
Arbitration, filed June 4, 2020, 7:5-18.

1 demands that this case be stayed pending the conclusion of the arbitration proceedings against
2 the CTC Defendants and Criterion.

3 **FACTS ALLEGED AGAINST MULLIGAN**

4 Plaintiff alleges that the CTC Defendants and Criterion worked together to benefit
5 themselves and other interrelated companies and related persons to the detriment of Spirit, and
6 that Mulligan took part in orchestrating the scheme. As a result of this scheme, Plaintiff alleges
7 that Spirit became insolvent and placed into Receivership and liquidation. Complaint, ¶¶ 1-4.
8 Specifically, Plaintiff alleges that Mulligan was an owner, officer, director, or manager of
9 several defendants, including CTC, Criterion, and Spirit.³

10 Plaintiff claims that defendant Chelsea Financial financed many of Spirit's insured's
11 premiums and was to pay those premiums to CTC, but Chelsea failed to do so and/or CTC failed
12 to track funds received from Chelsea. *Id.*, ¶¶ 58-60. This allegedly wrongful conduct was done
13 at the direction of CTC, Mulligan, and/or Pavel Kapelnikov. *Id.*, ¶ 60.

14 Plaintiff alleges that Spirit and CTC failed to give accurate and complete financial
15 information related to a loss portfolio transfer and that Mulligan orchestrated this conduct. *Id.*,
16 ¶¶ 3-75.

17 Regarding uncollected premiums, Plaintiff claims that CTC failed to cancel policies even
18 when premiums were delinquent or unpaid, and that Mulligan instructed CTC not to cancel those
19 policies. *Id.*, ¶¶ 112-114.

20 Plaintiff alleges that CTC issued policies that posed an unreasonable risk, and that this
21 was caused by Mulligan's exercise of undue influence to override controls of CTC to the
22 detriment of Spirit and for his own benefit. *Id.*, ¶¶ 129-133.

23 Regarding Criterion, Plaintiff alleges that it contracted with Spirit to provide claims
24 management services and that Mulligan was involved in the operation of Criterion, including the
25 reserve setting process. *Id.*, ¶ 141-145. Further, Criterion is alleged to have accepted a \$2.8
26 million loan from CTC at a time when those funds were owed to Spirit, and that this loan was

27
28 ³ In addition to denying all allegations of misconduct alleged in the Complaint, Mulligan denies that he was ever a
manager, officer, or director of Spirit.

1 caused by some conduct undertaken by Mulligan and Defendant Daniel George. *Id.*, ¶¶ 146.
2 Criterion is also alleged to have made repeated material misrepresentations to state regulators,
3 failed to properly report and maintain claims reserves, failed to maintain and enforce an
4 appropriate governance structure, and delayed payments on claims settlements. *Id.*, ¶ 153.
5 Plaintiff alleges that Mulligan influenced Criterion in this improper conduct. *Id.*

6 Regarding Chelsea Financial, Plaintiff alleges that it purported to finance premiums and
7 was to provide those premiums to CTC on Spirit's behalf. *Id.*, ¶¶ 160. Plaintiff alleges that
8 Chelsea either failed to pay those premiums to CTC and/or that CTC failed to collect or that it
9 returned excess premiums to Chelsea, all to enrich Mulligan and Pavel Kapelnikov. *Id.*, ¶¶ 161-
10 174.

11 Strangely, Plaintiff claims that Mulligan was a director of Spirit, though that has never
12 been true. Nevertheless, Plaintiff alleges that the Spirit directors breached their fiduciary duties
13 and contracts with Spirit by allowing the allegedly wrongful conduct perpetuated by CTC,
14 Criterion, and Chelsea to take place. *Id.*, ¶¶ 197-223.

15 Finally, Plaintiff alleges that CTC made "unusual" payments to Mulligan. *Id.*, ¶¶ 256.

16 Based on these allegations, Plaintiff has asserted the following causes of action against
17 Mulligan: Breach of Contract as a Spirit Director (Fourth), Breach of Fiduciary Duty as a Spirit
18 Director (Sixth), Nevada RICO (Tenth), Unjust Enrichment (Eleventh), Fraud (Twelfth), Civil
19 Conspiracy (Thirteenth), Alter Ego (Fourteenth), Avoidance of Transfers under NRS 112
20 (Fifteenth), Voidable Transfers under NRS 696B (Sixteenth), Recovery of Distributions and
21 Payments under NRS 696B (Seventeenth), Recovery of Distributions and Payments under NRS
22 692C.402 (Eighteenth), and Recovery of Unlawful Distribution as a Spirit Director under NRS
23 78.300 (Nineteenth).

24 It is glaringly obvious that the harm allegedly suffered by Plaintiff was caused (if at all)
25 by CTC and/or Criterion. Indeed, Plaintiff herself characterizes CTC as the "hub of a wheel" at
26 the center of the scheme laid out in the Complaint. The remaining defendants, including
27 Mulligan, are spokes on that wheel whose liability is dependent and premised on the alleged
28 misconduct of CTC and/or Criterion. In other words, Mulligan is alleged to have participated in

1 devising the wrongful scheme perpetrated by CTC/Criterion and/or benefitted from that scheme.
2 It is necessary to first determine whether there was, in fact, such a wrongful scheme before
3 determining any other party's liability for allegedly creating or benefitting from it. Accordingly,
4 this case should be stayed pending the conclusion of the Criterion and CTC arbitrations.

5 **THIS COURT SHOULD GRANT A STAY PENDING ARBITRATION**

6 Mulligan joins in the legal analysis proffered by the Six Eleven Defendants in the
7 Motion. Further, the United States Supreme Court has recognized,

8 In some cases, of course, it may be advisable to stay litigation
9 among the non-arbitrating parties pending the outcome of the
10 arbitration. That decision is one left to the district court (or to the
11 state trial court under applicable state procedural rules) as a matter
12 of its discretion to control its docket.

13 *Moses H. Cone Memorial Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 20 n. 23 (1983). There is
14 certainly no doubt that this court has the authority and discretion to stay the state-court litigation
15 involving Mulligan and the remaining defendants pending conclusion of the arbitrations between
16 Plaintiff and the CTC Defendants and Criterion.

17 In a case involving claims between two parties, certain of which were compelled to
18 arbitration and one which remained in district court for trial, the Ninth Circuit addressed the
19 question of the propriety of staying the district court proceedings as follows:

20 A trial court may, with propriety, find it is efficient for its own
21 docket and the fairest course for the parties to enter a stay of an
22 action before it, pending resolution of independent proceedings
23 which bear upon the case. This rule applies whether the separate
24 proceedings are judicial, administrative, or arbitral in character,
25 and does not require that the issues in such proceedings are
26 necessarily controlling of the action before the court. . . In such
27 cases the court may order a stay of the action pursuant to its power
28 to control its docket and calendar and to provide for a just
determination of the cases before it.

...

25 It would waste judicial resources and be burdensome upon the
26 parties if the district court in a case such as this were mandated to
27 permit discovery, and upon completion of pretrial proceedings, to
28 take evidence and determine the merits of the case at the same
time as the arbitrator is going through a substantially parallel
process.

1 *Leyva v. Certified Grocers of California, Ltd.*, 593 F.2d 857, 863-64 (9th Cir. 1979). *See also*
2 *Mediterranean Enterprises, Inc. v. Ssangyong Corp.*, 708 F.2d 1458, 1465 (9th Cir. 1983)
3 (affirming a district court order compelling arbitration of counts 1, 2, and 4 of the complaint and
4 staying litigation of counts 7, 8, and 9, noting: “By deciding those issues necessary to resolve
5 counts 1, 2 and 4, the arbitrator might well decide issues which bear in some way on the court’s
6 ultimate disposition of counts 7, 8 and 9. Nothing in the district court’s order, or in this opinion,
7 would bar such a result.”)

8 As shown in the Motion, the analysis does not change when deciding whether to stay
9 litigation of claims against nonparties to an arbitration agreement. Indeed, in *Bischoff v.*
10 *DirectTV, Inc.*, 180 F.Supp.2d 1097 (C.D. Cal. 2017), class plaintiffs brought an antitrust case
11 against DirectTV and others. The district court granted DirectTV’s motion to compel arbitration
12 as to the claims asserted against it. *Id.* at 1101. DirectTV, joined by defendants such as Best Buy,
13 RadioShack, and Circuit City who were not parties to an arbitration agreement with plaintiff,
14 moved to stay litigation pending conclusion of the arbitration. *Id.* The court granted that motion
15 as well. *Id.*

16 The court held that while the other defendants were not signatories to the contract
17 containing the arbitration agreement, a stay of all issues as to all parties was warranted because
18 questions of fact common to all would be involved in both the litigation and the arbitration. *Id.* at
19 1114. The court was not persuaded by the plaintiffs’ arguments against a stay:

20 Plaintiffs argue that the entire action should not be stayed because
21 many of the plaintiffs are not subject to the arbitration provision. A
22 stay of the entire action, Plaintiffs contend, will not promote
23 judicial efficiency because the arbitration between [named
24 Plaintiff] and DirectTV will be private, “with no record and no
25 precedential value,” and the results of the arbitration “will not be
26 binding in any way on DirectTV, Bischoff, or the other class
27 members in this action” . . . The Court acknowledges that while
28 the results of the arbitration will not be binding on DirectTV,
Bischoff or the other class members, a failure to stay the action
may lead to inconsistent findings which will hinder the pursuit of
judicial efficiency. *See Contracting Northwest, Inc. v. City of*
Fredericksburg, Iowa, 713 F.2d 382 (8th Cir.1983) (upholding the
stay of an action and noting that “[w]hile it is true that the

arbitrator's findings will not be binding as to those not parties to the arbitration, considerations of judicial economy and avoidance of confusion and possible inconsistent results nonetheless militate in favor of staying the entire action.”) *Id.* at 386 (citing *American Home Assurance Co. v. Vecco Concrete Construction Co.*, 629 F.2d 961 (4th Cir.1980)).

Id. at 1114-15.

The court concluded by holding that “the similarity of the issues of law and fact in this case to those that will be considered during arbitration, as well as the potential for inconsistent findings absent a stay, persuade the Court that a stay is warranted in the instant matter.” *Id.* at 1115.

This result makes a great deal of sense given the competing interests the court must balance when determining whether a stay is appropriate. “These competing interests include: (1) possible damage resulting from granting a stay; (2) hardship or inequity to a party if the proceedings go forward; and (3) simplification or complication of issues, proof and questions of law from a stay. *CMAX, Inc. v. Hall*, 300 F.2d 265, 268 (9th Cir. 1962).” *RB Prod., Inc. v. Ryze Capital, LLC*, No. 3:19-CV-00105-MMD-WGC, 2019 WL 5722205, at *2 (D. Nev. Nov. 4, 2019). In *RB Prod., Inc.*, the court ordered a stay of litigation against the non-arbitrating defendants because the claims against them involved the same witnesses and evidence as that in the arbitration proceeding and, absent a stay, both plaintiff and the remaining defendants would “expend unnecessary resources on duplicative litigation that will involve nearly identical evidence to prove overlapping claims.” *Id.* at *3. Moreover, “[a] stay on this proceeding would benefit all parties by giving them ‘more complete information regarding whether and how Plaintiff [] might pursue [its] claims which promotes the orderly course of justice’” and that “[t]his would further ‘increase[] judicial economy and the crystallization of the factual issues.’” *Id.* The court further noted that the plaintiff would benefit by the stay even if its claims were dismissed in arbitration because it would “be spared the expense of pursuing doomed claims.” *Id.*

Here, the claims against Mulligan are intertwined with and dependent on the claims asserted against Criterion and the CTC Defendants. Plaintiff claims that the CTC Defendants

1 engaged in a scheme to misappropriate more than \$43 million from Spirit. Plaintiff alleges that
2 Mulligan is liable for orchestrating that scheme and/or benefitting from it. The arbitrator will
3 decide whether the CTC Defendants did, in fact, misappropriate any money from Spirit. It makes
4 little sense to litigate the remaining defendants' liability for either orchestrating the scheme or
5 benefitting from it before there is a determination whether there actually was such a scheme in
6 the first place. There is plainly a risk of inconsistent findings if this Court were to proceed with
7 litigation before the CTC Defendants' arbitration is concluded.

8 There are also similar issues of law and fact in this case and the CTC Defendants'
9 arbitration. In fact, of the twelve causes of action asserted against Mulligan, eight are also
10 expressly asserted against CTC.⁴ While it is not clear whether CTC is a party to the Nineteenth
11 cause of action (Recovery of Unlawful Distribution under NRS 78.300), the allegations involve
12 questions of fact and law related to accounting classifications and distributions involving CTC.
13 Even the Fourth and Sixth causes of action asserting claims for breach of contract and breach of
14 fiduciary duty against the Spirit Director Defendants involve questions of fact and law related to
15 CTC's alleged conduct. *See, e.g.,* Complaint, ¶¶ 210-215 (alleging that the Spirit Directors'
16 failure to institute sufficient internal controls and oversight resulted in CTC's and Criterion's
17 alleged bad acts).⁵ The Alter Ego claim (Fourteenth cause of action) also necessarily depends
18 upon and is intertwined with the claims against CTC, expressly alleging that there is a unity of
19 interest between the individual defendants and "the entities." Complaint ¶ 382.

20 Because the claims subject to arbitration are inextricably intertwined with those
21 remaining in this litigation, staying this action pending conclusion of the arbitrations simplifies
22 the issues that may need to be tried here. Moreover, the hardship that Mulligan and the
23 remaining defendants have to face if a stay is not granted is immense – they would not only have
24 to actively litigate the case here, but they will also undoubtedly be subpoenaed and deposed in
25

26 ⁴ The following claims are asserted against the CTC Defendants and Mulligan: Nevada RICO (Tenth), Unjust
27 Enrichment (Eleventh), Fraud (Twelfth), Civil Conspiracy (Thirteenth), Avoidance of Transfers under NRS 112
28 (Fifteenth), Voidable Transfers under NRS 696B (Sixteenth), Recovery of Distributions and Payments under NRS
696B (Seventeenth), and Recovery of Distributions and Payments under NRS 692C.402 (Eighteenth).

⁵ Of course, Mulligan was never a director of Spirit, so these claims will fail against him in any event.

1 the arbitration in Washington, D.C. involving the CTC Defendants and in Nebraska involving
2 Criterion. This type of duplicative litigation on overlapping claims works a great hardship to all
3 involved. Finally, there is no damage that can occur from granting the stay. To the contrary, the
4 Receivership Estate that Plaintiff represents will benefit from an orderly processing of its
5 asserted claims by first determining in arbitration whether there in fact was a scheme resulting in
6 the misappropriation of money from Spirit. Plaintiffs' resources will be preserved by waiting
7 until that issue is determined before litigating issues related to who orchestrated that scheme and
8 who benefitted from it. *See Ruprecht v. Union Sec. Ins. Co.*, No. 3:07-CV-00231-BES-RAM,
9 2007 WL 9700737, at *7 (D. Nev. Dec. 20, 2007) (staying litigation against non-arbitrating
10 defendants because the arbitration might resolve similar questions facing both defendants and
11 may eliminate further litigation and, at a minimum, the arbitration was likely to streamline
12 subsequent proceedings before the court).

13 Simply put, there can be no serious dispute that the claims and allegations against the
14 CTC Defendants and Criterion are at the heart of this case. Every other defendant is alleged to
15 have participated in orchestrating the CTC Defendants' and Criterion's alleged wrongdoing,
16 failing to act to prevent it, or benefitting from the wrongdoing. Plaintiff herself acknowledges as
17 much when she identifies the CTC Defendants as the hub of the wheel at the center of this
18 "scheme." That being the case, the litigation pending against the "spokes" should be stayed
19 pending conclusion of the arbitration against the "hub."

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CONCLUSION

Based on the foregoing and the Motion, Mulligan respectfully requests that this case be stayed pending conclusion of the arbitration proceedings between Plaintiff and the CTC Defendants and Plaintiff and Criterion.

DATED this 3rd day of September, 2020.

JOLLEY URGAL WOODBURY & HOLTHUS

By: /s/ William R. Urga
William R. Urga, Esq., #1195
David J. Malley, Esq., #8171
Michael R. Ernst, Esq., #11957
330 S. Rampart Blvd., Suite 380
Las Vegas, NV 89145
Attorneys for Defendant Thomas Mulligan

CERTIFICATE OF SERVICE

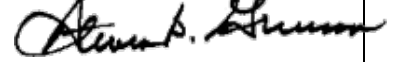
I hereby certify that I am employed in the County of Clark, State of Nevada, am over the age of 18 years and not a party to this action. My business address is Jolley Urga Woodbury & Holthus, 330 S. Rampart Boulevard, Suite 380, Las Vegas, Nevada 89145.

On this day I served the **DEFENDANT THOMAS MULLIGAN'S JOINDER TO MOTION TO STAY ARBITRATION** was served electronically using the Odyssey eFileNV Electronic Filing system and serving all parties with an email address on record, pursuant to Administrative Order 14-2 and Rule 9 of the N.E.F.C.R.

The date and time of the electronic proof of service is in place of the date and place of deposit in the U.S. Mail.

Dated this 3rd day of September, 2020.

/s/ Linda Schone
An employee of Jolley Urga Woodbury & Holthus



JMOT

TAMARA BEATTY PETERSON, ESQ., Bar No. 5218
tpeterson@petersonbaker.com
NIKKI L. BAKER, ESQ., Bar No. 6562
nbaker@petersonbaker.com
DAVID E. ASTUR, ESQ., Bar No. 15008
dastur@petersonbaker.com
PETERSON BAKER, PLLC
701 S. 7th Street
Las Vegas, NV 89101
Telephone: 702.786.1001
Facsimile: 702.786.1002

*Attorneys for Defendants Matthew Simon Jr.
and Scott McCrae*

DISTRICT COURT

CLARK COUNTY, NEVADA

BARBARA D. RICHARDSON IN HER
CAPACITY AS THE STATUTORY
RECEIVER FOR SPIRIT COMMERCIAL
AUTO RISK RETENTION GROUP, INC.,

Plaintiff,

v.

THOMAS MULLIGAN, an individual;
CTC TRANSPORTATION INSURANCE
SERVICES OF MISSOURI, LLC, a
Missouri Limited Liability Company; CTC
TRANSPORTATION INSURANCE
SERVICES LLC, a California Limited
Liability Company; CTC
TRANSPORTATION INSURANCE
SERVICES OF HAWAII LLC, a Hawaii
Limited Liability Company; CRITERION
CLAIMS SOLUTIONS OF OMAHA,
INC., a Nebraska Corporation; PAVEL
KAPELNIKOV, an individual; CHELSEA
FINANCIAL GROUP, INC., a California
Corporation; CHELSEA FINANCIAL
GROUP, INC., a Missouri Corporation;
CHELSEA FINANCIAL GROUP, INC., a
New Jersey Corporation d/b/a CHELSEA
PREMIUM FINANCE CORPORATION;
CHELSEA FINANCIAL GROUP, INC., a
Delaware Corporation; CHELSEA
HOLDING COMPANY, LLC, a Nevada
Limited Liability Company; CHELSEA
HOLDINGS, LLC, a Nevada Limited
Liability Company; FOURGOREAN

Case No.: A-20-809963-B
Dept. No.: XIII

**DEFENDANTS MATTHEW SIMON JR.
AND SCOTT MCCRAE'S JOINDER TO
MOTION TO STAY PENDING
ARBITRATION**

Date of Hearing: September 21, 2020

Time of Hearing: 9:00 a.m.

PETERSON BAKER, PLLC
701 S. 7th Street
Las Vegas, NV 89101
702.786.1001

CAPITAL, LLC, a New Jersey Limited Liability Company; KAPA MANAGEMENT CONSULTING, INC. a New Jersey Corporation; KAPA VENTURES, INC., a New Jersey Corporation; GLOBAL FORWARDING ENTERPRISES LIMITED LIABILITY COMPANY, a New Jersey Limited Liability Company; GLOBAL CAPITAL GROUP, LLC, a New Jersey Limited Liability Company; GLOBAL CONSULTING; NEW TECH CAPITAL, LLC, a Delaware Limited Liability Company; LEXICON INSURANCE MANAGEMENT LLC, a North Carolina Limited Liability Company; ICAP MANAGEMENT SOLUTIONS, LLC, a Vermont Limited Liability Company; SIX ELEVEN LLC, a Missouri Limited Liability Company; 10-4 PREFERRED RISK MANAGERS INC., a Missouri Corporation; IRONJAB LLC, a New Jersey Limited Liability Company; YANINA G. KAPELNIKOV, an individual; IGOR KAPELNIKOV, an individual; QUOTE MY RIG LLC, a New Jersey Limited Liability Company; MATTHEW SIMON, an individual; DANIEL GEORGE, an individual; JOHN MALONEY, an individual; JAMES MARX, an individual; CARLOS TORRES, an individual; VIRGINIA TORRES, an individual; SCOTT McCRAE, an individual; BRENDA GUFFEY, an individual; 195 GLUTEN FREE LLC, a New Jersey Limited Liability Company, DOE INDIVIDUALS I X; and ROE CORPORATE ENTITIES I-X,

Defendants.

Defendant Matthew Simon ("Mr. Simon"), and Defendant Scott McCrae ("Mr. McCrae") by and through their attorneys of record, the law firm of Peterson Baker, PLLC, hereby join in the "Motion to Stay Pending Arbitration" filed on August 28, 2020 ("Motion to Stay"), by Defendants Six Eleven LLC, Quote My Rig, LLC, New Tech Capital LLC, 195 Gluten, Free LLC, 10-4 Preferred Risk Managers, Inc., Ironjab, LLC, Fourgorean Capital LLC, Chelsea Holding Company, LLC, and Chelsea Financial Group, Inc. (Missouri) ("Six Eleven Defendants"). In this regard, pursuant to the Motion to Stay, this joinder thereto, and the papers and pleadings on file and

1 incorporated therein, Messrs. Simon and McCrae respectfully move the Court to stay this action
2 pending the completions of the arbitrations recently ordered by the Court. Messrs. Simon and
3 McCrae incorporate in this joinder the crux of the Motion to Stay, which is complemented by the
4 following brief summary:

5 The Motion to Stay seeks a stay of the entire matter pending the arbitration of Plaintiff's
6 claims against Defendants CTC Transportation Insurance Services of Missouri, LLC, CTC
7 Transportation Insurance Services LLC, and CTC Transportation Insurance Services of Hawaii
8 LLC (collectively, the "CTC Defendants"), and pending the arbitration of Plaintiff's claims against
9 Defendant Criterion Claim Solutions of Omaha, Inc. ("Criterion"). Further, the Motion to Stay
10 asserts that the claims against the Six Eleven Defendants are "identical and intertwined with the
11 claims asserted against CTC and Criterion," mandating a stay of those claims pending arbitration
12 of the claims against the CTC Defendants and Criterion.

13 Similarly, the remaining claims asserted against Messrs. Simon and McCrae¹ are
14 intertwined with the claims asserted against the CTC Defendants and Criterion that are subject to
15 arbitration. Plaintiff avers that Mr. Simon was "at relevant times, President of and a director of
16 Spirit and the Chief Operating Officer of" defendant CTC Transportation Insurance Services, LLC,
17 one of the CTC Defendants. (*See* Compl. at ¶ 36.) Plaintiff avers that Mr. Simon "has held many
18 executive positions at CTC and its many related entities." (*Id.*) For Mr. McCrae's part, Plaintiff
19 alleges that he "was an Executive Vice-President of CTC Transportation Services from August
20 2015 through January of 2019 and in January of 2019 became the President of CTC Transportation
21 Services and upon information and belief likely had a leading role with other CTC entities." (*Id.*
22 at ¶ 42.) Plaintiff also alleges that Mr. McCrae was the President of Criterion. (*Id.*) Plaintiff then
23 asserts claims against Messrs. Simon and McCrae that involve acts or omissions by them while
24 they held executive positions with the entities that are subject to arbitration.

25
26
27 ¹ In its Order Granting in Part and Denying in Part Defendants Scott McCrae and Matthew
28 Simon, Jr.'s Motion to Dismiss, filed August 10, 2020, the Court dismissed Plaintiff's Twelfth
Claim for Relief for Fraud as to both Defendants Mr. McCrae and Mr. Simon, and dismissed with
prejudice the Fourteenth Claim for Relief for Alter Ego as asserted against Mr. Simon.

1 By way of an example, which is by no means exhaustive, Plaintiff asserts that "Simon, as a
2 director of Spirit and Chief Operating Officer of CTC California—and while holding other
3 executive positions at CTC and its many related entities—participated negligently, knowingly
4 and/or intentionally in initiating, approving, executing, effecting and/or hiding the improper
5 transfers or withholdings of Spirit funds by CTC and Chelsea Financial, as alleged above and
6 below, at the direction and under the control of Mulligan." (*See* Compl. at ¶ 237.) Therefore, in
7 the arbitration involving the CTC Defendants, the parties would presumably conduct discovery
8 concerning any "transfers or withholdings of Spirit funds" by the CTC Defendants, including Mr.
9 Simon's role in any transfers or withholdings. Yet, based on the claims asserted against Mr. Simon,
10 individually, the parties in this action would undertake the same discovery.

11 Similarly, Plaintiff alleges that "McCrae, as Executive Vice President and later President of
12 CTC, participated negligently, knowingly and/or intentionally in initiating, approving, executing,
13 effecting and/or hiding the improper transfers or withholdings of Spirit funds by CTC and Chelsea
14 Financial, ..., at the direction and under the control of Mulligan."² (*See* Compl. at ¶ 228.) Thus,
15 the parties in the CTC Defendants arbitration will conduct discovery on any "transfers or
16 withholdings of Spirit funds" by the CTC Defendants, including Mr. McCrae's role in any transfers
17 or withholdings. Yet, based on the claims asserted against Mr. McCrae, individually, the parties in
18 this action would undertake the same discovery.

19 In sum, Messrs. Simon and McCrae are not parties to the arbitration agreement between
20 Spirit and the CTC Defendants. Nor are they parties to the arbitration agreement between Spirit
21 and Criterion. As non-parties, Messrs. Simon and McCrae would not be bound by any adverse
22 rulings in those arbitrations under the doctrine of issue or claim preclusion.³ Nevertheless, the
23 claims in the arbitration proceedings and the claims in this action are so intertwined that Messrs.
24 Simon and McCrae are potentially subject to three (3) depositions each—a deposition in each of

25
26 ² In her Complaint, Plaintiff refers to the CTC Defendants as "CTC" or the "CTC Entities".
(*See* Compl. at ¶ 13.)

27 ³ *See Taylor v. Sturgell*, 553 U.S. 880, 892–93 (2008) ("The application of claim and issue
28 preclusion to nonparties thus runs up against the 'deep-rooted historic tradition that everyone should
have his own day in court.'").

1 the arbitrations and a deposition in this action—and other duplicative discovery. Allowing this
2 action to move forward against Messrs. Simon and McCrae while the arbitrations proceed against
3 the CTC Defendants and Criterion would result in wasteful, expensive, and duplicative discovery
4 efforts and may result in divergent rulings on the same issues. Judicial economy and sound judicial
5 administration justify staying the claims against Messrs. Simon and McCrae in this action pending
6 resolution of the arbitrated claims against the CTC Defendants and Criterion. The Court should
7 grant the Motion to Stay and this joinder thereto.

8 Dated this 3rd day of September, 2020.

9 PETERSON BAKER, PLLC

10
11 By: /s/ Tamara Beatty Peterson
12 TAMARA BEATTY PETERSON, ESQ., Bar No. 5218
13 tpeterson@petersonbaker.com
14 NIKKI L. BAKER, ESQ., Bar No. 6562
15 nbaker@petersonbaker.com
16 DAVID E. ASTUR, ESQ., Bar No. 15008
17 dastur@petersonbaker.com
18 701 S. 7th Street
19 Las Vegas, NV 89101
20 Telephone: 702.786.1001
21 Facsimile: 702.786.1002

22 *Attorneys for Defendants Matthew Simon Jr. and Scott McCrae*
23
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25
26
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Peterson Baker, PLLC, and pursuant to NRCP 5(b), EDCR 8.05, Administrative Order 14-2, and NEFCR 9, I caused a true and correct copy of the foregoing **DEFENDANTS MATTHEW SIMON JR. AND SCOTT MCCRAE'S JOINDER TO MOTION TO STAY PENDING ARBITRATION** to be submitted electronically for filing and service with the Eighth Judicial District Court via the Court's Electronic Filing System on the 3rd day of September, 2020, to the following:

MARK E. FERRARIO, ESQ.
ferrariom@gtlaw.com
KARA B. HENDRICKS, ESQ.
hendricksk@gtlaw.com
KYLE A. EWING, ESQ.
ewingk@gtlaw.com
GREENBERG TRAUIG, LLP
10845 Griffith Peak Drive, Suite 600
Las Vegas, NV 89135

Attorneys for Plaintiff

KURT R. BONDS, ESQ.
kbonds@alversontaylor.com
ALVERSON TAYLOR & SANDERS
6605 Grand Montecito Parkway, Suite 200
Las Vegas, Nevada 89149

Attorneys for Defendant Brenda Guffey

THOMAS E. MCGRATH, ESQ.
tmcgrath@tysonmendes.com
CHRISTOPHER A. LUND, ESQ.
clund@tysonmendes.com
TYSON & MENDES LLP
3960 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169

*Attorneys for Defendants Pavel Kapelnikov;
Chelsea Financial Group, Inc., a New Jersey
corporation; Chelsea Financial Group, Inc. a
California corporation; Global Forwarding
Enterprises, LLC; Kapa Management
Consulting, Inc.; Kapa Ventures, Inc.*

ROBERT S. LARSEN, ESQ.
rlarsen@grsm.com
WING YAN WONG, ESQ.
wwong@grsm.com
GORDON REES SCULLY MANSUKHANI,
LLP
300 South Fourth Street, Suite 1550
Las Vegas, Nevada 89101

*Attorneys for Defendants Lexicon Insurance
Management LLC, Daniel George and ICAP
Management Solutions, LLC*

SHERI M. THOME, ESQ.
Sheri.Thome@wilsonelser.com
WILSON, ELSER, MOSKOWITZ,
EDELMAN & DICKER LLP
6689 Las Vegas Blvd. South, Ste. 200
Las Vegas, NV 89119

*Attorneys for Defendant
James Marx, Carlos Torres, Virginia Torres,
and John Maloney*

WILLIAM R. URGAS, ESQ.
wru@juwlaw.com
DAVID J. MALLEY, ESQ.
djm@juwlaw.com
MICHAEL R. ERNST, ESQ.
mre@juwlaw.com
JOLLEY URGAS WOODBURY &
HOLTHUS
330 S. Rampart Blvd., Suite 380
Las Vegas, NV 89145

Attorneys for Defendant Thomas Mulligan

L. CHRISTOPHER ROSE, ESQ.
lcr@h2law.com
KIRILL V. MIKHAYLOV, ESQ.
kvm@h2law.com
WILLIAM A. GONZALES, ESQ.
wag@h2law.com
HOWARD & HOWARD ATTORNEYS
PLLC
3800 Howard Hughes Parkway, Suite 1000
Las Vegas, Nevada 89169
*Attorneys for Defendants Six Eleven LLC;
Quote My Rig, LLC; New Tech Capital LLC;
195 Gluten Free LLC; 10-4 Preferred Risk
Managers, Inc.; Ironjab, LLC; Fourgorean
Capital LLC; and Chelsea Holding Company,
LLC*

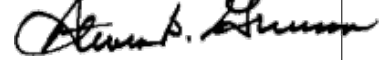
MATTHEW T. DUSHOFF, ESQ.
mdushoff@nvbusinesslaw.com
JORDAN D. WOLFF, ESQ.
jwolff@nvbusinesslaw.com
SALTZMAN MUGAN DUSHOFF
1835 Village Center Circle
Las Vegas, NV 89134

*Attorneys for Defendants CTC Transportation
Insurance Services of Missouri, LLC; CTC
Transportation Insurance Services, LLC; and
CTC Transportation Insurance Services of
Hawaii LLC*

JOHN R. BAILEY, ESQ.
JBailey@BaileyKennedy.com
JOSHUA M. DICKY, ESQ.
JDickey@BaileyKennedy.com
REBECCA L. CROOKER, ESQ.
RCrooker@BaileyKennedy.com
BAILEY KENNEDY
8984 Spanish Ridge Avenue
Las Vegas, Nevada 89148-1302.

*Attorneys for Defendant
Criterion Claim Solutions of Omaha, Inc.*

/s/ Erin Parcels
An employee of Peterson Baker, PLLC



1 **TYSON & MENDES LLP**
2 THOMAS E. MCGRATH
3 Nevada Bar No. 7086
4 Email: tmcgrath@tysonmendes.com
5 RUSSELL D. CHRISTIAN
6 Nevada Bar No. 11785
7 Email: rchristian@tysonmendes.com
8 3960 Howard Hughes Parkway, Suite 600
9 Las Vegas, Nevada 89169
10 Tel: (702) 724-2648
11 Fax: (702) 938-1048
12 *Attorneys for Defendants Pavel Kapelnikov,*
13 *Chelsea Financial Group, Inc. a New Jersey corporation;*
14 *Chelsea Financial Group, Inc. a California corporation;*
15 *Global Forwarding Enterprises, LLC; Kapa Management Consulting, Inc.;*
16 *Kapa Ventures, Inc.; and Igor and Yanina Kapelnikov*

10 **DISTRICT COURT**

11 **CLARK COUNTY, NEVADA**

12 BARBARA D. RICHARDSON IN HER
13 CAPACITY AS THE STATUTORY
14 RECEIVER FOR SPIRIT COMMERCIAL
15 AUTO RISK RETENTION GROUP, INC.,

16 Plaintiff,

17 vs.

18 THOMAS MULLIGAN, an individual; CTC
19 TRANSPORTATION INSURANCE SERVICES
20 OF MISSOURI, LLC, a Missouri Limited
21 Liability Company; CTC TRANSPORTATION
22 INSURANCE SERVICES LLC, a California
23 Limited Liability Company; CTC
24 TRANSPORTATION INSURANCE SERVICES
25 OF HAWAII LLC, a Hawaii Limited Liability
26 Company; CRITERION CLAIMS SOLUTIONS
27 OF OMAHA, INC., a Nebraska Corporation;
28 PAVEL KAPELNIKOV, an individual;
CHELSEA FINANCIAL GROUP, INC., a
California Corporation; CHELSEA FINANCIAL
GROUP, INC., a Missouri Corporation;
CHELSEA FINANCIAL GROUP, INC., a New
Jersey Corporation d/b/a CHELSEA PREMIUM
FINANCE CORPORATION; CHELSEA
FINANCIAL GROUP, INC., a Delaware
Limited Liability Company; KAPA
MANAGEMENT CONSULTING, INC. a New
Jersey Corporation; KAPA VENTURES, INC., a
New Jersey Corporation; GLOBAL

Case No. A-20-809963-C
Dept. No. VIII

**DEFENDANTS PAVEL KAPELNIKOV'S;
CHELSEA FINANCIAL GROUP, INC., A
NEW JERSEY CORPORATION'S;
CHELSEA FINANCIAL GROUP, INC. A
CALIFORNIA CORPORATION'S;
GLOBAL FORWARDING
ENTERPRISES, LLC'S; KAPA
MANAGEMENT CONSULTING, INC.'S;
KAPA VENTURES, INC.'S; AND IGOR
AND YANINA KAPELNIKOV'S
JOINDER TO MOTION TO STAY
PENDING ARBITRATION**

Date of Hearing: September 28, 2020
Time of Hearing: 9:00 AM

FORWARDING ENTERPRISES LIMITED
LIABILITY COMPANY, a New Jersey Limited
Liability Company; GLOBAL CAPITAL
Corporation; CHELSEA HOLDING
COMPANY, LLC, a Nevada Limited
Liability Company; CHELSEA HOLDINGS,
LLC, a Nevada Limited Liability Company;
FOURGOLEAN CAPITAL, LLC, a New Jersey
Limited Liability Company; KAPA
MANAGEMENT CONSULTING, INC. a New
Jersey Corporation; KAPA VENTURES, INC., a
New Jersey Corporation; GLOBAL
FORWARDING ENTERPRISES LIMITED
LIABILITY COMPANY, a New Jersey Limited
Liability Company; GLOBAL CAPITAL
GROUP, LLC, a New Jersey Limited Liability
Company; GLOBAL CONSULTING; NEW
TECH CAPITAL, LLC, a Delaware Limited
Liability Company; LEXICON INSURANCE
MANAGEMENT LLC, a North Carolina
Limited Liability Company; ICAP
MANAGEMENT SOLUTIONS, LLC, a
Vermont Limited Liability Company; SIX
ELEVEN LLC, a Missouri Limited Liability
Company; 10-4 PREFERRED RISK
MANAGERS INC., a Missouri Corporation;
IRONJAB LLC, a New Jersey Limited Liability
Company; YANINA G. KAPELNIKOV, an
individual; IGOR KAPELNIKOV, an individual;
QUOTE MY RIG LLC, a New Jersey Limited
Liability Company; MATTHEW SIMON, an
individual; DANIEL GEORGE, an individual;
JOHN MALONEY, an individual; JAMES
MARX, an individual; CARLOS TORRES, an
individual;
VIRGINIA TORRES, an individual; SCOTT
McCRAE, an individual; BRENDA GUFFEY,
an individual; 195 GLUTEN FREE LLC, a New
Jersey Limited Liability Company, DOE
INDIVIDUALS I-X; and ROE CORPORATE
ENTITIES I-X,

Defendants.

COME NOW Defendants PAVEL KAPELNIKOV, CHELSEA FINANCIAL GROUP,
INC., A NEW JERSEY CORPORATION; CHELSEA FINANCIAL GROUP, INC. A
CALIFORNIA CORPORATION; GLOBAL FORWARDING ENTERPRISES, LLC; KAPA



3960 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169

1 MANAGEMENT CONSULTING, INC.; KAPA VENTURES, INC.; AND IGOR AND
2 YANINA KAPELNIKOV (hereinafter referenced as “these Joining Defendants”), by and
3 through their counsel, TYSON & MENDES LLP, and hereby bring this Joinder to Co-
4 Defendants’ Motion to Stay Pending Arbitration.

5 This Joinder is made and based upon the following Memorandum of Points and
6 Authorities, including all exhibits attached hereto, the papers, pleadings and evidence on file, and
7 any oral argument entertained by the Court at the time of hearing.

8 DATED this 3rd day of September, 2020.

9 TYSON & MENDES LLP

10 /s/ Thomas E. McGrath

11 THOMAS E. MCGRATH

12 Nevada Bar No. 7086

13 RUSSELL D. CHRISTIAN

14 Nevada Bar No. 11785

15 3960 Howard Hughes Parkway, Suite 600

16 Las Vegas, Nevada 89169

17 Tel: (702) 724-2648

18 *Attorneys for Defendants Pavel Kapelnikov,*
19 *Chelsea Financial Group, Inc. a New Jersey*
20 *corporation;*

21 *Chelsea Financial Group, Inc. a California*
22 *corporation;*

23 *Global Forwarding Enterprises, LLC; Kapa*
24 *Management Consulting, Inc.;*

25 *Kapa Ventures, Inc.; and Igor and Yanina*
26 *Kapelnikov*

27 **MEMORANDUM OF POINTS AND AUTHORITIES**

28 **I.**

INTRODUCTION

On August 28, 2020, the following Co-Defendants filed a Motion to Stay Pending Arbitration:

Six Eleven LLC; Quote My Rig, LLC; New Tech Capital LLC; 195 Gluten Free LLC; 10-4 Preferred Risk Managers, Inc.; Ironjab, LLC; Fourgorean Capital LLC; Chelsea Holding Company, LLC; and Chelsea Financial Group, Inc. (Missouri)

These Joining Defendants include Pavel Kapelnikov, five corporations wherein Pavel is

1 an officer or member and Pavel’s brother, Igor Kapelnikov and Igor’s wife, Yanina Kapelnikov.
2 Plaintiff alleges its Complaint arises from a “vast fraudulent enterprise orchestrated by
3 [Defendant] Thomas Mulligan and others” and wherein Plaintiff contends the “Defendants
4 operated a multitude of interrelated companies in the insurance service industry for their own
5 benefit and to the detriment of their customers and their insureds, including Spirit”. *See*
6 *Plaintiff’s Complaint, page 3, ¶ 1*. While Plaintiff’s allegations are false (they ignore that Spirit
7 possessed more than \$30 million in assets when it was placed in receivership), for purposes of
8 the Court’s analysis of the Motion to Stay this case pending completion of Plaintiff’s arbitration
9 with co-defendants CTC and Criterion, if the Court assumes the allegations are true, they
10 confirm staying this case is the only way to avoid inconsistent rulings and serve judicial
11 economy.

12 Plaintiff must concede that in its discovery in its arbitration with CTC and Criterion, it
13 will seek to depose Defendant Pavel Kapelnikov, both in his individual capacity and as the
14 “person most knowledgeable” witness for the five corporate defendants among these Joining
15 Defendants. These Joining Defendants anticipate Plaintiff also will direct a subpoena to Pavel,
16 commanding him to appear for and testify at the arbitration hearing.

17 Plaintiff alleges in its Complaint, both Chelsea Financial Inc., a New Jersey Corporation
18 and Chelsea Financial Inc., a California corporation, are part of a group of corporate entity
19 defendants Plaintiff references as “Chelsea Financial”. Plaintiff erroneously alleges “Chelsea
20 Financial” is “owned and operated by Mulligan and Defendant Pavel Kapelnikov and is affiliated
21 with the CTC entities and Criterion. *See Plaintiff’s Complaint at pgs. 5-6, ¶ 18*. While Pavel
22 Kapelnikov denies owning or operating all of the “Chelsea Financial” entities, Plaintiff alleges
23 the Chelsea Financial entities “failed, however, to pay all Spirit premium and financial funds
24 owed to CTC and/or Spirit”. *Id.* This allegation alone establishes Plaintiff’s claims against CTC
25 and Criterion are indistinguishable from the claims asserted against these Joining Defendants and
26 certainly, they arise from the same alleged facts and/or occurrences. Therefore, the Court should
27 grant the Motion to Stay this case pending completion of Plaintiff’s arbitration with CTC and
28 Criterion.

II.

STATEMENT OF FACTS

These Joining Defendants hereby incorporate the Statement of Facts as set forth in the August 28, 2020 Motion to Stay Pending Arbitration. Of note, Co-Defendants emphasize Plaintiff's prior arguments that:

All of its claims were not subject to arbitration because the arbitration provisions in the CTC/Criterion Agreements only encompassed the claims and parties intended in the original contracts and that the non-contractual claims were not subject to the arbitration provisions.

See, Motion to Stay Pending Arbitration, p. 3, ll. 23-28; See Further Plaintiff's Opposition to CTC and Criterion Motions to Compel Arbitration, filed herein on June 4, 2020.

Plaintiff's Complaint asserts the following allegations specific to these Joining Defendants, which confirm Plaintiff's claims against these Joining Defendants are interrelated with its claims against CTC and Criterion.

Plaintiff alleges Defendant Kapa Management Consulting Inc. was used to "further Pavel Kapelnikov's and others' personal financial interest and to siphon funds from CTC that was owed to Spirit". *See Plaintiff's Complaint at pg. 7, ¶ 26.*

Plaintiff alleges Defendant Global Forwarding Enterprises, LLC was "owned by Mulligan and Pavel Kapelnikov and operated by Pavel Kapelnikov and his brother, Igor Kapelnikov, which was utilized to expropriate money from CTC that was owed to Spirit." *See Plaintiff's Complaint at pg. 7, ¶ 27.*

Plaintiff alleges Defendant Yanina G. Kapelnikov "is an individual that upon information and belief unlawfully and fraudulently received Spirit funds from CTC at the direction of Mulligan and/or Pavel Kapelnikov." *See Plaintiff's Complaint at pgs. 7-8, ¶ 33.*

Plaintiff alleges Defendant Kapa Ventures, Inc. "unlawfully and fraudulently received Spirit funds from CTC." *See Plaintiff's Complaint at pgs. 8, ¶ 34.*

Finally, Plaintiff alleges in its Complaint, "Defendant Igor Kapelnikov ("I. Kapelnikov") was, at relevant times, Chief Technology Officer of CTC California, and CEO of Global

1 Forwarding Enterprises and/or Global Forwarding Inc. and upon information and belief was paid
2 Spirit funds by CTC for purported expense reimbursements for which documentation is lacking.”
3 *See Plaintiff’s Complaint at pg. 9, ¶ 41.*

4 Plaintiff also alleges that CTC failed to track funds and/or documents it received from the
5 Chelsea Financial entities “on a per policy basis and then co-mingled such funds with those it
6 collected on behalf of other insurance companies in its general operating account...and exposing
7 Spirit to loss exposure for policies for which CTC may not have collected premiums through
8 Chelsea Financial.” *See Plaintiff’s Complaint at pgs. 13, ¶ 59.*

9 Finally, Plaintiff’s Tenth Cause of Action for RICO violations is asserted against CTC,
10 Criterion and the “Kapelnikovs” and numerous other defendants. Plaintiff directs its Eleventh
11 Cause of Action for Unjust Enrichment, Twelfth Cause of Action for Fraud and its Thirteenth
12 Cause of Action for Civil Conspiracy against all defendants. Plaintiff’s Seventeenth and
13 Eighteenth Causes of Action for Recovery of Distributions and Payments is directed against
14 CTC and its transferees” and Plaintiff’s allegations make clear Plaintiff considers these Joining
15 Defendants to be included in its designation of CTC’s alleged transferees.

16 III.

17 LEGAL ARGUMENT

18 The present motion and this joinder aim to prevent inconsistent results, “piecemeal”
19 litigation, and the improper application of *res judicata*. As this Court is aware, *res judicata* is a
20 rule, which precludes the parties from re-litigating what is substantially the same cause of action
21 Clark v. Clark, 80 Nev. 52, 55–56, 389 P.2d 69, 71 (1964). *Res Judicata* is properly limited to
22 the situation where there is a bar to or a merger of the former cause of action. Id.

23 Co-Defendants agree with moving Defendants’ contention that if the Court does not
24 grant its Motion and stay this case pending the resolution of the arbitrations, there is a great risk
25 of “inconsistent results under the same set of identical facts”. *See, Motion to Stay Pending*
26 *Arbitration, p. 4, ll. 6.* Co-Defendants seek to avoid piecemeal litigation

27 Plaintiff alleges in its Complaint that all defendants are “affiliated”, “interrelated” and co-
28 conspirators in the alleged scheme to direct Spirit premiums to the Defendants and their

corporations. Plaintiff's Complaint reveals its claims arise against all defendants, including CTC and Criterion, arise out of the same conduct and/or transactions that will be litigated in Plaintiff's arbitration with CTC and Criterion. Therefore, staying these proceedings, pending conclusion of Plaintiff's arbitration with CTC and Criterion, is in the best interest of the parties and will enhance judicial economy. It also will prevent the improper application of the doctrine of *res judicata*.

IV.

CONCLUSION

For all of the above reasons, these Joining Defendants join and request that the Court grant the pending Motion to Stay Pending Arbitration.

DATED this 3rd day of September, 2020.

TYSON & MENDES LLP

/s/ Thomas E. McGrath

THOMAS E. MCGRATH

Nevada Bar No. 7086

RUSSELL D. CHRISTIAN

Nevada Bar No. 11785

3960 Howard Hughes Parkway, Suite 600

Las Vegas, Nevada 89169

Tel: (702) 724-2648

Attorneys for Defendants Pavel Kapelnikov, Chelsea Financial Group, Inc., a New Jersey corporation; Chelsea Financial Group, Inc. a California corporation; Global Forwarding Enterprises, LLC; Kapa Management Consulting, Inc.; Kapa Ventures, Inc.; and Igor and Yanina Kapelnikov



3960 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169

CERTIFICATE OF SERVICE

The undersigned, an employee of Tyson & Mendes LLP, hereby certifies that on the 1st day of September 2020, a copy of **DEFENDANTS PAVEL KAPELNIKOV'S, CHELSEA FINANCIAL GROUP, INC., A NEW JERSEY CORPORATION'S; CHELSEA FINANCIAL GROUP, INC. A CALIFORNIA CORPORATION'S; GLOBAL FORWARDING ENTERPRISES, LLC'S; KAPA MANAGEMENT CONSULTING, INC.'S; KAPA VENTURES, INC.'S; AND IGOR AND YANINA KAPELNIKOV'S JOINDER TO MOTION TO STAY PENDING ARBITRATION**, was served by electronic service in accordance with Administrative Order 14.2, to all interested parties, through the Court's **ODYSSEY eFileNV** system addressed to:

MARK E. FERRARIO, ESQ.
ferrariom@gtlaw.com
KARA B. HENDRICKS, ESQ.
hendricksk@gtlaw.com
KYLE A. EWING, ESQ.
ewingk@gtlaw.com
GREENBERG TRAUIG, LLP
10845 Griffith Peak Drive, Suite 600
Las Vegas, NV 89135
Attorneys for Plaintiff

KURT R. BONDS, ESQ.
kbonds@alversontaylor.com
ALVERSON TAYLOR & SANDERS
6605 Grand Montecito Parkway, Suite 200
Las Vegas, Nevada 89149
Attorneys for Defendant Brenda Guffey

SHERI M. THOME, ESQ.
Sheri.Thome@wilsonelser.com
WILSON, ELSE, MOSKOWITZ,
EDELMAN & DICKER LLP
6689 Las Vegas Blvd. South, Ste. 200
Las Vegas, NV 89119
*Attorneys for Defendant
James Marx, Carlos Torres, Virginia Torres,
and John Maloney*

ROBERT S. LARSEN, ESQ.
rlarsen@grsm.com
WING YAN WONG, ESQ.
wwong@grsm.com
GORDON REES SCULLY
MANSUKHANI,LLP
300 South Fourth Street, Suite 1550
Las Vegas, Nevada 89101
*Attorneys for Defendants Lexicon Insurance
Management LLC, Daniel George and ICAP
Management Solutions, LLC*

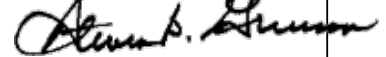
1 MATTHEW T. DUSHOFF, ESQ.
mdushoff@nvbusinesslaw.com
2 JORDAN D. WOLFF, ESQ.
jwolff@nvbusinesslaw.com
3 SALTZMAN MUGAN DUSHOFF
4 1835 Village Center Circle
Las Vegas, NV 89134
5 *Attorneys for Defendants*
6 *CTC Transportation Insurance Services of*
7 *Missouri, LLC; CTC*
8 *Transportation Insurance Services, LLC; and*
9 *CTC Transportation Insurance Services of*
10 *Hawaii LLC*

9 JOHN R. BAILEY, ESQ.
JBailey@BaileyKennedy.com
10 JOSHUA M. DICKEY, ESQ.
JDickey@BaileyKennedy.com
11 REBECCA L. CROOKER, ESQ.
RCrooker@BaileyKennedy.com
12 BAILEY KENNEDY
13 8984 Spanish Ridge Avenue
Las Vegas, Nevada 89148-1302.
14 *Attorneys for Defendant*
15 *Criterion Claim Solutions of Omaha, Inc.*

WILLIAM R. URGAS, ESQ.
wru@juwlaw.com
DAVID J. MALLEY, ESQ.
djm@juwlaw.com
MICHAEL R. ERNST, ESQ.
mre@juwlaw.com
JOLLEY URGAS WOODBURY & HOLTHUS
330 S. Rampart Blvd., Suite 380
Las Vegas, NV 89145
Attorneys for Defendant Thomas Mulligan

L. CHRISTOPHER ROSE, ESQ.
lcr@h2law.com
KIRILL V. MIKHAYLOV, ESQ.
kvm@h2law.com
WILLIAM A. GONZALES, ESQ.
wag@h2law.com
HOWARD & HOWARD ATTORNEYS
PLLC
3800 Howard Hughes Parkway, Suite 1000
Las Vegas, Nevada 89169
Attorneys for Defendants
Six Eleven LLC; Quote My Rig, LLC; New
Tech Capital LLC; 195 Gluten Free LLC; 10-4
Preferred Risk Managers, Inc.; Ironjab, LLC;
Fourgorean Capital LLC; and Chelsea
Holding Company, LLC

/s/ Scarlett Fisher
An employee of Tyson & Mendes LLP



1 **JMOT**
2 ROBERT S. LARSEN, ESQ.
3 Nevada Bar No. 7785
4 WING YAN WONG, ESQ.
5 Nevada Bar No. 13622
6 GORDON REES SCULLY MANSUKHANI, LLP
7 300 South Fourth Street, Suite 1550
8 Las Vegas, Nevada 89101
9 Telephone: (702) 577-9300
10 Direct: (702) 577-9301
11 Facsimile: (702) 255-2858
12 E-Mail: rlarsen@grsm.com
13 wwong@grsm.com

14 *Attorneys for Lexicon Insurance Management LLC,*
15 *Daniel George and ICAP Management Solutions, LLC*

16 EIGHTH JUDICIAL DISTRICT COURT

17 CLARK COUNTY, NEVADA

18 BARBARA D. RICHARDSON IN HER
19 CAPACITY AS THE STATUTORY RECEIVER
20 FOR SPIRIT COMMERCIAL AUTO RISK
21 RETENTION GROUP, INC.,

22 Plaintiff,

23 vs.

24 THOMAS MULLIGAN, an individual; CTC
25 TRANSPORTATION INSURANCE SERVICES OF
26 MISSOURI, LLC, a Missouri Limited Liability
27 Company; CTC TRANSPORTATION
28 INSURANCE SERVICES LLC, a California
Limited Liability Company; CTC
TRANSPORTATION INSURANCE SERVICES OF
HAWAII LLC, a Hawaii Limited Liability
Company; CRITERION CLAIMS SOLUTIONS OF
OMAHA, INC., a Nebraska Corporation; PAVEL
KAPELNIKOV, an individual; CHELSEA
FINANCIAL GROUP, INC., a California
Corporation; CHELSEA FINANCIAL GROUP,
INC., a Missouri Corporation; CHELSEA
FINANCIAL GROUP, INC., a New Jersey
Corporation d/b/a CHELSEA PREMIUM FINANCE
CORPORATION; CHELSEA FINANCIAL
GROUP, INC., a Delaware Corporation; CHELSEA
HOLDING COMPANY, LLC, a Nevada Limited
Liability Company; CHELSEA HOLDINGS, LLC,
a Nevada Limited Liability Company;
FOURGOREAN CAPITAL, LLC, a New Jersey
Limited Liability Company; KAPA

Case No.: A-20-809963-B
Dept. No.: 13

**LEXICON INSURANCE
MANAGEMENT LLC, DANIEL
GEORGE, AND ICAP
MANAGEMENT SOLUTIONS,
LLC'S JOINDER TO MOTION TO
STAY PENDING ARBITRATION**

MANAGEMENT CONSULTING, INC. a New Jersey Corporation; KAPA VENTURES, INC., a New Jersey Corporation; GLOBAL FORWARDING ENTERPRISES LIMITED LIABILITY COMPANY, a New Jersey Limited Liability Company; GLOBAL CAPITAL GROUP, LLC, a New Jersey Limited Liability Company; GLOBAL CONSULTING; NEW TECH CAPITAL, LLC, a Delaware Limited Liability Company; LEXICON INSURANCE MANAGEMENT LLC, a North Carolina Limited Liability Company; ICAP MANAGEMENT SOLUTIONS, LLC, a Vermont Limited Liability Company; SIX ELEVEN LLC, a Missouri Limited Liability Company; 10-4 PREFERRED RISK MANAGERS INC., a Missouri Corporation; IRONJAB LLC, a New Jersey Limited Liability Company; YANINA G. KAPELNIKOV, an individual; IGOR KAPELNIKOV, an individual; QUOTE MY RIG LLC, a New Jersey Limited Liability Company; MATTHEW SIMON, an individual; DANIEL GEORGE, an individual; JOHN MALONEY, an individual; JAMES MARX, an individual; CARLOS TORRES, an individual; VIRGINIA TORRES, an individual; SCOTT McCRAE, an individual; BRENDA GUFFEY, an individual; 195 GLUTEN FREE LLC, a New Jersey Limited Liability Company, DOE INDIVIDUALS I-X; and ROE CORPORATE ENTITIES I-X,

Defendants.

Defendants Lexicon Insurance Management LLC (“Lexicon”), ICAP Management Solutions, LLC (“ICAP”), and Daniel George (“George”), by and through their counsel, Robert S. Larsen, Esq. and Wing Yan Wong, Esq. of GORDON REES SCULLY MANSUKHANI, LLP, hereby join the Motion to Stay Pending Arbitration, filed August 28, 2020, by Defendants Six Eleven LLC, Quote My Rig, LLC; New Tech Capital LLC; 195 Gluten Free LLC; 10-4 Preferred Risk Managers, Inc.; Ironjab, LLC; Fourgorean Capital LLC; Chelsea Holding Company, LLC; and Chelsea Financial Group, Inc. (Missouri) (collectively as the “Six Eleven Defendants”).

This Joinder is based on the following Memorandum of Points and Authorities, the papers and pleadings on file with this Court, along with any oral argument of counsel presented

1 in support of the Motion to Stay Pending Arbitration and this Joinder.

2 **MEMORANDUM OF POINTS AND AUTHORITIES**

3 **I. INTRODUCTION**

4 Lexicon, ICAP, and George concur with the Six Eleven Defendants that this entire action
5 should be stayed pending completion of the arbitration between Spirit, the CTC Defendants, and
6 Criterion Claim Solutions of Omaha, Inc. (“Criterion”). The Court granted the motions to
7 compel arbitration filed by defendants CTC Transportation Insurance Services of Missouri, LLC,
8 CTC Transportation Insurance Services LLC, and CTC Transportation Insurance Services of
9 Hawaii LLC (collectively as “CTC Defendants”) and Criterion, respectively, enforcing the
10 arbitration agreements between these defendants and Spirit Commercial Auto Risk Retention
11 Group, Inc. (“Spirit”). *See* Orders entered on July 16, 2020 and July 22, 2020. On August 28,
12 2020, the Six Eleven Defendants filed a Motion to Stay Pending Arbitration (“Motion to Stay”).
13 For brevity, Lexicon, ICAP, and George hereby incorporate by reference the arguments in the
14 Motion to Stay in their entirety.

15 Plaintiff’s allegations and claims against Lexicon, ICAP, and George are intertwined and
16 overlapping with Plaintiff’s claims against the CTC Defendants and Criterion which are subject
17 to arbitration. Fundamentally, Plaintiff believes there is a conspiracy in which the CTC
18 Defendants and Criterion are the key instrumentalities purportedly used by many of the
19 remaining defendants, including Lexicon, ICAP, and George, to enrich themselves.

20 Lexicon, ICAP, and George strongly dispute the veracity of the allegations in the
21 Complaint. However, Plaintiff has pled her allegations in such a manner that Lexicon, ICAP,
22 and George’s liability necessarily depends in part on the outcome of the arbitration. It would be
23 a waste of judicial resources for Plaintiff to pursue this litigation before the arbitration reaches
24 resolution. Should Plaintiff proceed with this litigation before the arbitration reaches resolution,
25 Lexicon, ICAP, and George will face significant risk of inconsistent results. The stay will pose
26 minimal prejudice to Plaintiff; instead, the stay will prevent Plaintiff from needlessly duplicating
27 discovery effort on the same sets of fact in two different forums.

28 ///

1 **II. PLAINTIFF’S ALLEGATIONS AS TO LEXICON, ICAP, AND GEORGE**

2 According to Plaintiff, CTC California acted as Spirit’s program administrator from 2011
3 to 2016. Compl. at ¶ 11. CTC Missouri took over from CTC California as program
4 administrator beginning on or about July 2016. *Id.* at ¶ 12. Plaintiff believes George was
5 “responsible for putting ‘processes’ and internal controls in place at CTC, meant to ensure cash
6 and funds received from third parties were properly accounted for, recorded, handled, and
7 distributed when held in trust by CTC.” *Id.* at ¶ 37. According to Plaintiff, ICAP allegedly
8 “received Spirit funds from CTC, which were funneled to Defendant Daniel George.” *Id.* at ¶
9 32.

10 George, Lexicon, and ICAP strongly deny Plaintiff’s allegations and deny that they
11 committed any wrongful conduct. Plaintiff’s allegations nevertheless implicate George,
12 Lexicon, and ICAP in much of the CTC Defendants and Criterion’s purported misconduct:

- 13 • CTC commingled funds, allowing CTC “to provide preferential payments to... George”
14 and entities affiliated with him. *Id.* at ¶ 62.
 - 15 • CTC purportedly failed to provide the Division of Insurance information pertaining to the
16 loss portfolio transfer so CTC could continue to operate for the benefit of George at a
17 detriment to Spirit and its policyholders. *Id.* at ¶¶ 73-75.
 - 18 • George purportedly failed to disclose that CTC owed Spirit more than \$27.6 million. *Id.*
19 at ¶¶ 83-85, 201, 217, 235.
 - 20 • George purportedly instructed CTC and/or Spirit not to cancel insurance policies when
21 premiums were not paid by the insured to benefit George. *Id.* at ¶¶ 113-14, 202, 210-
22 211.
 - 23 • CTC improperly transferred millions of dollars to individuals and entities affiliated with
24 Mulligan, including Lexicon. *Id.* at ¶¶ 129-131, 205, 213.
 - 25 • CTC operated with limited financial control, allowing Mulligan and George to override
26 controls. *Id.* at ¶¶ 132, 139-140.
 - 27 • CTC overpaid Criterion claims handling fees. *Id.* at ¶ 143.
- 28

- Mulligan and George caused CTC to loan \$2.8 million to fund Criterion's operation. *Id.* at ¶ 146.
- Lexicon aided the improper transfers or withholdings of Spirit funds by CTC, under the control of Mulligan and George. *Id.* at ¶¶ 183-184.

Based on these allegations, Plaintiff assert many of the same causes of action against the CTC Defendants, Criterion, Lexicon, ICAP, and/or George, including:

- Nevada RICO claim based on the alleged racketeering activities between the CTC Defendants, Criterion, Lexicon, and George, among other defendants (tenth cause of action)
- Fraud against all defendants (twelfth cause of action)
- civil conspiracy between the CTC Defendants, Criterion, Lexicon, ICAP, and George, among other defendants (thirteenth cause of action)
- NRS 112 for avoidance of transfers allegedly made by the CTC Defendants to ICAP and George, among other defendants (fifteenth cause of action)
- NRS 696B for avoidance of transfers allegedly made by the CTC Defendants to ICAP and George, among other defendants (sixteenth cause of action)
- NRS 696B for recovery of distributions and payments made by the CTC Defendants to ICAP and George, among other defendants (seventeenth cause of action)
- NRS 692C.402 for recovery of distributions and payments made by the CTC Defendants to ICAP and George, among other defendants (eighteenth cause of action)
- NRS 78.300 for recovery of unlawful distribution made through the CTC Defendants, among other defendants (nineteenth cause of action)

Plaintiff assert additional causes of action against Lexicon, ICAP and George, including breach of contract, breach of the implied covenant of good faith and fair dealing, and/or breach of fiduciary duty. However, these causes of action are premised in part upon the same set of facts, *e.g.*, George's purported conduct through the CTC Defendants and Criterion.

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1 **III. LEGAL ARGUMENTS**

2 **A. Stay of This Action Pending Arbitration Will Conserve Judicial Resources**
3 **and Reduce the Risk of Inconsistent Results.**

4 This Court has authority to stay this action pending the arbitration. NRS 38.221(7)
5 provides, “If the court orders arbitration, the court on just terms shall stay any judicial
6 proceeding that involves a claim subject to the arbitration.” Further, this Court has broad
7 discretion to control its docket and “to control the disposition of the causes on its docket with
8 economy of time and effort for itself, for counsel, and for litigants.” *Maheu v. Eighth Jud. Dist.*
9 *Ct.*, 510 P.2d 627, 629 (Nev. 1973) (quotation omitted). Consistent with this principle,

10 [a] trial court may, with propriety, find it is efficient for its own docket and the
11 fairest course for the parties to enter a stay of an action before it, pending
12 resolution of independent proceedings which bear upon the case. This rule applies
13 whether the separate proceedings are judicial, administrative, or arbitral in
14 character, and does not require that the issues in such proceedings are necessarily
15 controlling of the action before the court.

16 *Mediterranean Enterprises, Inc. v. Ssangyong*, 708 F.2d 1458 (9th Cir. 1983) (quoting *Leyva v.*
17 *Certified Grocers of Calif. Ltd.*, 593 F.2d 857, 864 (9th Cir. 1979)).

18 A stay of this action pending resolution of Plaintiff’s arbitration with the CTC
19 Defendants and Criterion is appropriate. As detailed above, Plaintiff’s allegations and claims
20 against Lexicon, ICAP, and George are not only intertwined but also fundamentally dependent in
21 part on the conduct of the CTC Defendants and Criterion. In the event the CTC Defendants and
22 Criterion prevail in the arbitration, much of the basis of liability asserted against Lexicon, ICAP,
23 and George will fail in this litigation. Under the facts as pled by Plaintiff, Plaintiff must
24 demonstrate that CTC Defendants and Criterion acted improperly before Plaintiff can further
25 prove that Lexicon, ICAP, and George contributed to these improper acts. For example, in the
26 event the arbitrator finds that the CTC Defendants did not improperly handle any Spirit funds,
27 then Plaintiff cannot argue that the CTC Defendants had improperly “funneled” “Spirit funds” to
28 Lexicon, ICAP, or George. Plaintiff also cannot argue that George committed any breach of
fiduciary duty or contract, or any other wrongful conduct through the CTC Defendants or
Criterion.

1 Discovery in this action will surely be a costly process. Plaintiff weaved a story of
2 conspiracy in her 77-page Complaint. Over two dozens of defendants remain in this action.
3 Much of the facts and legal issues in this case surround the operation and conduct of the CTC
4 Defendants and Criterion. Allowing the arbitration to first proceed through resolution will
5 enable the Plaintiff to identify the specific evidence of purported acts of misconduct by the CTC
6 Defendants and Criterion, if any exists at all.

7 Should Plaintiff be permitted to proceed in this action, Lexicon, ICAP, and George will
8 face significant risks for potential inconsistent results and findings. It would be more judicious
9 for the arbitration to reach resolution before this Court determines whether any improper conduct
10 was attributable to Lexicon, ICAP, George in this litigation.

11 **B. The Stay Will Not Unduly Prejudice Plaintiff.**

12 The stay will pose minimal prejudice to Plaintiff. Instead, the stay will prevent Plaintiff
13 from needlessly duplicating discovery effort to pursue the same sets of allegations in two
14 different forums, eroding the funds available to Spirit and its policyholders.

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1 **IV. CONCLUSION**

2 While Plaintiff's position is legally and factually unsound, Plaintiff's claims against
3 ICAP, Lexicon, and George are so inextricably interrelated with the claims subject to arbitration
4 that the claims remaining in this litigation should not proceed, pending completion of the
5 arbitration. For the reasons stated above, Lexicon, ICAP, and George respectfully request that
6 the Court stay this litigation in its entirety pending completion of Plaintiff's arbitration with the
7 CTC Defendants and Criterion.

8 DATED this 3rd day of September, 2020.

9 GORDON REES SCULLY
10 MANSUKHANI, LLP

11 /s/ Robert S. Larsen

12 Robert S. Larsen, Esq.
13 Nevada Bar No. 7785
14 Wing Yan Wong, Esq.
15 Nevada Bar No. 13622
16 300 South Fourth Street, Suite 1550
17 Las Vegas, Nevada 89101

18 *Attorneys for Lexicon Insurance*
19 *Management LLC, Daniel George, and*
20 *ICAP Management Solutions, LLC*

CERTIFICATE OF SERVICE

Pursuant to Rule 5(b) of the Nevada Rules of Civil Procedure, I hereby certify under penalty of perjury that on the 3rd day of September, 2020, the foregoing **LEXICON INSURANCE MANAGEMENT LLC, DANIEL GEORGE, AND ICAP MANAGEMENT SOLUTIONS, LLC'S JOINDER TO MOTION TO STAY PENDING ARBITRATION** was served upon those persons designated by the parties in the E-Service Master List in the Eighth Judicial District court eFiling System in accordance with the mandatory electronic service requirements of Administrative Order 14-1 and the Nevada Electronic Filing and Conversion Rules, or mailed via U.S. Post Office, first class postage prepaid, as follows:

Mark E. Ferrario, Esq.
Kara B. Hendricks, Esq.
Kyle A. Ewing, Esq.
GREENBERG TRAURIG, LLP
10845 Griffith Peak Drive, Suite 600
Las Vegas, NV 89135

Attorneys for the Plaintiff

Kurt R. Bonds, Esq.
ALVERSON TAYLOR & SANDERS
6605 Grand Montecito Parkway, Suite 200
Las Vegas, NV 89149

Attorneys for Defendant Brenda Guffey

Sheri M. Thome, Esq.
WILSON ELSEER MOSKOWITZ EDELMAN
& DICKER, LLP
6689 Las Vegas Blvd. South, Suite 200
Las Vegas, NV 8911169

Attorneys for Defendant James Marx; Carlos Torres and Virginia Torres; John Maloney

L. Christopher Rose, Esq.
Kirill V. Mikhaylov, Esq.
William A. Gonzales, Esq.
HOWARD & HOWARD PLLC
3800 Howard Hughes Parkway, Ste. 1000
Las Vegas, NV 89169

Attorneys for Six Eleven LLC; Quote My Rig, LLC; New Tech Capital LLC; 195 Gluten Free LLC; 10-4 Preferred Risk Managers, Inc.; Ironjab LLC; Fourgorean Capital LLC; and Chelsea Holding Company, LLC

Thomas E. McGrath, Esq.
Christopher A. Lund, Esq.
TYSON & MENDES LLP
3960 Howard Hughes Parkway, Suite 600
Las Vegas, NV 89169

Attorneys for Defendants Pavel Kapelnikov: Global Forwarding Enterprises, LLC; Kapa Management Consulting, Inc.; and Kapa Ventures, Inc.

Matthew T. Dushoff, Esq.
Jordan D. Wolff, Esq.
SALTZMAN MUGAN DUSHOFF
1835 Village Center Circle
Las Vegas, NV 89134

Attorneys for CTC Transportation Insurance Services of Missouri, LLC; CTC Transportation Insurance Services, LLC; CTC Transportation Insurance Services of Hawaii, LLC;

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William R. Urga, Esq.
David J. Malley, Esq.
Michael R. Ernst, Esq.
JOLLEY URGa WOODBURY & HOLTHUS
330 So. Rampart Blvd., Suite 380
Las Vegas, NV 89145

Attorneys for Defendant Thomas Mulligan

Tamara Beatty Peterson, Esq.
Nikki L. Baker, Esq.
David E. Astur, Esq.
PETERSON BAKER, PLLC
701 S. 7th Street
Las Vegas, NV 89101

*Attorneys for Defendants Matthew Simon, Jr.
and Scott McCrae*

John R. Bailey, Esq.
Joshua M. Dickey, Esq.
Rebecca L. Crooker, Esq.
BAILEY KENNEDY
8984 Spanish Ridge Avenue
Las Vegas, NV 89148-1302

*Attorneys for Defendant Criterion Claim
Solutions of Omaha, Inc.*

/s/ Gayle Angulo
An Employee of GORDON REES
SCULLY MANSUKHANI, LLP

A-20-809963-B

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Business Court Matters

COURT MINUTES

September 04, 2020

A-20-809963-B Barbara Richardson, Plaintiff(s)
vs.
Thomas Mulligan, Defendant(s)

September 04, 2020 11:30 AM Minute Order

HEARD BY: Denton, Mark R.

COURTROOM: Chambers

COURT CLERK: Madalyn Kearney

JOURNAL ENTRIES

HAVING reviewed and considered the parties' filings pertaining to "Plaintiff's Motion for Reconsideration and/or Clarification of the Court's July 17, 2020 Order Regarding CTC Defendants' Motion to Compel Arbitration," deemed submitted and under advisement as of August 31, 2020 pursuant to the Minute Order of August 26, 2020, and being fully advised in the premises, the Court DENIES such Motion. Counsel for the CTC Defendants is directed to submit a proposed order consistent herewith and with supportive briefing after providing the same to Plaintiff's counsel for signification of approval/disapproval.

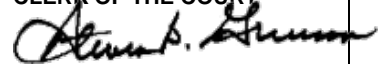
IT IS SO ORDERED.

CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Madalyn Kearney, to all registered parties for Odyssey File & Serve. /mk 9/4/20

PRINT DATE: 09/04/2020

Page 1 of 1

Minutes Date: September 04, 2020



OPP

MARK E. FERRARIO, Bar No. 1625
KARA B. HENDRICKS, Bar No. 7743
KYLE A. EWING, Bar No. 14051
GREENBERG TRAURIG, LLP
10845 Griffith Peak Drive, Suite 600
Las Vegas, NV 89135
Telephone: (702) 792-3773
Facsimile: (702) 792-9002
Email: ferrariom@gtlaw.com
hendricksk@gtlaw.com
ewingk@gtlaw.com

Counsel for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

STATE OF NEVADA, EX REL.
COMMISSIONER OF INSURANCE,
BARBARA D. RICHARDSON, IN HER
OFFICIAL CAPACITY AS RECEIVER FOR
SPIRIT COMMERCIAL AUTO RISK
RETENTION GROUP, INC.,

Plaintiff,

v.

THOMAS MULLIGAN, et al.

Defendants.

Case No.: A-20-809963-B
Dept. No.: XIII

**PLAINTIFF'S OPPOSITION TO
MOTION TO STAY PENDING
ARBITRATION AND JOINDERS
THERE TO**

Hearing: September 21, 2020, 9:00 a.m.

COMES NOW, Plaintiff Barbara D. Richardson, in her capacity as the Statutory Receiver for Spirit Commercial Auto Risk Retention Group, Inc. ("Receiver"), by and through her attorneys of record, the law firm of Greenberg Traurig, LLP, and hereby opposes the Motion to Stay Pending Arbitration and joinders thereto ("Opposition"). This Opposition is based upon the pleadings and papers on file herein, the following Memorandum of Points & Authorities, and any and all oral arguments allowed by this Court at the time of hearing.

1 **MEMORANDUM OF POINTS & AUTHORITIES**

2 **I. INTRODUCTION**

3 There are thirty-two (32) defendants that responded to the allegations in the complaint. Twenty-
4 eight (28) defendants are requesting this action be stayed pending arbitration by four (4) other defendants
5 in two separate venues.¹ Of course, the twenty-eight defendants that were participants in the fraudulent
6 scheme and conspiracy to siphon money away from Spirit Commercial Auto Risk Retention Group, Inc.
7 (“Spirit”) want to postpone being held accountable for their actions as long as possible. However, the
8 Spirit Receivership would be greatly prejudiced by the requested stay based upon rulings in the two
9 possible arbitration proceedings, and such a stay is not needed before claims can proceed against the
10 twenty-eight defendants filing the subject request for a stay (“Filing Defendants”).

11 The allegations in the Complaint arise from a vast fraudulent enterprise by which the defendants
12 operated a multitude of interrelated companies in the insurance service industry for their own benefit and
13 to the detriment of Spirit. Although the subject motion and each joinder that was filed denounce the
14 notion that there was a conspiracy to defraud Spirit, the Filing Defendants do not try to distance
15 themselves from the actions of the CTC Defendants and Criterion--and instead argue the claims are
16 integrally related providing further support for the fraud, unjust enrichment, conspiracy and RICO claims
17 that have been asserted by the Receiver. However, no such arguments were made when the motions to
18 compel arbitration were pending, and each party now seeking relief from the Court remained silent.

19 The motion to stay was originally brought by nine defendants collectively referred to as the Six
20 Eleven Defendants,² all of which are or were controlled by Defendants Thomas Mulligan and/or Pavel
21 Kapelnikov. Each of the Six Eleven Defendants obtained funds belonging to Spirit, and/or participated
22 in the scheme to siphon money away from Spirit, and each wants to delay returning funds to Spirit and
23 postpone answering legally for their actions. The return of funds that were wrongfully siphoned away
24 and looted from Spirit is extremely important, and none of these defendants have offered to return such
25 funds to Spirit or to even place them in a trust account pending the outcome of this legal proceeding. The

26
27 ¹ Defaults have been entered against Global Capital Group, LLC and Chelsea Holdings LLC.

28 ² Six Eleven LLC, Quote My Rig, LLC, New Tech Capital, LLC, 195 Gluten Free LLC, 10-4 Preferred Risk
Managers, Inc., Ironjab LLC, Fourgorean Capital LLC, Chelsea Holdings Company, LLC (“Chelsea Holdings”),
and Chelsea Financial Group, Inc. (MO) (“Chelsea Financial MO”) (collectively Six Eleven Defendants”)

1 longer that it takes to obtain a judgment against these defendants for the recovery of Spirit's funds, the
2 more time such defendants will have to dissipate, transfer or even squander Spirit's money. Seeing an
3 opportunity to slow their day or reckoning and hide their culpability, nineteen additional defendants
4 jumped on the bandwagon and filed joinders to the Motion to Stay.³ This is precisely why the Receiver
5 requested reconsideration relating to the separate arbitration proceedings sought by the CTC Defendants⁴
6 and Criterion Claims Solutions of Omaha, Inc. ("Criterion"), and is why the Court should allow all claims
7 to proceed in this forum.⁵ Based on what we have now heard from the twenty-eight Filing Defendants,
8 they agree with the Receiver's original request that all claims should proceed together.

9 In this case, a complex web of companies and individuals facilitated fleecing Spirit of over
10 \$40,000,000. Rewarding the CTC Defendants and Criterion by allowing claims asserted against them to
11 go forward in arbitration already separates claims that involve multiple defendants like fraud, civil
12 conspiracy and RICO claims into multiple forums. However, it appears that the moving defendants have
13 no issue testifying in two different arbitration forums, but just do not want to testify in this proceeding
14 where they can be held personally liable. Interestingly, the Motion and Joinders do not address the fact
15 that because there are potentially two different arbitration proceedings, it is highly unlikely that a decision
16 will be reached simultaneously in each arbitration. It is also possible that there will be different decisions
17 reached in the two arbitrations on similar claims.

20 ³ Brenda Guffey filed a joinder on September 2, 2020. James Marx, John Maloney, Virginia Torres and Carlos
21 Torres (Marx, Maloney, V. Torres and C. Torres will be referred to collectively herein as the " Spirit Director
22 Defendants") also filed a joinder on September 2, 2020. On September 3, 2020 Defendants Pavel Kapelnikov,
23 Chelsea Financial Group, Inc. (New Jersey) ("Chelsea Financial New Jersey"), Chelsea Financial Group, Inc.
24 (California) ("Chelsea Financial California"), Global Forwarding Group, Inc. ("Global Forwarding"), Kapa
25 Management Consulting, Inc. ("Kapa Management"), Kapa Ventures Inc. ("Kapa Ventures"), Igor Kapelnikov,
26 and Yanina Kapelnikov (collectively "Kapelnikov Group") filed a joinder. Thomas Mulligan also filed a joinder
27 on September 3, 2020. Additionally, on September 3, 2020 Defendants Lexicon Insurance Management LLC
28 ("Lexicon"), ICAP Management Solutions, LLC ("ICAP") and Daniel George ("George") collectively
("Lexicon/George Group") filed a joinder. Matthew Simon Jr. and Scott McCrae also filed a joinder on September
4, 2020.

⁴ The "CTC Defendants" or "CTC" are collectively CTC Transportation Insurance Services of Missouri, LLC
("CTC Missouri") CTC Transportation Insurance Services, LLC ("CTC California"), and CTC Transportation
Insurance's Services of Hawaii, LLC ("CTC Hawaii").

⁵ Pending before this Court is a Motion for Reconsideration and/or Clarification of orders issued compelling all
claims asserted by the Receiver against Criterion to arbitration. As detailed in the briefings, good cause exists for
the matter to be heard here. A similar motion was also filed relating to the CTC Defendants with a minute order
issued denying the same.

1 Spirit and the Receiver did not create this situation, the situation was created by the Defendants
2 themselves who are now looking for any and every opportunity possible to profit from Spirit's insolvency
3 and delay judgment against them. However, a stay is not mandatory. Rather, in situations such as this,
4 where there is real harm and third parties that will be damaged by a stay, the Court should summarily
5 deny the motion. Moreover, because the Filing Defendants failed to show any hardship or inequity which
6 they would suffer if the case proceeds, the inquiry should end.

7 It is not necessary to wait until two separate arbitration proceedings conclude before this matter
8 can proceed against the remaining twenty-eight defendants. As detailed below, it is possible to parse out
9 the claims against the Filing Defendants and the Court must do so to ensure the receivership estate has
10 sufficient funds to pay Spirit claims. Here, there is a heightened need to proceed expeditiously with this
11 matter because there is a claims deadline pending in the Spirit Receivership and a claims process and
12 procedure already in place. As of this filing, there are over 800 claims already submitted to the Receiver
13 for evaluation and, based on available information, the potential for many more. The longer that it takes
14 to make recoveries from defendants in this case, the longer that innocent claimants wait for receivership
15 distributions of funds from litigation recoveries. Some of the Spirit policyholder claim cases involve
16 severe, traumatic, or wrongful death cases in which claimants are in dire need of material financial
17 distributions from the Spirit receivership. A delay of this litigation will be very harmful to those claimants
18 who are in substantial need of litigation recoveries from this case. The request for a stay must be denied.

19 II. RELEVANT FACTS

20 Plaintiff is the Commissioner of the Nevada Division of Insurance and brought the subject
21 action in her capacity as Spirit's court-appointed Permanent Receiver ("Receiver") on behalf of Spirit,
22 Spirit's members, insured enrollees, and creditors. Spirit transacted commercial auto liability insurance
23 business and specialized in serving commercial truck owners. Spirit was placed into receivership after
24 its true financial condition and hopeless insolvency, in which it was unable to cure its financial
25 deficiencies, were uncovered.

26 //

27 //

1 **Spirit Receivership Proceedings**

2 A Permanent Injunction Order was entered against Spirit on February 27, 2019.⁶ Per the
3 Permanent Injunction Order, the Receiver was tasked with establishing a claims and appeal procedure
4 to facilitate the orderly disposition and resolution of claims or controversies involving the receivership
5 estate. This process is also governed by Chapter 696B of the Nevada Revised Statutes. On November
6 6, 2019, a Final Order Placing Spirit into Liquidation was entered, and on the same date, the
7 Receivership Court approved claims filing procedures and approved a claims filing deadline. The
8 current Claims Filing Deadline is October 31, 2020 (however, the Receiver has requested the deadline
9 be extended to May 31, 2021).⁷

10 In addition to developing claims procedures and the like, the Receiver also began investigating
11 Spirit's financial condition and, in connection with CTC Missouri, retained the forensic accounting firm
12 of FTI Consulting, Inc. ("FTI") to investigate missing funds that were owed to Spirit. After an extensive
13 investigation, the FTI report detailed numerous deficiencies, financial mismanagement, intentional acts
14 by individuals and entities affiliated with Spirit and/or Mulligan and Kaplenikov and transfers made to
15 insiders that divested Spirit of the assets needed to operate in a solvent manner. Subsequently, the
16 instant action was filed against the parties responsible for fleecing Spirit.

17 **Background Information Regarding This Action**

18 Although the Complaint in this matter was filed on February 6, 2020, the Receiver has faced
19 numerous roadblocks in attempts to move things forward. Notably, after service of the Complaint was
20 effectuated, every single defendant requested additional time to respond to the allegations in the
21 Complaint. The Receiver graciously granted extensions and worked with opposing counsel to
22 accommodate their individual requests. Ultimately, answers were filed by twenty-eight defendants,
23
24

25 ⁶ The "Receivership Proceedings" are pending in Case No. A-19-787325 in the Eighth Judicial District Court of
the State of Nevada in and for Clark County.

26 ⁷ The Receiver requested the Claims Filing Deadline be extended because 1) additional interested parties have
27 recently been identified by the Receiver; 2) it appears that there are some large open claims on the Company's pre-
receivership loss run report for which no POC has yet been filed and the Receiver is taking additional measures to
28 ensure proper notice is provided to such claimants; and 3) COVID-19 has caused unexpected delays and concerns
relating to notarization of POC forms and timely submittal of the same. The Motion to Extend Claims Filing
Deadline is set for hearing on September 30, 2020 in the Receivership Proceedings.

1 defaults were entered against two defendants, and four defendants moved to compel arbitration.⁸ As is
2 relevant here, the CTC Defendants moved to compel arbitration, and subsequent to an order being
3 entered regarding the same, the Receiver filed a motion seeking reconsideration. Absent further
4 direction from the Court, the claims asserted against the CTC Defendants are slated to go forward in an
5 arbitration proceeding in the District of Columbia. Similarly, Criterion moved to compel arbitration
6 and, if the order to compel is upheld after consideration of the pending request for reconsideration and/or
7 clarification filed by the Receiver, the claims asserted against Criterion are slated to go forward in a
8 wholly separate arbitration proceeding.

9 Although each and every one of the defendants that are now seeking a stay were served with
10 the briefs relating to the motions to compel filed by the CTC Defendants and Criterion, and all were
11 fully aware of concerns expressed by the Receiver regarding arbitration, not one of the Filing Defendants
12 advised the Court that they believed arbitration would be prejudicial to them and/or create inconsistent
13 rulings. Moreover, CTC Defendants and Criterion were both adamant that the opposite was true.

14 Indeed, the CTC Defendants argued that each and every cause of action the Receiver alleged
15 against CTC in the Complaint is related to the CTC Agreement and is therefore subject to arbitration.⁹
16 In the CTC Defendants' Reply brief, they further argued that the CTC Defendants were not necessary
17 parties to the case and that the Receiver could seek testimony and documents through subpoenas.¹⁰ They
18 also argued that the Receiver's dispute with the CTC Defendants is "a simple accounting disagreement"
19 with "discreet issues that should be quickly and efficiently disposed of through arbitration..."¹¹
20 Importantly, not once did the CTC Defendants contend that their principal, employees and other entities
21 that they were affiliated with, or provided money to, would be burdened or prejudiced if the arbitration
22 went forward--or that the arbitration would create inefficiencies. It is disingenuous for such issues to
23 be raised now.

24 ///

26 ⁸ Default was entered against Global Capital and Chelsea Holdings, LLC. Separately, Chelsea Financial Group,
27 Inc. (Delaware) was voluntarily dismissed.

28 ⁹ CTC Defendants Motion to Compel, page 9.

¹⁰ Reply in Support of CTC Defendants Motion to Compel, Page 17.

¹¹ Reply in Support of CTC Defendants Motion to Compel, Page 18.

1 Criterion argued that each of the nine claims asserted against it were premised on the Criterion
2 Spirit Agreement and that without the Agreement, no basis would exist for the claims against Criterion.¹²
3 And in its Reply brief, Criterion went all in arguing that the Receiver’s arguments were “the product of
4 its own fanciful efforts to transform what is a straight-forward dispute over contractual performance into
5 a civil RICO claim.”¹³ Additionally, in response to concerns raised by the Receiver that arbitration
6 would interfere with the liquidation proceedings, Criterion advised the Court that arbitration generally
7 avoids higher costs and longer time periods associated with traditional litigation and suggested the
8 Receiver was exhibiting “liberal spending of Spirit’s assets in pursuit of this litigation.”¹⁴ Although
9 Criterion may not like the Receiver seeking compensation for the harm it incurred at the hands of its
10 claims manager Criterion, there are ample grounds to do so. Moreover, in pressing the Court to divest
11 itself from hearing the claims against Criterion, not once did Criterion contend that its principals,
12 employees, and other entities that the company is affiliated with would be burdened if there were
13 separate proceedings. As stated above, it is disingenuous for such issues to be raised now.

14 **Claims Asserted by the Receiver Against the Filing Defendants**

15 Notwithstanding arguments by the CTC Defendants and Criterion that the claims the Receiver
16 has asserted against them solely arise from contracts that not one of the Filing Defendants is a party to,
17 all of the Filing Defendants now contend the claims asserted against them are entirely dependent on
18 claims asserted against these other parties. If the Filing Defendants are willing to stipulate that they are
19 jointly and severally liable for any rulings and/or judgments against the CTC Defendants and Criterion,
20 the Receiver is certainly willing to do so. However, despite contending all claims are intertwined, the
21 Filing Defendants will undoubtedly try to distance themselves from the actions of the CTC Defendants
22 and Criterion as discovery unfolds. Moreover, the Complaint itself identifies independent actions and
23 culpability of each named defendant.

24 In the interest of judicial economy, and to assist the Court in understanding the actions of the
25 Filing Defendants that formed the basis for their inclusion in the Complaint, they will be grouped into
26 eight categories or groups.

27 ¹² Criterion Motion to Compel, page 7.

28 ¹³ Reply in Support of Criterion Motion to Compel, Page 3.

¹⁴ Reply in Support of Criterion Motion to Compel, Page 10.

1 Six Eleven Defendants

2 The Six Eleven Defendants as specifically defined in footnote 2 are all owned and controlled
3 by Defendants Tom Mulligan and/or the Pavel Kapelnikov.¹⁵ Notably, not one of these Defendants is
4 a party to either the CTC Agreement or the Criterion Agreement. Moreover, while the CTC Defendants
5 controlled Spirit’s finances and operations and Criterion managed Spirit’s claims, the Six Eleven
6 Defendants appear to have primarily been created for the purpose of simply collecting Spirit funds or
7 acting as “piggy banks” for Spirit funds to be deposited into.

8 Although there are similarities regarding the ownership of the Six Eleven Defendants and their
9 collective use as piggy banks, there are also some differences. Notably, 10-4 Preferred Risk Managers
10 (“10-4 Preferred”) was paid a \$125 service fee to purportedly verify coverage of Spirit claims, even
11 though Criterion was responsible for doing the same.¹⁶ New Tech Capital was created to allow
12 Mulligan and Kapelnikov to invest \$500,000 of Spirit funds with a private fund called Iterative Capital
13 LP, a high-risk investment fund that invested in cryptocurrencies, network tokens, as well as in the mining
14 operations and equipment relating to the generation of “new” cryptocurrency tokens.¹⁷ By the time the
15 Receiver was able to track down the “investment” (that was never put in Spirit’s name—and instead
16 placed in the names of Mulligan and Kapelnikov for their personal benefit), the \$500,000 investment had
17 depreciated to a mere \$110,378.68.¹⁸ Quote My Rig, LLC (“Quote My Rig”) was utilized as a sub
18 producer for Spirit, from which Mulligan took commissions on Spirit policies.¹⁹ The stated purpose of
19 the remaining Six Eleven Defendants, but for the Chelsea entities that will be discussed below, are not
20 entirely clear. However, what is known is that each entity received substantial payments of funds that
21 should have been sent to Spirit, specifically: Six Eleven LLC received payments of approximately
22 \$872,000, \$337,913 and \$72,000; Fougorean received payments of approximately \$1.2 Million and
23 \$214,000; Quote My Rig received over \$304,000; 10-4 Preferred Risk Managers received \$74,700 in
24 addition to \$125.00 for claim verifications; Ironjab LLC received approximately \$15,300; and 195 Gluten

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26 ¹⁵Complaint ¶¶ 15, 19, 22, 23, 24, 25, 29, 35, 40, 44.

27 ¹⁶ Complaint ¶ 158.

28 ¹⁷ Complaint ¶¶ 187- 191.

¹⁸ Certain funds were provided to the Receiver from New Tech as set forth in the Stipulation and Order that was
filed herein on April 28, 2020.

¹⁹ Complaint ¶ 35.

1 Free LLC received \$44,000.²⁰ The Receiver has a right to recover these funds regardless of any rulings
2 entered in any arbitration proceedings against the CTC Defendants and/or Criterion.

3 Chelsea Defendants

4 Two of the Six Eleven Defendants include Chelsea Holding and Chelsea Financial MO who are
5 also associated and affiliated with Chelsea Financial California and Chelsea Financial New Jersey, such
6 entities will be referred to herein as the “Chelsea Defendants.”²¹ As detailed in the Complaint, the
7 Chelsea Defendants provided so-called premium financing to Spirit policyholders. Indeed, the Chelsea
8 Defendants represented to Spirit and its policyholders as having financed insurance premiums of Spirit,
9 for which it charged a high rate of interest to Spirit policyholders.²² The Chelsea Defendants also misled
10 Spirit policyholders into believing that they were paying all their collected premium payments to Spirit,
11 which was false and misleading as large premium balances were collected by the Chelsea Defendants
12 and never paid to Spirit.²³ The Receiver has a separate and distinct right to recover against the Chelsea
13 Defendants who played a different role in the fraudulent scheme than the CTC Defendants or Criterion.
14 Importantly, there is no reference to the Chelsea Defendants as being necessary parties to the arbitrations
15 being sought by the CTC Defendants or Criterion.

16 Kapelinkov Group

17 While contending that the allegations of a “vast fraudulent enterprise” are false, the six
18 defendants comprising the Kapelinkov Group are adamant that claims asserted against them are somehow
19 dependent on the claims asserted against the CTC Defendants and Chelsea. These two positions are
20 inconsistent. Moreover, there are more than sufficient allegations alleged in the Complaint to allow the
21 claims against the different parties to proceed separately.

22 Details regarding the actions of Chelsea Financial California and Chelsea Financial New Jersey,
23 which are part of the Kapelinkov Group, are referenced above. Because the Chelsea Defendants provided
24 “premium financing” to Spirit policyholders and had an obligation to ensure funds were paid to Spirit,

25 ²⁰ Complaint ¶ 256.

26 ²¹ Complaint ¶¶ 15- 21. Chelsea Premium Finance Corporation, Pennsylvania is also believed to be a part of the
27 collective Chelsea Group. Complaint ¶ 16. Chelsea Financial California and Chelsea Financial New Jersey, who
28 are represented by different counsel than Chelsea Holding and Chelsea Financial MO, joined in the Motion to Stay
on September 3, 2020 as part of the joinder filed by the Kapelinkov Group.

²² Complaint ¶ 160.

²³ Id.

1 the direct claims against the Chelsea Defendants can proceed independently.

2 Similarly, the Receiver has an independent basis to pursue claims against the remaining members
3 of the Kapelinkov Group based on allegations in the complaint of wrongdoing. Indeed, to further the
4 scheme to defraud Spirit, Pavel Kapelnikov set up his own companies, separate and apart from the
5 companies that Mulligan created, so P. Kapelnikov himself could siphon money belonging to Spirit.²⁴
6 His admitted ownership of Chelsea Financial California and Chelsea Financial New Jersey are a
7 significant part of the scam. Furthermore, as alleged in the Complaint, Kapa Management and Kapa
8 Ventures were used as shell entities to further P. Kapelnikov's personal interests and unlawfully received
9 Spirit's funds.²⁵ Global Forwarding was owned by Mulligan, P. Kapelnikov and Igor Kapelnikov, and
10 was utilized as yet another "piggy bank" to deposit funds due to Spirit.²⁶ Igor "wore multiple hats"
11 serving at relevant times as a technology officer of CTC California and the CEO of Global forwarding.
12 He was paid substantial amounts of Spirit funds for purported expense reimbursements that are not
13 documented.²⁷ And finally, Yanina Kapelnikov is named as a defendant as she and/or her husband I.
14 Kapelnikov received approximately \$354,000 of Spirit funds for no known reason. To put the amount of
15 money the Kapelnikov Group siphoned from Spirit into context: over \$6.5 million was paid to Chelsea
16 Financial; payments of more than \$2.3 million were made to Kapa Management, and another \$1.5 million
17 is believed to have been paid to Kapa Management that was coded wrong;²⁸ Global Forwarding received
18 approximately \$719,000; and Kapa Ventures was paid approximately \$35,889.²⁹ In total, the Kapelnikov
19 Group made off with at least \$11,408,889 of Spirit's money. That is money that the Receiver is entitled
20 to collect to assist with paying claims. The return of this money can and should be pursued separate and
21 apart from the Receiver's claims against the CTC Defendants and Criterion.

22 Lexicon/George Group

23 The Lexicon, ICAP and Daniel George "strongly dispute the veracity of the allegations in the
24 complaint," including allegations that there was a conspiracy in which each member of the

25 ²⁴ Complaint ¶ 3.

26 ²⁵ Complaint ¶¶ 26, 34.

26 ²⁶ Complaint ¶ 27.

27 ²⁷ Complaint ¶ 41.

27 ²⁸ The coding issues were identified as part of the FTI report and discovery is needed to fully understand the
28 same.

²⁹ Complaint ¶ 256

1 Lexicon/George Group enriched themselves, but also argue there must be a stay because the claims
2 asserted against them are intertwined with the claims the Receiver asserted against the CTC Defendants
3 and Criterion. They cannot have it both ways. Not only are such arguments inconsistent, but neither the
4 CTC Defendants nor Criterion contend the Lexicon/George Group are necessary parties to the claims
5 asserted against them.

6 As alleged in the Complaint, Lexicon was owned and controlled by Mulligan and George,
7 provided management services for insurance companies, and served as Spirit's Risk Retention Group
8 Manager.³⁰ This arrangement with Spirit was separate and apart from the arrangement that was facilitated
9 with the CTC Defendants and was provided under a separate contract (which does not have an arbitration
10 provision). There is no basis to delay the Receiver's right to recovery based on Lexicon's actions.

11 ICAP was used to unlawfully and fraudulently funnel Spirit funds to George.³¹ Records have
12 revealed that ICAP was paid more than \$1.5 million of Spirit funds.³² The Receiver has the legal right
13 to seek direct recovery from ICAP for amounts received.

14 George had his "fingers in multiple pies." He was the President of Lexicon, Executive Vice
15 President of CTC California, served as Spirit's Risk Retention Group Manager by and through Lexicon,
16 presided over Spirit's Board of Directors acting as its Chair, owns 100% of ICAP, and was an active
17 participant in misrepresenting Spirit's financial condition to third parties.³³ Despite his role with CTC
18 California, George did not raise any concerns about claims in multiple forums while the motion to compel
19 was pending. However, now that George sees an opportunity to delay proceedings against him, he has
20 joined in the request for a stay. Claims arising due to George's role as Chair of Spirit's Board of Directors
21 and his service as Spirit's Risk Retention Group Manager will not be impacted by any arbitration
22 involving the CTC Defendants or Criterion. Any potential overlap in the claims asserted against George
23 and the CTC Defendants is not only nominal, but was self-created by George. The Receiver's ability to
24 proceed against George should not be delayed.

27 ³⁰ Complaint ¶ 30.

28 ³¹ Complaint ¶ 32.

³² Complaint ¶ 256.

³³ Complaint ¶ 37.

1 Spirit Director Defendants

2 It defies explanation how Spirit’s former directors can argue the claims asserted against them
3 are dependent on the claims asserted against the CTC Defendants and Criterion. Defendants Marx,
4 Maloney, V. Torres and C. Torres were at relevant times directors of Spirit with duties and obligations
5 to the Company and its insureds.³⁴ The Complaint includes allegations that these former directors failed
6 to report or disclose actions of Mulligan and other insiders, approved a \$500,000 “investment” in New
7 Tech Capital that was utilized to invest in unstable crypto-currency, failed to uphold duties of good
8 faith and loyalty to Spirit in approving loans and dividends, failed to act independently, violated Spirit’s
9 code of ethics and corporate governance standards, knowingly continued Spirit’s business operations
10 beyond financial insolvency, and failed to take appropriate actions to retrieve Spirit funds that were
11 improperly retained by Spirit affiliates, just to mention a few of the bad acts.³⁵ The claims against the
12 Spirit Director Defendants are not contingent on the claims asserted against the CTC Defendants and
13 Criterion, and suggesting otherwise would provide a basis for additional claims against these individuals
14 if they were also involved in the ongoing operations of the CTC Defendants and Criterion.

15 Guffey

16 Brenda Guffey was President of Spirit and was intimately involved in, actively participated in,
17 and was knowledgeable of the management and affairs of Spirit, including its failure to collect premiums
18 due to the company, unrealistic and material under-reserving of claims, payment of claims on policies
19 with outstanding delinquent premiums, unauthorized writing of cross-border insurance business by Spirit
20 to cover Mexican insureds and drivers that led to large Spirit losses, and material misstatements to Spirit’s
21 policyholders, auditors, and the Nevada Division of Insurance.³⁶

22 As Guffey is Spirit’s former President, the Receiver has a right to pursue claims against Guffey
23 separate and apart from claims asserted against Criterion and the CTC Defendants. Although Guffey was
24 also an employee of one of the CTC Defendants, she had separate responsibilities and liabilities due to
25 her role as the President of the now defunct insurance company she purportedly served. Notably, in the
26 briefing of the CTC Defendants motion to compel arbitration, Guffey’s name was not raised. Further,

27 ³⁴ Complaint ¶¶ 38, 39.

28 ³⁵ Complaint ¶¶ 160, 190, 197- 223.

³⁶ Complaint ¶ 43.

1 the CTC Defendants and Guffey herself made no assertions regarding any purported prejudice of claims
2 against Guffey proceeding in a different forum.

3 Simon & McCrae

4 Matthew Simon and Scott McCrae now contend that a stay is warranted because the claims
5 asserted against them are so intertwined with the claims that were asserted by the Receiver against the
6 CTC Defendants and Criterion. However, no such arguments were made during the briefing of the
7 motions to compel arbitration. And although both individuals had connections with one or more of the
8 CTC Defendants, they had duties and obligations to Spirit separate and apart from CTC that can and
9 should proceed immediately.

10 As set forth in the Complaint, Simon was, at relevant times, the President of Spirit and served
11 as a director of Spirit.³⁷ As Spirit's President, he was intimately involved in, actively participated in, and
12 was knowledgeable of the management and affairs of Spirit, including the concealment of the true
13 financial condition of the company. He must be held accountable for the same. Similarly, as a director
14 of Spirit, Simon had fiduciary duties to the now defunct company, including duties of good faith and
15 loyalty. The claims against Simon as a former director of Spirit are not contingent on the claims asserted
16 against the CTC Defendants and Criterion, and suggesting otherwise would provide a basis for additional
17 claims against him. Moreover, any overlap between the claims proceeding in different forums is of his
18 own doing, and the Receiver should not be precluded from moving forward against him individually now.

19 Although McCrae readily admits he was involved with CTC and Criterion, and per his joinder
20 will be involved in both arbitration proceedings, two arbitrations did not concern him. The only concern
21 now voiced is the purported prejudice a third proceeding would have. Of course, this case is the only
22 proceeding in which he can be held directly accountable for his actions. Individual claims against McCrae
23 can proceed now. Notably, McCrae acted with other individual defendants to conceal the true financial
24 condition of Spirit and participated in misrepresentations to Spirit policyholders regarding the financing
25 provided by the Chelsea Defendants.³⁸ The Receiver has a right to pursue claims against McCrae
26 separate and apart from the arbitration proceedings against the CTC Defendants and Criterion. And

27
28 ³⁷ Complaint ¶ 36.

³⁸ See e.g. Complaint ¶¶ 63, 75, 132, 230.

1 despite his early efforts to have this matter dismissed, the Court already determined there are sufficient
2 facts to warrant the Receiver proceeding against McCrae on the Nevada RICO claim, unjust enrichment,
3 and conspiracy claims asserted in the Complaint. There is no reason for delay.

4 Mulligan

5 And of course Mulligan, who is the mastermind behind the scheme to siphon money away from
6 Spirit, also wants to delay the proceedings against him to avoid liability, and is hiding behind the Six
7 Eleven Defendants' Motion to Stay by joining the same. However, Mulligan was silent when the motions
8 to compel arbitration were filed by the CTC Defendants and Criterion, and never once suggested that the
9 claims asserted against such defendants were integral to the claims asserted against him, thus waiving
10 any arguments of purported prejudice. As mentioned above, both the CTC Defendants and Criterion
11 were adamant that the claims being sent to arbitration arose solely from the contracts they had with Spirit.
12 For Mulligan to suggest otherwise now is wholly disingenuous.

13 The Receiver has made no secret of allegations that Mulligan set up the web of interrelated
14 companies responsible for Spirit's insolvency. Mulligan's efforts to do so and fleece Spirit are detailed
15 in the Complaint and extend well beyond the claims asserted against the CTC Defendants and Criterion.
16 Indeed, Mulligan at relevant times was a manager, officer or director of Spirit, and was also an officer,
17 manager, control party, or director of a multitude of other related companies, including Chelsea Financial
18 Group, Chelsea Premium Finance, Lexicon, Whitehall, Swan & Adams Freight Forwarding, Six Eleven
19 LLC, and Fourgorean Capital, LLC.³⁹ These claims can and should proceed even if the claims against
20 the CTC Defendants and Criterion proceed elsewhere.

21 For at least the last year and half, Mulligan has tried to distance himself from the companies he
22 created. However, such actions are too little and too late. Mulligan's "fingerprints" are all over the
23 claims asserted against the twenty-eight Filing Defendants in this action. Even his attempts to distance
24 himself from a number of the entities after Spirit's insolvency cannot negate his liability.⁴⁰ Furthermore,
25 a decision in any CTC arbitration and/or Criterion arbitration is not required for findings of intentional

26 ³⁹ Complaint ¶ 10.

27 ⁴⁰ As detailed in the Complaint, in March of 2019 Mulligan resigned from the positions he held as an officer,
28 director or manager of numerous defendant entities he was affiliated with including Spirit, Chelsea Financial
California, Chelsea Financial New Jersey, Chelsea Holding Company; each of the CTC Defendants, Criterion,
and Lexicon. Complaint ¶ 94.

1 misconduct by Mulligan sufficient to establish Mulligan's breach of his fiduciary duties to Spirit in his
2 role as a manger, offer and/or director. Moreover, Mulligan's individual actions are integral to the
3 pending civil RICO claims, and he was also unjustly enriched, participated in fraud, and was active in a
4 civil conspiracy.⁴¹ The documented unlawful transfers which padded Mulligan's pockets include, but
5 are not limited to payments to Chase Bank for Mulligan's personal credit card bills in the amount of \$2.67
6 million dollars, three transfers directly to Mulligan's personal account(s) of more than \$1.8 million
7 dollars, and direct payment of additional Mulligan's personal credit cards of \$363,000.⁴² Such amounts
8 do not include the additional transfers referenced herein to other entities that were owned and controlled
9 by Mulligan.

10 There are ample grounds for claims to proceed against the Filing Defendants even if the claims
11 against the CTC Defendants and Criterion proceed elsewhere.

12 II. LEGAL ARGUMENT

13 The fact that three defendants⁴³ in this matter had contracts with Spirit that included arbitration
14 provisions is not a basis to stay the claims asserted against the twenty-eight Filing Defendants. The Filing
15 Defendants cannot have it both ways and claim that they were not part of a fraudulent scheme, conspiracy,
16 and/or RICO based claims that harmed Spirit, and at the same time, request a stay because a few other
17 alleged members of the scheme may have their claims arbitrated. Indeed, there has been no authority
18 submitted that mandates or requires a stay. Even the authority relied on by defendants indicates that a
19 court has the discretionary power to choose to stay the litigation. *Landis v. N. AM. Co.*, 299 U.S. 248,
20 57 S. Ct. 163 (1936); *see also Maheu v. Eighth Judicial Dist. Court*, 89 Nev. 214, 217, 510 P.2d 627, 629
21 (1973) (noting the "broad discretion" afforded to trial courts under *Landis*). Moreover, "the heavy
22 presumption should be that the arbitration and the lawsuit will each proceed in its normal course. *Dean*
23 *Witter Reynolds Inc., v. Byrd*, 470 U.S. 213, 225, 105 S. Ct. 1238, 1245 (1985) at 225 (J. White,
24 concurring opinion). Here, a stay is not warranted as "[c]ourts generally proceed with the nonarbitrable
25 claims when feasible." *Benson Pump Co. v. S. Cent. Pool Supply*, 325 F. Supp. 2d 1152, 1160 (D. Nev.

26 ⁴¹ Complaint, Claim 6, Claim 10, Claim 11, Claim 12, Claim 13, Claim 14, and Claims 15- 19.

27 ⁴² Complaint ¶ 256.

28 ⁴³ Notably, although there are three CTC Defendants, it is undisputed that CTC Hawaii did not enter into an agreement that had an arbitration provision with Spirit as further detailed in the Receiver's Motion for Reconsideration/Clarification and the briefing thereto.

2004). Additionally, a stay is not appropriate here because it is unlikely the other proceedings will conclude within a reasonable time and stays generally should not be granted if they would be indefinite in nature. *Dependable Highway Express, Inc. v. Navigators Ins. Co.*, 498 F.3d 1059, 1067 (9th Cir. 2007). Furthermore, there are distinct issues and wrongdoings relating to each of the Filing Defendants that make proceeding with this action feasible without the involvement of the CTC Defendants and/or Criterion.

As described in *Sharp Corp. v. Hisense USA Corp.*, 2017 WL 6017897, (N.D. Cal. 2017), cited by Filing Defendants, in determining whether to order such a stay, a court must “weigh the competing interests which will be affected by the granting or refusal to grant a stay, among which are the possible damage which may result from the granting of a stay, the hardship or inequity which a party may suffer in being required to go forward, and the orderly course of justice measured in terms of the simplifying or complicating of issues, proof, and questions of law which could be expected to result from a stay.” *Id.* at 11-12. (internal quotations and citations omitted); *see also SST Millennium v. Mission St. Dev.*, 2019 WL 2342277, * 10 (N. D. Cal. 2019) (citing *Lockyer v. Mirant Corp.*, 398 F. 3d 1098, 1110 (9th Cir. 2005), *CMAX, Inc. v. Hall*, 300 F.2d 265, 268 (9th Cir. 1962)). Importantly, the party seeking the stay has the burden of demonstrating why a stay should be granted. *See Clinton v. Jones*, 520, U.S. 681, 708, 117 S. Ct. 1636, (1997). Additionally, the Ninth Circuit, relying on the holding in *Landis*, has cautioned that “if there is even a fair possibility that the stay will work damage to someone else, the party seeking the stay must make out a clear case of hardship or inequity. *See Lockyer*, 398 F.3d 1098, 1112 (internal citations and quotations omitted). Each of the three considerations the Court must look at are set forth in detail below and weigh against a stay as 1) the receivership and Spirit Claimants will be damaged by a stay; 2) the Filing Defendants have not shown that hardship or inequity would result if the claims proceed now; and 3) a stay would not promote orderly justice or simplification of issues or resolve questions of law relevant to the Filing Defendants.

A. The Damage to Spirit Creditors and the receivership that Would Result from a Stay Warrants Denying the Request.

In evaluating a request for a stay, the Court must look at the possible damage which may result from the granting of a stay. *See, e.g., SST Millennium*, 2019 WL 2342277, * 10 (citing *Lockyer*, 398 F.

1 3d 1098, 1110, *CMAX, Inc.*, 300 F.2d 265, 268, *Sharp Corp.*, 2017 WL 6017897. This is a unique case
2 in which the Receiver is seeking to recover on behalf of Spirit insureds and creditors after Spirit was
3 found insolvent and placed into liquidation.

4 A stay will delay the Receiver's ability to recover funds from twenty-eight parties and will delay
5 payments to those deeply in need of money. As the Court is aware, Spirit insured trucking companies.
6 Some of the Spirit policyholder claim cases involve severe, traumatic, or wrongful death cases in which
7 claimants are in dire need of material financial distributions from the Spirit receivership (and much more
8 money than what the receivership now can offer them). Spirit policyholders have also been injured and
9 in many cases have been required to take on the very significant costs of their own defense in Spirit's
10 absence. Many of those that have filed claims have already expressed frustration regarding the deadlines
11 in place and have obligations to pay medical and other expenses that otherwise would have been covered
12 by Spirit, but for the insolvency. The Receiver's goal is to recover as much as possible in order to
13 maximize payments of claims. Staying these proceedings will have long-term consequences and damage
14 individuals that are not directly apart of these proceedings, but will benefit from amounts recovered from
15 the Filing Defendants. The damage for receivership claimants is real and the request for stay must be
16 denied.

17 Chapter 696B of the Nevada Revised Statutes governs delinquent insurance companies and the
18 rehabilitation and liquidation of the same. In matters involving risk retention groups, like Spirit, there is
19 no insurance guaranty association to cover Spirit's policy claims while litigation is prolonged by a stay.
20 The Court appointed Receiver is charged with overseeing assets and establishing a procedure pursuant to
21 which claims are filed, evaluated and paid pursuant to the distribution priority set forth in NRS 696B.420.
22 As referenced above, there is a current deadline for claims to be filed with the Spirit Receivership of
23 October 31, 2020; however, due to complications associated with COVID-19 and recently identified
24 potential new claimants, a request has been made to extend the claims deadline to May 31, 2021. With
25 a claims deadline pending and a desire to maximize available funds to pay claims, there is an increased
26 urgency to proceed against the Filing Defendants as soon as possible. Indeed, there are over 800 current
27 claimants that have submitted claims to the Receiver and more claims expected. Many of the parties
28 filing claims are seeking compensation for losses in which Spirit was the primary insurance company.

1 Additionally, the timing for the completion of any arbitration involving the CTC Defendants
2 and/or Criterion is unknown and weighs against a stay. Indeed, arbitration proceedings have yet to be
3 initiated relating to either the CTC Defendants and/or Criterion, and there is no timeline for when such
4 arbitrations may be complete. Additionally, this case is different than every case cited by the Filing
5 Defendants because there are two separate arbitration proceedings anticipated, not one. As such, there is
6 a different level of uncertainty relating to a timeline for completion, with the inherent possibility of
7 differing rulings in the two arbitration forums. There is no reason to wait until two arbitrations are
8 complete for the claims to proceed against the Filing Defendants, especially when the timing and
9 processes associated with those arbitrations have not been defined.⁴⁴

10 A stay also goes against the Receiver's fundamental right to a just and speedy resolution of the
11 claims it has asserted against the Filing Defendants. As this Court is aware, "[t]he rules of civil procedure
12 are to be construed to secure the just, speedy, and inexpensive determination of every action." *Dougan v.*
13 *Gustaveson*, 108 Nev. 517, 521, 835 P.2d 795, 797 (1992), *see also*, Nev. R. Civ. P. 1. Staying this
14 matter pending two arbitration proceedings of an undefined duration deprives the Receiver of a
15 fundamental right to a just and speedy resolution to the claims asserted against the Filing Defendants.
16 Moreover, an expensive, lengthy or indefinite stay requires the moving party to make a stronger showing
17 justifying the same. *Young v. I.N.S.*, 208 F.3d 1116, 1119 (9th Cir. 2000). As detailed below, the Filing
18 Defendants have not provided a sufficient basis to justify a stay of this matter--and certainly have not
19 addressed the potential length of the same.

20 The length of the stay and timing associated with the two potential arbitrations are factors that the
21 Court must consider. The Ninth Circuit has recognized that stays should not be indefinite in nature and
22 should not be granted unless it appears likely the other proceedings will be concluded within a reasonable
23 time. *Dependable Highway*, 498 F.3d 1059, 1066. This is a critical issue because the Receiver is seeking
24 to maximize recovery for those that have filed claims as part of the receivership proceedings, and most
25 of the Filing Defendants directly received funds that belonged to Spirit which the Receiver seeks to
26 recover. Money at issue includes, but is not limited to, the following:

27 ⁴⁴ The Receiver's motion for reconsideration is still pending as to Criterion. A minute order was issued denying
28 the Receiver's request for reconsideration of the order that was issued compelling the CTC Defendants to
arbitration. However, a formal order has yet to be executed.

- Documented unlawful transfers which padded Mulligan's pockets include payments to Chase Bank for Mulligan's personal credit card bills in the amount of \$2.67 million dollars; three transfers directly to Mulligan of more than \$1.8 million dollars; and direct payment of additional Mulligan credit cards of \$363,000.
- The Kapelnikov Group making off with at least \$11,408,889 of Spirit's money.
- The Six Elven Defendants taking more than \$3,160,913 not including the extra \$125 10-4 Preferred Risk Managers was purportedly paid on individual Spirit claims.

Spirit has a right to directly recovery these amounts from the party that received the funds pursuant to NRS 112.210 (b), NRS 112.220 (2), NRS 696B.410, NRS 696B.412, and/or NRS 692C.402. Such statutes authorize direct claims against parties that received unlawful payments and the Receiver and the CTC Defendants and/or Criterion are not required parties to such actions. Because of the unique nature of this case and the Receiver's obligations to recover funds not for its own benefit, but for the benefit of those entitled to insurance coverage from Spirit, a stay of these proceedings will damage hundreds of claimants that unfortunately have already faced delays in receiving payments because of Spirit's insolvency.

The Filing Defendants have "lined their own pockets" with Spirit funds and must be held responsible for their individual actions separate and apart from liability that will be faced by Criterion and the CTC Defendants. A stay is not warranted and the Motion should be denied.

B. The Filing Defendants Have Not Shown Hardship or Inequity Sufficient to Justify a Stay.

As detailed above, a stay of this matter pending separate arbitration proceedings involving the CTC Defendants and Criterion would have a devastating impact on the Receiver's ability to pay claims and Spirit claimants. This is not outweighed by any purported hardship of inequity. Here, the Filing Defendants have not come close to making a showing of a purported hardship or inequity that would warrant a stay, even though they were required to do so. The law in this area is clear, as follows:

A party seeking a stay must make out a clear case of hardship or inequity in being required to go forward, if there is even a fair possibility that the stay for which he prays will work damage to some one else. Only in rare circumstances will a litigant in one case be compelled to stand aside while a litigant in another settles the rule of law that will define the rights of both.

1 *Lockyer*, 398 F.3d 1098, 1109-1110 (citing *Landis* 299 U.S. at 255.) This is not a passing obligation,
2 and courts looking at the issue have noted that the hardship imposed is of paramount importance. “Due
3 to the potential for damage to the nonmoving party and the rare circumstances under which a stay should
4 be granted, *Landis*, requires the movant to establish a hardship or inequity, not merely that the stay will
5 reduce its burden.” *Garmendiz v. Capio Partners*, 2017 WL 3208621, * 3 (M.D. Florida, 2017), (citing
6 *Landis*, 299 U.S. at 255). Because there is not a clear case of hardship or inequity, there is no basis to
7 grant the relief requested.

8 Interestingly, few of the Filing Defendants even attempt to show that they would experience a
9 hardship or inequity by having to participate in litigation herein. Their failure to address this issue
10 demonstrates the charade that is being perpetrated by the subject motion. Instead of showing hardship
11 or inequity, most of the Filing Defendants argued that claims in both arbitrations are so intertwined with
12 this litigation that the arbitration proceedings should conclude first, and this issue will be addressed in
13 Section III(c) below.⁴⁵ A summary of the arguments made by the Filing Defendants in this respect is
14 helpful to the analysis the Court must make and is attached hereto as **Exhibit 1**. (Allegations of purported
15 hardship or inequity are highlighted for the Court’s convenience.)

16 In sum, the purported hardships and/or inequities identified by the Filing Defendants that would
17 result if a stay were not granted are: 1) four of the defendants (P. Kapelinkov, Simon, McCrae and
18 Mulligan) may have to testify *via* deposition in three different proceedings; and 2) the overlapping claims
19 or piecemeal litigation would create an undefined hardship to all involved. The Filing Defendants have
20 simply not met their burden.

21 This is not the rare circumstance in which a stay is warranted. It is not justifiable for the Filing
22 Defendants to postpone litigation against twenty-eight defendants because claims brought by the Receiver
23 against four other defendants were compelled to arbitration. Not one of the twenty-eight Filing
24 Defendants was a party to an agreement with Spirit that had an arbitration provision, and the arbitration
25 provisions involving the CTC Defendants and Criterion should not and cannot define the Receiver’s right
26 to pursue the twenty-eight other bad actors in this matter. The closest the Filing Defendants come to

27 ⁴⁵ Arguments that a stay will preserve judicial resources and streamline issues in the case are more appropriate
28 under the analysis of judicial economy, not in determining whether the defendants will suffer a hardship.
Garmendioz v. Capio Partners, cv-17-00987 (M.D. Florida, July 25, 2017), 2017 WL 3208621, * 6.

1 arguing a purported harm is the contention that P. Kapelinkov, Simon, McCrae and Mulligan may be
2 called to testify in three different proceedings. This does not affect the other twenty-four defendants.
3 Moreover, as to the four individuals making this claim, this is a problem of their own making in “playing
4 fast and loose” with Spirit assets and their individual involvement with different entities that acted to
5 harm Spirit. Interestingly, before the subject motion was filed, not one of the four individuals complained
6 about the potential that they could be witnesses in both the CTC arbitration and the Criterion arbitration.
7 However, now that it is apparent claims can go forward against them in their individual capacity, they
8 want to delay the same.

9 Although several of the Filing Defendants contend that two separate arbitrations and a litigation
10 proceeding before Your Honor will create piecemeal litigation; the notion of piecemeal litigation is not
11 sufficient to justify a stay. *Riley Mfg. Co., v. Anchor Glass Container Corp.*, 157 F.3d 775, 785 (10th
12 Cir. 1998) (citing *Coors Brewing Co. v. Molson Breweries*, 51 F.3d 1511,1517 (10th Cir. 1995) (holding
13 that if the parties intended that some matters, but not others be arbitrated, litigation must proceed in a
14 piecemeal fashion.) Moreover, given that this Court expressed no concerns about severing claims into
15 two arbitration forums, a third forum with the Filing Defendants is a necessary result of the same.

16 The Filing Defendants also feign concern for the best interests of the Receiver and suggest that a
17 stay is more cost effective for the Spirit Receivership. However, litigation delays only benefit the
18 Defendants, and it is unlikely that any of them will abide by favorable arbitration decisions against CTC
19 and the Criterion defendants. Moreover, claims can be pursued in a cost effective manner against the
20 twenty-eight defendants bringing the current motion.

21 Simply put, the Filing Defendants have not made out a clear case of hardship or inequity as is
22 required. The failure to do so in their moving briefs is telling and demonstrates the futility in their
23 position. Because the issue was not addressed in the Motion and/or Joinders, any attempt by the Filing
24 Defendants to create a purported hardship in their reply briefs should be summarily disregarded. Filing
25 Defendants knew and cited the applicable standard, yet provided no tangible hardship or inequity that is
26 *a required showing if there is even a fair possibility that the stay will work damage to someone else.*
27 Accordingly, the request for a stay must be denied.

1 **C. A stay will not promote judicial economy.**

2 The primary argument that is made in the Motion or Joinders is that a stay is needed here because
3 the claims against the twenty-eight Filing Defendants are dependent on the claims asserted against the
4 CTC Defendants and Criterion. This is false. Moreover, what is absent from the moving papers is
5 telling. No party did or can argue that either the CTC arbitration and/or the Criterion arbitration could or
6 would eliminate the claims asserted them. This is because each of the Filing Defendants had a separate
7 role and function in the scheme that was perpetrated against Spirit. Each Filing Defendant can and should
8 be held personally responsible for their actions. Indeed, the Receiver could have filed separate complaints
9 against the Filing Defendants and/or added an additional 50 pages or more to the existing complaint so
10 that there were separate causes of action against each party. However, because the Receiver tried to be
11 efficient and called out the interplay between all of the Defendants named in the Complaint and grouped
12 defendants in the claims asserted, the Filing Defendants now contend a stay is justified. That is not so.

13 There are multiple problems with the Filing Defendants arguments suggesting that the claims with
14 the CTC Defendants and Criterion are intertwined to the extent that it is impossible for the Filing
15 Defendants to proceed separately. First, the Filing Defendants were silent when the Receiver raised this
16 issue during the briefing of the Motions to Compel. Second, the Court rejected that notion that the claims
17 cannot proceed separately by ordering the CTC Defendants and Criterion claims to proceed in separate
18 forums. Third, independent bases exist for the claims to proceed against the Filing Defendants as each is
19 responsible for their own actions and should return to Spirit money that they unlawfully obtained. Fourth,
20 the contentions that there is a great risk of inconsistent results under the same set of identical facts is a
21 farce and arguments made in the Motion and Joinders inconsistent. Such flaws in the Filing Defendants
22 arguments are discussed below.

23 **1. This Court has already decided that it is possible for fraud, conspiracy, unjust**
24 **enrichment and RICO claims to proceed in different forums.**

25 Obviously, the Receiver would prefer for the claims against the thirty-four defendants that
26 responded to the complaint to proceed together in this forum at the same time. Indeed, the issue was
27 raised as part of the briefing of the motions to compel arbitration, and not one of the Filing Defendants
28 raised any concerns or suggested prejudice--even in the face of arguments raised by the CTC Defendants

1 and Criterion that the claims headed to arbitration are solely contract based and appropriate for arbitration.
2 If the Filing Defendants had voiced their concerns, the decision of the Court may have been different.
3 However, this Court has already rejected that notion that claims asserted against the CTC Defendants and
4 Criterion were inextricably intertwined with the other claims and parties in this matter, (*i.e.*, when it
5 rejected Spirit's arguments opposing the motions to compel arbitration).

6 In ordering two separate arbitrations to go forward (against the CTC Defendants and Criterion),
7 the Court has already decided that it is possible for fraud, conspiracy, unjust enrichment and RICO claims
8 to proceed in different forums even when parties to the two separate arbitration proceedings acted in
9 concert to pillage Spirit of its assets and are, or were, controlled by the same person or group. Because
10 such findings have already been made by this Court in ruling in favor of the CTC Defendants and
11 Criterion's motion to compel arbitration, the arguments set forth by the Filings Defendants now, which
12 contend that the claims are interrelated, are moot.

13 **2. Independent bases exist for the claims to proceed against the Filing Defendants.**

14 As detailed in Section II, herein, the Receiver has independent bases to proceed against
15 each of the Filing Defendants. To recap, just a few of the independent bad acts of the Filing Defendants
16 include:

- 17 • the Six Eleven Defendants collectively siphoned and collected Spirit's funds;
- 18 • the Chelsea Defendants provided so-called premium financing to Spirit policyholders, misleading
19 Spirit policyholders into premiums were paid in full to Spirit payments to Spirit--and then failed
20 to pay Spirit the amounts collected;
- 21 • Pavel Kapelnikov set up his own companies separate and apart from the companies that Mulligan
22 created so that Pavel himself could siphon money belonging to Spirit. Members of the Kapelnikov
23 Group were also utilized to abscond with at least \$11,408,889 of Spirit's money;
- 24 • The Lexicon/George Group acted independently, as Lexicon was owned and controlled by
25 Mulligan and George, provided management services for insurance companies, served as Spirit's
26 Risk Retention Group Manager ("Group Manager") separate and apart from the arrangement
27 that was facilitated with the CTC Defendants, and served as Group Manager under a separate
28 contract;

- 1 • Meanwhile, ICAP was used to unlawfully and fraudulently funnel Spirit funds to George who
2 had his fingers in multiple pies while serving as the President of Lexicon, Executive Vice
3 President of CTC California, and Group Manager;
- 4 • The Spirit Director Defendants (including the individuals separately identified that also served
5 as directors of Spirit) had independent duties and obligations to Spirit and its insureds, and they
6 violated those duties and obligations by, among other things, failing to uphold duties of good
7 faith and loyalty to Spirit, violating Spirit's code of ethics and corporate governance standards,
8 and knowingly continuing Spirit's business operations beyond financial insolvency;
- 9 • Brenda Guffey was President of Spirit, and in this role, she was intimately involved and actively
10 participated in the management and affairs of Spirit, thereby making her responsible for actions
11 taken and accountable to the Receiver;
- 12 • Simon & McCrae are also individually culpable and should be held responsible for their actions.
13 Simon (like Guffey) served, at relevant times, as the President of Spirit and had obligations to
14 the defunct company because of that role. Additionally, Simon served as Director of Spirit and
15 had fiduciary duties that were breached. As to McCrae, he acted with other individual defendants
16 to conceal the true financial condition of Spirit and participated in misrepresentations to Spirit
17 policyholders regarding the financing provided by the Chelsea Defendants.
- 18 • Mulligan, who is the mastermind behind the scheme to siphon money away and loot Spirit, was
19 at relevant times a manager, officer or director of Spirit, and he was also an officer, manager,
20 controlling party, or director of a multitude of other related companies, including, but not limited
21 to, Chelsea Financial Group, Chelsea Premium Finance, Lexicon, Whitehall, Swan & Adams
22 Freight Forwarding, Six Eleven LLC, and Fourgorean Capital, LLC.

23 Here, the Court must determine whether a stay promotes the orderly course of justice, and in doing so, it
24 must look at the degree of overlap in factual allegations between parallel cases in order to avoid
25 unnecessary duplicative litigation. The issues identified above conclusively establish that there are
26 distinct issues that do not overlap with the factual allegations that are slated to proceed in arbitration
27 involving Criterion and the CTC Defendants. Justice is best served by allowing the claims against the
28 twenty-eight Filing Defendants to proceed now.

1 **3. Contentions that there is a great risk of inconsistent results under the same set of**
2 **identical facts are a farce.**

3 A number of the Filing Defendants raise purported concerns regarding inconsistent results that
4 may be reached if this case is not stayed. However, not one of the briefs address the fact that this Court
5 sanctioned claims proceeding in multiple forums when it granted the motions to compel arbitration.
6 When the Court ordered two separate arbitrations, there became a risk of inconsistent results and/or
7 findings of wrongdoing against the CTC Defendants that differ from findings of wrongdoing against
8 Criterion.

9 As at this juncture, not one party has come forward and offered to be jointly and severally liable
10 for the actions of the others, and this is to be expected as each also adamantly deny they participated in
11 any fraud or conspiracy and where applicable, are subject to RICO claims. When it comes to fraud,
12 conspiracy, RICO and unjust enrichment claims (and the other claims assert by the Receiver), it will be
13 up to the Receiver to establish the role of each of the Filing Defendants. Thus, different, not identical
14 facts, will be explored in discovery herein. Accordingly, any arguments fail that the claims are
15 interconnected or inseparable or identical to the claims asserted against the non-signatory defendants.

16 The case law cited by the Filing Defendants indicates that a stay may be granted in situations in
17 which the “same conduct” or same “operative facts” will be addressed in arbitration and non-arbitration
18 proceedings.⁴⁶ However, the discovery here will not focus on the same conduct and the operative facts.
19 Importantly, each of the defendants here is culpable for their own actions, and this litigation will focus
20 on the bad conduct of the twenty-eight Filing Defendants as detailed above.

21 The cases cited by the Filings Defendants are readily distinguishable from this matter. By way
22 of example, *Hansen v. Musk* was brought by a former employee of Tesla against Tesla, its CEO, and U.S.
23 Security Associates, Inc. (“USAA”) after Hansen was informed that his position at Tesla was being
24 eliminated due to restructuring and the company had arranged for him to work with USAA. *Hansen v.*
25 *Musk*, 2020 WL 4004800 (D. Nev. July 15, 2020). At issue were employment related documents between
26 Hansen and Tesla that included arbitration provisions. *Id.* The Court found that two counts of Hansen’s
27 complaint were encompassed by an arbitration agreement and stayed proceedings in Federal Court

28

⁴⁶See, Motion to Stay, page 6-7.

1 relating to the third count in the complaint that it deemed non-arbitrable. *Id.* at 7. In granting the stay,
2 the court found that the remaining third claim stemmed from Hansen's tenure and termination while
3 working for both Tesla and USSA and that all claims arose from the same conduct. *Id.* at 8. The situation
4 here is wholly distinct as the parties requesting the stay are not subject to arbitration, and allegations
5 against the Filing Defendants relate to their own conduct, not the conduct of the CTC Defendants or
6 Criterion whose claims are being arbitrated.

7 Even the cases cited by Filing Defendants, where stays were granted to non-signatories of an
8 arbitration agreement, are readily distinguishable. In *Sharp Corp.*, for example, an exclusive license to
9 use Sharp-brand trademarks was entered between Defendant HIAIC and Sharp. *Sharp Corp.*, 2017 WL
10 6017897 (N.D. Cal. 2017). After Sharp was acquired by a new company and sought to cancel the
11 trademark agreement, arbitration proceedings were initiated and an injunctive relief ordered. *Id.*
12 Thereafter, Sharp filed a separate litigation which alleged facts identical to what Sharp alleged when
13 attempting to terminate the trademark agreement. *Id.* The Court found grounds under the FAA to stay
14 the proceedings, including the stay of claims brought by any non-signatories to the trademark agreement
15 (who were manufacturers and sellers of televisions that were alleged to violate federal regulations and
16 standards) that were included in the lawsuit. *Id.* In so doing, Court found that a stay was warranted
17 because a resolution of the trademark agreement dispute would be determinative of the other issues in the
18 lawsuit. *Id.* at 5. Here, the claims brought by the Receiver against the Filing Defendants are not
19 contingent on what happens in the arbitrations involving the CTC Defendants and Criterion. There is not
20 a single contract that governs all parties' rights and obligations, and there is no basis for a stay. And
21 contrary to assertions by the Filing Defendants, the claims against them are not dependent on what
22 happens against the other parties in arbitration.

23 The differences in the cases cited by Filing Defendants and this matter cannot be overlooked.
24 Not one of the cases considers staying a matter pending two separate arbitration proceedings.
25 Additionally, the disproportionate nature of the parties seeking stay compared to parties involved in
26 arbitration should also be considered. Not one of the cases cited by the Filing Defendants presents a
27 situation where twenty-eight Defendants are seeking a stay because claims asserted against four other
28 parties are sent to arbitration. Moreover, not one of the cases cited by Defendants were in a posture in

1 which third parties would be harmed by the stay requested.

2 Additionally, although the Filing Defendants attempt to convince the Court they are united in
3 their basis and reasoning for a stay, the filed briefs suggest otherwise. Interestingly, the Kapelnikov
4 Defendants argue that the “aim” of the motion and joinder was “to prevent ‘piecemeal’ litigation, and the
5 improper application of *res judicata*.” (Kapelnikov Defendants Joinder, page 6.) In so doing, they cite
6 to authority indicating the *res judicata* doctrine is to preclude the parties from re-litigating what is
7 substantially the same cause of action. However, the Kapelnikov Defendants (and the other Filing
8 Defendant) are not parties to either of the arbitration and therefore this doctrine would not apply. Indeed,
9 this was recognized in the Joinder that was filed on behalf of Simon & McCrae wherein they note that
10 Simon and McCrae “would not be bound by an adverse rulings in those arbitrations under the doctrine of
11 issue or claim preclusion.” (Simon & McCrae Joinder, page 4).

12 The case cited by Simon & McCrae is clear that everyone should have his own day in court and
13 the application of claim and issue preclusion to nonparties does not work. *See Taylor v. Sturgell*, 553
14 U.S. 880, 892-92 (2008). To get around this issue, Simon & McCrae argue that a stay is warranted
15 because the claims against them are so intertwined that both Simon and McCrae could be subject to three
16 depositions. However, as argued above, this Court has already deemed the claims against the CTC
17 Defendants and Criterion un-intertwined enough that they can go forward in two forums. The analysis is
18 not different for a third proceeding, especially here where twenty-eight (28) defendants are involved.
19 Furthermore, the Receiver cannot be faulted due to the fact that Simon & McCrae (and the other
20 defendants that claim they will be prejudiced due to multiple depositions) chose to “wear multiple hats”
21 and be involved in the operations of multiple companies. If the Receiver would have filed multiple
22 lawsuits, they would be subject to the same.

23 The bottom line is that the claims against the Filing Defendants can and must proceed without
24 the CTC Defendants and Criterion. There are separate and distinct issues to be addressed with the
25 individual defendants and the entities that directly received funds from Spirit. The Receiver intends to
26 proceed in a judicious and expeditious manner and is willing to work with the four parties that expressed
27 concerns about depositions being held in multiple forums to streamline the process.

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CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of September, 2020, a true and correct copy of the foregoing *Plaintiff's Opposition to Motion to Stay Pending Arbitration and Joinders Thereto* was served electronically using the Odyssey eFileNV Electronic Filing system upon all parties with an email address on record, pursuant to Administrative Order 14-2 and Rule 9 of the N.E.F.C.R. The date and time of the electronic proof of service is in place of the date and place of deposit in the U.S. Mail.

/s/ Andrea Lee Rosehill
An employee of Greenberg Traurig, LLP

Exhibit 1

A summary of the “factual basis” underlying Filing Defendants reasoning for a stay is below. Allegations of purported hardship or inequity are highlighted for the Court’s convenience.

Filing Defendant	Purported hardship or inequity/basis for stay request per Motion or Joinder
Six Eleven Defendants	<ul style="list-style-type: none">• Specific hardship not identified.• Purported Concerns appears to be relatedness with claims brought against CTC Defendants and Criterion including:• Six Eleven Defendants are alleged to be part of the Mulligan Enterprise. (Motion, page 9)• The claims asserted against the Six Eleven Defendants arise out of the same conduct that is subject to arbitration. (Motion, page 11).• Whether or not the Six Eleven Defendants were unjustly enriched is entirely dependent on whether CTC’s actions were improper or fraudulent. (Motion, page 10)• Fraudulent transfer claims require a determination as to whether CTC and Criterion Defendants improperly managed or siphoned Spirit funds. (Motion, page 10)
Chelsea Defendants	<ul style="list-style-type: none">• See, Six Eleven Defendants and Kaplenikov Group Arguments
Kapelnikov Group	<ul style="list-style-type: none">• Pavel Kapelnikov will likely be subject to deposition in the arbitration of the CTC Defendants and Criterion. (Kapelnikov Group Joinder, page 4)• Specific hardship for remaining members of Kapelnikov Group not identified.• Allegations that Chelsea Financial failed to pay all Spirit premium and financial fund, establishes that Plaintiff’s claims against the CTC Defendants and Criterion are indistinguishable. (Kapelnikov Group Joinder, page 4)• Joining defendants are alleged to have been transferred funds by CTC. (Kapelnikov Group Joinder, page 6)• Stay will promote judicial economy. (Kapelnikov Group Joinder, page 7)
Lexicon/George Group	<ul style="list-style-type: none">• Specific hardship not identified.• Significant risk of inconsistent results (Joinder, page 3)• Staying will prevent Plaintiff from duplicating efforts (Lexicon/George Group Joinder, page 3)• Many of the same causes of action asserted against the CTC Defendants and Criterion are also asserted against Lexicon/George Group. (Lexicon/George Group Joinder, page 5)• Plaintiff’s breach of contract, breach of implied covenant of good faith and fair dealing, and/or breach of fiduciary duty are premised in part upon the same set of facts as and the CTC Defendants and Criterion claims. (Lexicon/George Group Joinder, page 5)
Spirit Director Defendants	<ul style="list-style-type: none">• Specific hardship to Spirit Director Defendants not identified.

	<ul style="list-style-type: none"> • Claims intertwined with CTC and Criterion claims. (Spirit Director Defendants Joinder, page 4) • A stay will conserve judicial resources and avoid piecemeal litigation. (Spirit Director Defendants Joinder, page 6) • Duplicative litigation wastes resources. (Spirit Director Defendants Joinder, page 8)
Guffey	<ul style="list-style-type: none"> • Specific hardship not identified. • No substantive facts or arguments included.
Simon & McCrae	<ul style="list-style-type: none"> • Duplicative discovery. (Simon & McCrae Joinder, page 4) • Simon and McCrae are potentially subject to three depositions each and other duplicative discovery. (Simon & McCrae Joinder page 4-5). • As non-parties to the arbitration agreements, Simon and McCrae would not be bound by any adverse rulings in the arbitration proceedings. (Simon & McCrae Joinder, page 4)
Mulligan	<ul style="list-style-type: none"> • Threshold questions of whether CTC and/or Criterion engaged in a wrongful scheme will be answered in arbitrations and claims against Mulligan are inextricably intertwined and dependent on those arbitrations. (Mulligan Joinder, page 3-6) • Mulligan, while actively litigating this case, will undoubtedly be subpoenaed and deposed in the two separate arbitrations involving the CTC Defendants and Criterion. (Mulligan Joinder, page 9-10) • The overlapping claims works a great hardship to all involved. (Mulligan Joinder, page 10). • Plaintiffs' resources will be reserved by a stay. (Joinder, page 10).

A-20-809963-B

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Business Court Matters

COURT MINUTES

September 14, 2020

A-20-809963-B Barbara Richardson, Plaintiff(s)
vs.
Thomas Mulligan, Defendant(s)

September 14, 2020 7:15 AM Minute Order

HEARD BY: Denton, Mark R.

COURTROOM: Chambers

COURT CLERK: Madalyn Kearney

JOURNAL ENTRIES

HAVING reviewed and considered the parties' filings pertaining to "Plaintiff's Motion for Reconsideration and/or Clarification of the Court's July 22, 2020 Order Regarding Criterion Claim Solutions of Omaha, Inc.'s Motion to Compel Arbitration," deemed submitted and under advisement as of September 8, 2020 pursuant to the Minute Order of September 3, 2020, and being fully advised in the premises, the Court DENIES such Motion. The Court will not award attorneys' fees/costs to Defendant Criterion Claim Solutions of Omaha, Inc. as sought in its Opposition to the Motion. Counsel for said Defendant is directed to submit a proposed order consistent herewith and with supportive briefing after providing the same to Plaintiff's counsel for signification of approval/disapproval.

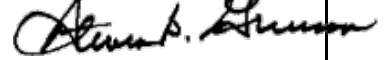
IT IS SO ORDERED.

CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Madalyn Kearney, to all registered parties for Odyssey File & Serve. /mk 9/14/20

PRINT DATE: 09/14/2020

Page 1 of 1

Minutes Date: September 14, 2020



1 Sheri M. Thome, Esq.
Nevada Bar No. 008657
2 Rachel L. Wise, Esq.
Nevada Bar No. 12303
3 **WILSON, ELSE, MOSKOWITZ,**
EDELMAN & DICKER LLP
4 6689 Las Vegas Blvd. South, Suite 200
Las Vegas, NV 89119
5 Telephone: 702.727.1400
Facsimile: 702.727.1401
6 Email: Sheri.Thome@wilsonelser.com
Email: Rachel.Wise@wilsonelser.com
7 *Attorneys for Defendants James Marx*
John Maloney, Virginia Torres, and Carlos Torres

8 **DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

10 BARBARA D. RICHARDSON IN HER
11 CAPACITY AS THE STATUTORY
12 RECEIVER FOR SPIRIT COMMERCIAL
AUTO RISK RETENTION GROUP, INC.

13 Plaintiff,

14 vs.

15 THOMAS MULLIGAN, an individual; CTC
TRANSPORTATION INSURANCE
16 SERVICES OF MISSOURI, LLC, a Missouri
Limited Liability Company; CTC
17 TRANSPORTATION INSURANCE
SERVICES LLC, a California Limited Liability
18 Company; CTC TRANSPORTATION
INSURANCE SERVICES OF HAWAII LLC,
19 a Hawaii Limited Liability Company;
CRITERION CLAIMS SOLUTIONS OF
20 OMAHA, INC., a Nebraska Corporation;
PAVEL KAPELNIKOV, an individual;
21 CHELSEA FINANCIAL GROUP, INC., a
California Corporation; CHELSEA
22 FINANCIAL GROUP, INC., a Missouri
Corporation; CHELSEA FINANCIAL
23 GROUP, INC., a New Jersey Corporation d/b/a
CHELSEA PREMIUM FINANCE
24 CORPORATION; CHELSEA FINANCIAL
GROUP, INC., a Delaware Corporation;
25 CHELSEA HOLDING COMPANY, LLC, a
Nevada Limited Liability Company;
26 CHELSEA HOLDINGS, LLC, a Nevada
Limited Liability Company; FOURGOREAN
27 CAPITAL, LLC, a New Jersey Limited
Liability Company; KAPA MANAGEMENT
28 CONSULTING, INC. a New Jersey
Corporation; KAPA VENTURES, INC., a New

Case No. A-20-809963-B
Dept. No.: 13

**DEFENDANTS JAMES MARX,
JOHN MALONEY, VIRGINIA TORRES,
AND CARLOS TORRES' REPLY IN
SUPPORT OF JOINDER TO MOTION TO
STAY PENDING ARBITRATION**

**Hearing Date: September 21, 2020
Hearing Time: 9:00 a.m.**

Jersey Corporation; GLOBAL FORWARDING ENTERPRISES LIMITED LIABILITY COMPANY, a New Jersey Limited Liability Company; GLOBAL CAPITAL GROUP, LLC, a New Jersey Limited Liability Company; GLOBAL CONSULTING; NEW TECH CAPITAL, LLC, a Delaware Limited Liability Company; LEXICON INSURANCE MANAGEMENT LLC, a North Carolina Limited Liability Company; ICAP MANAGEMENT SOLUTIONS, LLC, a Vermont Limited Liability Company; SIX ELEVEN LLC, a Missouri Limited Liability Company; 10-4 PREFERRED RISK MANAGERS INC., a Missouri Corporation; IRONJAB LLC, a New Jersey Limited Liability Company; YANINA G. KAPELNIKOV, an individual; IGOR KAPELNIKOV, an individual; QUOTE MY RIG LLC, a New Jersey Limited Liability Company; MATTHEW SIMON, an individual; DANIEL GEORGE, an individual; JOHN MALONEY, an individual; JAMES MARX, an individual; CARLOS TORRES, an individual; VIRGINIA TORRES, an individual; SCOTT McCRAE, an individual; BRENDA GUFFEY, an individual; 195 GLUTEN FREE LLC, a New Jersey Limited Liability Company, DOE INDIVIDUALS I-X; and ROE CORPORATE ENTITIES I-X,

Defendants.

DEFENDANTS JAMES MARX, JOHN MALONEY, VIRGINIA TORRES, AND CARLOS TORRES' REPLY IN SUPPORT OF JOINDER TO MOTION TO STAY PENDING ARBITRATION

Defendants, James Marx ("Dr. Marx"), John Maloney ("Mr. Maloney"), Virginia Torres ("Ms. Torres"), and Carlos Torres ("Mr. Torres" and collectively, "Director Defendants"), by and through their attorneys of record, Wilson, Elser, Moskowitz, Edelman & Dicker LLP, hereby submit the following Reply in Support of their Joinder to Motion to Stay Pending Arbitration ("Reply").

This Reply is made based upon the following memorandum of Points and Authorities submitted herewith and all arguments and evidence permitted at the hearing.

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1 **II. ARGUMENT**

2 **A. The Director Defendants Accurately Identify the Relationship between the Claims**
3 **Proceeding to Arbitration and Claims Against Them.**

4 The actual allegations in her Complaint belie Receiver's arguments regarding the Director
5 Defendants. (Opp., 12:1-14). A basic comparison of the Complaint proves that much of the evidence
6 concerning the claims against the Director Defendants will be duplicative of the evidence
7 concerning the claims against CTC and Criterion, *precisely as the Director Defendants stated in*
8 *their Joinder:*

9 ¶ 56: Defendants CTC Missouri, CTC California and/or CTC Hawaii
10 upon information and belief ***are all related entities with unity of interest***
11 ***and ownership and are affiliates of Spirit.***

12 ¶ 57: In 2011, Spirit entered into a claims administration agreement
13 with Criterion (the "Criterion Agreement"), under which Criterion
14 would provide claims management services to Spirit. Claims were to be
15 investigated in accordance with applicable law and the terms of the
16 parties' agreement. Criterion was to establish loss reserves, settle
17 claims, and issue loss payments, maintaining a separate file for each
18 loss. ***Upon information and belief, Criterion shared unity of interest***
19 ***and ownership with Spirit and was an affiliate of Spirit as well as an***
20 ***affiliate of the CTC Entities.***

21 (Compl., ¶¶56-57) (emphasis added) (*see also* Director Defendants' Joinder, 7:4-5) ("Plaintiff
22 attributes the Director Defendants' lack of good faith to their association with CTC, Criterion, and
23 Mulligan") (*see also* Director Defendants' Joinder 7:1-3) ("Plaintiff includes the CTC and Criterion
24 Agreements as two of the main "transactions" in which the Director Defendants allegedly acted
25 without good faith or within a conflict of interest").

26 Receiver alleges that the Director Defendants somehow breached a fiduciary duty for failing
27 to oversee these contracts:

28 ¶ 214: ***Overall, the Spirit Director Defendants failed to institute***
 sufficient internal controls to ensure the protection of Spirit's assets.
 Instead of hiring qualified and independent entities to transact key
 components of the business, such as program administration, ***the Spirit***
 Director Defendants engaged in self-dealing, entering into contracts
 with affiliated businesses to perform services that they knew or should
 have known would not be adequately performed, and/or providing
 loans to affiliate businesses that they knew or should have known
 would not be repaid to Spirit

1 (Compl., ¶214) (emphasis added) (*see also* Director Defendants’ Joinder, 7:1-3) (“Plaintiff includes
2 the CTC and Criterion Agreements as two of the main “transactions” in which the Director
3 Defendants allegedly acted without good faith or within a conflict of interest”). The two “affiliated
4 businesses” consistently referenced by Receiver throughout her Complaint are (1) CTC and (2)
5 Criterion. (Compl., ¶¶56-57).

6 Receiver further contends the Director Defendants (amongst others) withheld information
7 from Receiver based on the improper influence of Thomas Mulligan:

8 ¶ 30: CTC was months behind on processing endorsements for Spirit,
9 yet could transfer millions of dollars to individuals and entities affiliated
10 with Mulligan and his Enterprise as a direct result of the outsized
11 influence he exercised over the control, affairs, finances,
12 management and employees of Spirit, CTC, Lexicon, and the rest of the
13 Mulligan Enterprise.

14 (Compl., ¶30) (emphasis added) (Director Defendants’ Joinder, 7:7-9) (“Plaintiff contends that
15 Thomas Mulligan was the grand mastermind orchestrating this breach, and improperly influencing
16 the Director Defendants in all decisions) (citations omitted).

17 Importantly, the crux of Receiver’s Complaint circles back to allegations that the Director
18 Defendants violated their fiduciary duties by failing to exercise due care in managing the company
19 or instituting appropriate safeguards:

20 ¶ 200: *The duties owed by the Spirit Director Defendants included*
21 *instituting adequate internal controls to protect company assets and*
22 *operations*, adequately selecting and supervising employees and
23 contractors, making accurate, non-misleading statements to regulators,
24 avoiding self-dealing, fully and adequately disclosing related party
25 transactions, avoiding the squandering of the company’s assets, and
26 *reviewing and ensuring the accuracy of company documents,*
27 *financial statements, and regulatory filings.*

28 (Compl., ¶200) (emphasis added) (*see also* Director Defendants’ Joinder, 6:27-28) (“Plaintiff
specifically alleges that the Director Defendants breach is the failure to “operate in a fiduciary
manner,” and the failure to “exercise the utmost good faith in all transactions involving their duties
and to refrain from conflicts of interest. . .”).

Finally, Receiver alleges that Director Defendants (amongst the other defendants) violated
their fiduciary duties by failing to enforce terms of CTC’s contract with Spirit:

¶ 202: Further, the Spirit Director Defendants failed to collect substantial balances in accounts receivable owed to Spirit, *failed to obtain premiums from CTC, failed to accurately report financials, misguided the Division as to the financial and operating status of Spirit, and failed to maintain reserve requirements*, leaving the company in precarious financial condition

(Compl., ¶ 202) (emphasis added) (*see also* Director Defendants’ Joinder, 6:27-7:1) (Plaintiff specifically alleges that the Director Defendants breach is the failure to . . . “exercise the utmost good faith in all transactions involving their duties and to refrain from conflicts of interest.”) (*see also* Compl., ¶ 281).

Conspicuously absent from Receiver’s Opposition is any specific rebuttal of the position that the CTC or Criterion arbitration may materially affect Receiver’s claims against Director Defendants’ claims. Receiver relies on sweeping arguments that she maintains “independent basis” against the Director Defendants. In doing so, Receiver ignores valid arguments set forth by the Director Defendants in their Joinder. As stated in the joinder, there can be no doubt that Receiver’s claims will be severely diminished, as to the Director Defendants, if CTC and Criterion prevail in arbitration. And if CTC and Criterion do not prevail in arbitration, the Receiver’s claims that the Director Defendants failed to implement appropriate controls or proceed with enough oversight regarding CTC and Criterion are ripe for litigation. (Opp., 24:4-8) (Re-asserting breach of fiduciary duty allegations against the Director Defendants) (*see also* Defendant Directors’ Joinder, 7:26-8:3).

As previously argued, Receiver must prove that the Director Defendants fraudulently or knowingly violated the law. (Director Defendants’ Joinder, 8:1-12) (citations omitted). The facts and elements necessary to prove these allegations are intertwined with the matters proceeding to arbitration with CTC and Criterion. For example, if the arbitrator finds that CTC or Criterion acted fraudulently toward the Director Defendants, then the Director defendants could not have knowingly skirted their fiduciary duties as to CTC or Criterion. NRS 78.138. In that instance, there is no lack of oversight when the Director Defendants themselves are victims of fraud.

Receiver fails to address these arguments because she cannot rebut this logic. Indeed, Receiver’s own language supports Defendant Director’s position. (Opp., 2:11-13) (stating “[t]he allegations in the Complaint arise from a vast fraudulent enterprise by which the defendants operated a multitude of interrelated companies in the insurance service industry for their own benefit

1 and to the detriment of Spirit.”). Receiver herself argues that all allegations arise from a singular
2 fraudulent enterprise, and this enterprise is singularly spearheaded by Mulligan. (*see generally*,
3 Compl.). There is no difference between Receiver stating the allegations are intertwined and the
4 Director Defendants’ position in the Joinder.

5 Disregarding the overwhelming effects the decision against CTC and Criterion may have on
6 the Director Defendants does not negate the *Landis* standard. For these reasons, a stay is
7 appropriate.

8 ***B. Receiver Fails to Distinguish Case Law Permitting a Stay When the Result of a***
9 ***Separate Proceeding has a Bearing on the District Court Case.***

10 Receiver strains without success to support her argument that stays should only be granted
11 in rare circumstances. (Opp., 16:7-24; 19:25-27). In doing so, she ignores eighty-four years of
12 precedence and the applicable authority of *Landis*, and its progeny; *Leyva* and *Stern*, which hold a
13 stay is appropriate if the result of a separate proceeding has some bearing upon the district court
14 case. *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936); *Leyva v. Certified Grocers of Cal., Ltd.*, 593
15 F.2d 857, 864 (9th Cir. 1979); *Stern v. United States*, 563 F. Supp. 484 (D. Nev. 1983). Plaintiff
16 cites *Lockyer v. Mirant Corp.*, 398 F.3d 1098 (9th Cir. 2005) to argue that Director Defendants may
17 not be granted a stay because there is a possibility claimants may be damaged by the stay. (Opp.,
18 16:7-24; 19:19-21:27). But *Lockyer* does not stand for the proposition that a court should sparingly
19 stay matters as Receiver contends. Indeed, Receiver’s argument is wholly undermined by the very
20 case on which she relies – *Lockyer*. What Receiver neglected to identify is the *Lockyer* Court held
21 that the decision applies only to “the circumstances of this case.” *Lockyer*, 398 F.3d at 1112 (“[w]e
22 ***hold only that a Landis stay³ is improper in the circumstances of this case***”). In carving out this
23 limited exception, the *Lockyer* court identifies three separate elements which helped it conclude that
24 a *Landis* stay was improper: “where the power of the district court to decide whether the automatic
25 stay applies is clear, where the inapplicability of the automatic stay is also clear, and where the
26 proceeding in the bankruptcy court is unlikely to decide, or to contribute to the decision of, the
27 factual and legal issues before the district court.” *Id.* For *Lockyer* to rebut a *Landis* stay, an

28 ³ A *Landis* Stay is a stay granted by the court when the result of a separate proceeding has some bearing upon the
district court case. *Landis*, 299 U.S. at 254; *Leyva*, 593 at 864.

1 automatic stay must be clearly inapplicable, and *the underlying decision of the bankruptcy court*
2 *must not have a bearing on the case before the district court.* *Id.*, (emphasis added) *see also,*
3 *Leyva*, 593 F.2d at 864. This matter is not in bankruptcy, there is no automatic stay (applicable or
4 not), and the decision of the arbitration(s) have a bearing on the case before the district court.
5 Therefore, *Lockyer* is inapplicable and conversely, a stay should be granted.

6 Further, in *Lockyer*, the Ninth Circuit had the foresight to hold that “[w]e do not intend that
7 *this opinion be read to restrict unduly the ability of the district court, in appropriate cases, to issue*
8 *Landis stays, or to issue stays under other doctrines,* such as *Colorado River Water Conservation*
9 *Dist. v. U.S.*, 424 U.S. 800 (1976) (permitting a stay in order to prevent duplicative litigation
10 between state and federal courts) (emphasis added). Indeed, a *Landis* stay is appropriate when the
11 results of a separate pleading have *some* bearing upon the district court case. *Landis*, 299 U.S. at
12 254; “This rule applies whether the separate proceedings are judicial, administrative, or arbitral in
13 character, and does not require that the issues in such proceedings are necessarily controlling of the
14 action before the court.” *Leyva*, 593 F.2d at 254; *Stern*, 563 F. Supp. 484. As previously argued by
15 the Director Defendants, the three claims (unjust enrichment, fraud, civil conspiracy) as to the CTC
16 and Criterion Defendants *do* have some bearing upon the district court case. (Director Defendants’
17 Joinder, 7:10-8:20). In accordance with the United States Supreme Court applicable (as well as
18 supporting Ninth Circuit and Nevada Federal District Court) authority, a stay should be granted.

19 ***C. Duplicative Results are Not in the Best Interest of Anyone.***

20 Incongruent judgments or rulings will lead to confusion and the inability properly and
21 appropriately administer justice. *Leyva.*, 593 F.2d at 859 (A trial court may, with propriety, find it
22 is efficient for its own docket and the fairest course for the parties to enter a stay of an action before
23 it, pending resolution of independent proceedings which bear upon the case). The fairest course in
24 this matter is to allow CTC and Criterion to continue their arbitration. If, for example, Criterion is
25 found to have engaged in a conspiracy, but this Court absolves the Director Defendants of any and
26 all wrong-doing under the same claim and the same facts, then the claimants are deprived of their
27 restitution from all parties except Criterion. Similarly, if one party is found not liable pending
28 appeal and the other judicable matter is decided to the alternative during appeal on the same issue,

1 the matter will most likely be stayed pending an outcome of the appeal, or possibly be subject to a
2 claw-back. By creating at least three separate litigations, or strings of recovery, Receiver is only
3 harming the claimants – not helping them.

4 The requested stay is not indefinite as Receiver asserts. The stay is limited by the arbitration.
5 Applicable state and federal laws add guidance to the time limits in which an arbitration may be
6 held, as Receiver is well aware. This Court also maintains discretion to request status reports and
7 other information concerning the arbitrations.

8 ***D. Receiver Incorrectly States that the Director Defendants did not Address the Hardship***
9 ***Factor.***

10 Receiver next alleges, without support, that the Director Defendants failed to address their
11 “situational hardship” in the joinder. Receiver is mistaken, as the Director Defendants argued the
12 cost of piecemeal litigation, the number of witnesses adding to that cost, and the impact discovery
13 may have if required to be conducted in multiple jurisdictions. (Director Defendants’ Joinder, 8:21-
14 9:5). Director Defendants also recognized the pre-trial discovery costs such as: requesting the same
15 witnesses’ documents, requesting their responses to interrogatories or serving subpoena *duces tecum*
16 to the same overlapping witnesses. The same witnesses will be paraded in and out of conference
17 rooms, court rooms, arbitration rooms, and law firms. They will tell their stories to teams of lawyers
18 (all billing hourly) regarding the same or similar facts applicable to the twenty-eight defendants in
19 this case. (*see also* Directors Defendants’ Joinder, 8:22-25). In recognition of these costs, Director
20 Defendants asserted, “[t]his case will involve a number of witnesses” increasing the costs of the
21 matter significantly. (Director Defendants’ Joinder, 8:24-25). The exponential costs of litigating a
22 matter with “twenty-eight defendants” in three different jurisdictions is a hardship that only a party
23 backed by the funding of the state could endure. (Opp., 20:22).

24 Finally, Receiver continues to argue, without support that this Court already held claims for
25 fraud conspiracy, unjust enrichment, and the RICO claims could proceed in different forums.
26 Receiver failed to cite to any statement made by this Court or any written order issued by this Court
27 in support of this position.

28 ///

1 **III. CONCLUSION**

2 For all the foregoing reasons, the Director Defendants respectfully request that his Court
3 stay this matter pending arbitration.

4 DATED this 16th day of September, 2020.

5 WILSON, ELSER, MOSKOWITZ, EDELMAN
6 & DICKER LLP

7 By: /s/ Rachel Wise
8 Sheri M. Thome, Esq.
9 Nevada Bar No. 008657
10 Rachel L. Wise, Esq.
11 Nevada Bar No. 12303
12 6689 Las Vegas Blvd. South, Suite 200
13 Las Vegas, NV 89119
14 Attorneys for Defendants James Marx
15 John Maloney, Virginia Torres, and
16 Carlos Torres

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5, I certify that I am an employee of WILSON, ELSER, MOSKOWITZ,
3 EDELMAN & DICKER LLP and that on this 16th day of September, 2020, I served a true and
4 correct copy of the foregoing **DEFENDANTS JAMES MARX, JOHN MALONEY, VIRGINIA**
5 **TORRES, AND CARLOS TORRES' REPLY IN SUPPORT OF JOINDER TO MOTION TO**
6 **STAY PENDING ARBITRATION** as follows:

- 7 ☐ by placing same to be deposited for mailing in the United States Mail, in a sealed
8 envelope upon which first class postage was prepaid in Las Vegas, Nevada;
- 9 ☒ via electronic means by operation of the Court's electronic filing system, upon each
party in this case who is registered as an electronic case filing user with the Clerk;
- 10 ☐ via hand-delivery to the addressees listed below;
- 11 ☐ via facsimile;
- 12 ☐ by transmitting via email the document listed above to the email address set forth
13 below on this date before 5:00 p.m.

14 Mark E. Ferrario, Esq.
Kara B. Hendricks, Esq.
15 Kyle A. Ewing, Esq.
GREENBERG TRAURIG, LLP
16 10845 Griffith Peak Drive, Suite 600
Las Vegas, NV 89135
Telephone: (702) 792-3773
17 Facsimile: (702) 792-9002
Email: ferrariom@gtlaw.com
18 hendricksk@gtlaw.com
ewingk@gtlaw.com
19 *Attorneys for the Plaintiff*

20
21
22 Kurt R. Bonds, Esq.
Trevor R. Waite, Esq.
23 ALVERSON, TAYLOR & SANDERS
6605 Grand Montecito Pkwy., Suite 200
24 Las Vegas, NV 89149
Telephone: (702) 384-7000
25 Email: efile@alversontaylor.com
Attorneys for Defendant Brenda Guffey

Thomas E. McGrath, Esq.
Christopher A. Lund, Esq.
26 TYSON & MENDES LLP
3960 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169
Tel: (702) 724-2648
Fax: (702) 938-1048
Email: tmcgrath@tysonmendes.com
Email: clund@tysonmendes.com
Attorneys for Defendants Pavel Kapelnikov;
Chelsea Financial Group, Inc., a New Jersey
corporation; Chelsea Financial Group, Inc. a
California corporation; Global Forwarding
Enterprises, LLC; Kapa Management
Consulting, Inc.; Kapa Ventures, Inc.

27 John R. Bailey, Esq.
Joshua M. Dickey, Esq.
28 Rebecca L. Crooker, Esq.
BAILEY KENNEDY
8984 Spanish Ridge Avenue
Las Vegas, Nevada 89148-1302
Telephone: 702.562.8820
Facsimile: 702.562.8821
JBailey@BaileyKennedy.com
JDickey@BaileyKennedy.com
RCrooker@BaileyKennedy.com
Attorneys for Defendant
Criterion Claim Solutions of Omaha, Inc.

1 Robert S. Larsen, Esq.
2 Wing Yan Wong, Esq.
3 GORDON REES SCULLY
4 MANSUKHANI, LLP
5 300 South Fourth Street
6 Suite 1550
7 Las Vegas, Nevada 89101
8 rlarsen@grsm.com
9 wwong@grsm.com
10 *Attorneys for Defendants Lexicon Insurance*
11 *Management LLC; Daniel George; and ICAP*
12 *Management Solutions, LLC*

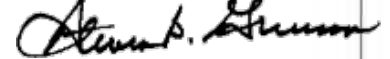
7 L. Christopher Rose, Esq.
8 Kirill V. Mikhaylov, Esq.
9 William A. Gonzales, Esq.
10 HOWARD & HOWARD
11 ATTORNEYS PLLC
12 3800 Howard Hughes Parkway, Suite 1000
13 Las Vegas, Nevada 89169
14 lcr@h2law.com
15 kvm@h2law.com
16 wag@h2law.com
17 *Attorneys for Defendants Six Eleven LLC;*
18 *Quote My Rig, LLC; New Tech Capital LLC;*
19 *195 Gluten Free LLC; 10-4 Preferred Risk*
20 *Managers, Inc.; Ironjab, LLC; Fourgorean*
21 *Capital LLC; Chelsea Holding Company, LLC;*
22 *and Chelsea Financial Group, Inc. (Missouri)*

Matthew T. Dushoff, Esq.
Jordan D. Wolff, Esq.
SALTZMAN MUGAN DUSHOFF
1835 Village Center Circle
Las Vegas, Nevada 89134
mdushoff@nvbusinesslaw.com
jwolff@nvbusinesslaw.com
Attorneys for Defendants CTC Transportation
Insurance Services of Missouri, LLC; CTC
Transportation Insurance Services LLC; and
CTC Transportation Insurance Services of
Hawaii LLC

Tamara Beatty Peterson, Esq.
Nikki L. Baker, Esq.
David E. Astur, Esq.
PETERSON BAKER, PLLC
701 South 7th Street
Las Vegas, Nevada 89101
tpeterson@petersonbaker.com
nbaker@petersonbaker.com
dastur@petersonbaker.com
Attorneys for Defendants Matthew Simon
Jr. and Scott McCrae

BY: /s/ Lani Maile

An Employee of
WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP



1 **NEOJ**

MATTHEW T. DUSHOFF, ESQ.

2 Nevada Bar No. 004975

JORDAN D. WOLFF, ESQ.

3 Nevada Bar No. 014968

SALTZMAN MUGAN DUSHOFF

4 1835 Village Center Circle

Las Vegas, Nevada 89134

5 Telephone: (702) 405-8500

Facsimile: (702) 405-8501

6 E-Mail: mdushoff@nvbusinesslaw.com

jwolff@nvbusinesslaw.com

7 Attorneys for Defendants

8 **CTC TRANSPORTATION INSURANCE**

SERVICES OF MISSOURI, LLC; CTC

9 **TRANSPORTATION INSURANCE SERVICES**

LLC; and CTC TRANSPORTATION

10 **INSURANCE SERVICES OF HAWAII LLC**

11
12 **DISTRICT COURT**

13 **CLARK COUNTY, NEVADA**

14 * * *

15 BARBARA D. RICHARDSON IN HER
16 CAPACITY AS THE STATUTORY RECEIVER
FOR SPIRIT COMMERCIAL AUTO RISK
RETENTION GROUP, INC.,

17 Plaintiff,

18 vs.

19 THOMAS MULLIGAN, an individual; CTC
20 TRANSPORTATION INSURANCE SERVICES
OF MISSOURI, LLC, a Missouri Limited
21 Liability Company; CTC TRANSPORTATION
INSURANCE SERVICES LLC, a California
22 Limited Liability Company; CTC
TRANSPORTATION INSURANCE SERVICES
23 OF HAWAII LLC, a Hawaii Limited Liability
Company; CRITERION CLAIMS SOLUTIONS
24 OF OMAHA, INC., a Nebraska Corporation;
PAVEL KAPELNIKOV, an individual;
25 CHELSEA FINANCIAL GROUP, INC., a
California Corporation; CHELSEA FINANCIAL
26 GROUP, INC., a Missouri Corporation;
CHELSEA FINANCIAL GROUP, INC., a New
27 Jersey Corporation d/b/a CHELSEA PREMIUM
FINANCE CORPORATION; CHELSEA
28 FINANCIAL GROUP, INC., a Delaware

CASE NO. A-20-809963-B

DEPT NO. XIII

**NOTICE OF ENTRY OF ORDER
DENYING PLAINTIFF'S MOTION
FOR RECONSIDERATION AND/OR
CLARIFICATION OF THE
COURT'S JULY 17, 2020 ORDER
REGARDING THE CTC
DEFENDANTS' MOTION TO
COMPEL ARBITRATION**

SALTZMAN MUGAN DUSHOFF PLLC

1835 Village Center Circle

Las Vegas, Nevada 89134

Tel: (702) 405-8500 / Fax: (702) 405-8501

1 Corporation; CHELSEA HOLDING COMPANY,
2 LLC, a Nevada Limited Liability Company;
3 CHELSEA HOLDINGS, LLC, a Nevada Limited
4 Liability Company; FOURGOREAN CAPITAL,
5 LLC, a New Jersey Limited Liability Company;
6 KAPA MANAGEMENT CONSULTING, INC., a
7 New Jersey Corporation; KAPA VENTURES,
8 INC., a New Jersey Corporation; GLOBAL
9 FORWARDING ENTERPRISES LIMITED
10 LIABILITY COMPANY, a New Jersey Limited
11 Liability Company; GLOBAL CAPITAL
12 GROUP, LLC, a New Jersey Limited Liability
13 Company; GLOBAL CONSULTING; NEW
14 TECH CAPITAL, LLC, a Delaware Limited
15 Liability Company; LEXICON INSURANCE
16 MANAGEMENT LLC, a North Carolina Limited
17 Liability Company; ICAP MANAGEMENT
18 SOLUTIONS, LLC, a Vermont Limited Liability
19 Company; SIX ELEVEN LLC, a Missouri
20 Limited Liability Company; 10-4 PREFERRED
21 RISK MANAGERS INC., a Missouri
22 Corporation; IRONJAB LLC, a New Jersey
23 Limited Liability Company; YANINA G.
24 KAPELNIKOV, an individual; IGOR
25 KAPELNIKOV, an individual; QUOTE MY RIG
26 LLC, a New Jersey Limited Liability Company;
27 MATTHEW SIMON, an individual; DANIEL
28 GEORGE, an individual; JOHN MALONEY, an
individual; JAMES MARX, an individual;
CARLOS TORRES, an individual; VIRGINIA
TORRES, an individual; SCOTT McCRAE, an
individual; BRENDA GUFFEY, an individual;
195 GLUTEN FREE LLC, a New Jersey Limited
Liability Company, DOE INDIVIDUALS I-X; and
ROE CORPORATE ENTITIES I-X,

Defendants.

**NOTICE OF ENTRY OF ORDER DENYING PLAINTIFF'S MOTION FOR
RECONSIDERATION AND/OR CLARIFICATION OF THE COURT'S JULY 17, 2020
ORDER REGARDING THE CTC DEFENDANTS' MOTION TO COMPEL
ARBITRATION**

Please take notice that the Order Denying Plaintiff's Motion for Reconsideration and/or
Clarification of the Court's July 17, 2020 Order Regarding the CTC Defendants' Motion to

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SALTZMAN MUGAN DUSHOFF PLLC

1835 Village Center Circle
Las Vegas, Nevada 89134
Tel: (702) 405-8500 / Fax: (702) 405-8501

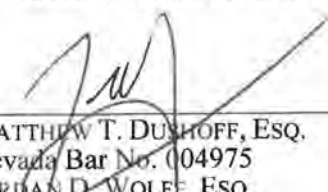
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Compel Arbitration was entered with the above court on the 16th day of September, 2020, a copy of which is attached hereto as **Exhibit A**.

DATED this 16th day of September, 2020.

SALTZMAN MUGAN DUSHOFF

By


MATTHEW T. DUSHOFF, ESQ.
Nevada Bar No. 004975
JORDAN D. WOLFF, ESQ.
Nevada Bar No. 014968
1835 Village Center Circle
Las Vegas, Nevada 89134

Attorneys for Defendants
**CTC TRANSPORTATION INSURANCE
SERVICES OF MISSOURI, LLC; CTC
TRANSPORTATION INSURANCE
SERVICES LLC; and CTC
TRANSPORTATION INSURANCE
SERVICES OF HAWAII LLC**

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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of SALTZMAN MUGAN DUSHOFF, and that on the 16th day of September, 2020, I caused to be served a true and correct copy of the foregoing NOTICE OF ENTRY OF ORDER DENYING PLAINTIFF'S MOTION FOR RECONSIDERATION AND/OR CLARIFICATION OF THE COURT'S JULY 17, 2020 ORDER REGARDING THE CTC DEFENDANTS' MOTION TO COMPEL ARBITRATION 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 the Court's facilities to those parties listed below:

Barbara D Richardson:

Andrea Rosehill (rosehilla@gtlaw.com)
Mark Ferrario (ferrariom@gtlaw.com)
Megan Sheffield (sheffieldm@gtlaw.com)
Kara Hendricks (hendricksk@gtlaw.com)
Whitney Welch-Kirmse (welchkirmsew@gtlaw.com)
LVGT docketing (lvlitdock@gtlaw.com)
Andrea Flintz (flintza@gtlaw.com)
Evelyn Gaddi (escobargaddie@gtlaw.com)
Kyle Ewing (ewingk@gtlaw.com)

Thomas Mulligan:

William Urga (wru@juwlaw.com)
David Malley (djm@juwlaw.com)
Michael Ernst (mre@juwlaw.com)
Linda Schone (ls@juwlaw.com)

CTC Transportation Insurance Services of Missouri, LLC:

Matthew Dushoff (mdushoff@nvbusinesslaw.com)
Jordan Wolff (jwolff@nvbusinesslaw.com)

Criterion Claims Solutions of Omaha, Inc.:

Joshua Dickey (jdickey@baileykennedy.com)
John Bailey (jbailey@baileykennedy.com)
Bailey Kennedy, LLP (bkfederaldownloads@baileykennedy.com)
Rebecca Crooker (rcrooker@baileykennedy.com)

Chelsea Holding Company, LLC:

L. Christopher Rose (lcr@h2law.com)
Julia Diaz (jd@h2law.com)
Susan Owens (sao@h2law.com)
Kirill Mikhaylov (kvm@h2law.com)
William Gonzales (wag@h2law.com)

Lexicon Insurance Management LLC, a North Carolina LLC:

Sean Owens (sowens@grsm.com)
Gayle Angulo (gangulo@grsm.com)
Robert Larsen (rlarsen@grsm.com)
Wing Wong (wwong@grsm.com)
E-serve GRSM (WL_LVSupport@grsm.com)

James Marx:

Efile LasVegas (efilelasvegas@wilsonelser.com)
Sheri Thome (sheri.thome@wilsonelser.com)
Nicole Hrustyk (nicole.hrustyk@wilsonelser.com)
Lani Maile (lani.maile@wilsonelser.com)
Rachel Wise (rachel.wise@wilsonelser.com)

Scott McCrae:

Tamara Peterson (tpeterson@petersonbaker.com)
Nikki Baker (nbaker@petersonbaker.com)
Erin Parcells (eparcells@petersonbaker.com)
David Astur (dastur@petersonbaker.com)

Brenda Guffey:

Copy Room (efile@alversontaylor.com)
Trevor Waite (twaite@alversontaylor.com)
Kurt Bonds (kbonds@alversontaylor.com)

Other Service Contacts not associated with a party on the case:

Olivia Swibies (oswibies@nevadafirm.com)
Alejandro Pestonit (apestonit@nevadafirm.com)
Richard Holley, Esq. (rholley@nevadafirm.com)
Mary Langsner (mlangsner@nevadafirm.com)
Thomas McGrath (tmcgrath@tysonmendes.com)
Scarlett Fisher (sfisher@tysonmendes.com)
Christopher Lund (clund@tysonmendes.com)
Christina Espinosa (cespinosa@tysonmendes.com)
Denise Doyle (service@cb-firm.com)

Cindy Kishi

An Employee of SALTZMAN MUGAN DUSHOFF

Exhibit A

(Order Denying
Plaintiff's Motion for
Reconsideration and/or
Clarification)

Andrew J. Smith
CLERK OF THE COURT

SALTZMAN MUGAN DUSHOFF PLLC

1835 Village Center Circle
Las Vegas, Nevada 89134
Tel: (702) 405-8500 / Fax: (702) 405-8501

ODM

MATTHEW T. DUSHOFF, ESQ.

Nevada Bar No. 004975

JORDAN D. WOLFF, ESQ.

Nevada Bar No. 014968

SALTZMAN MUGAN DUSHOFF

1835 Village Center Circle

Las Vegas, Nevada 89134

Telephone: (702) 405-8500

Facsimile: (702) 405-8501

E-Mail: mdushoff@nvbusinesslaw.com

jwolff@nvbusinesslaw.com

Attorneys for Defendants

CTC TRANSPORTATION INSURANCE

SERVICES OF MISSOURI, LLC; CTC

TRANSPORTATION INSURANCE SERVICES

LLC; and CTC TRANSPORTATION

INSURANCE SERVICES OF HAWAII LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

BARBARA D. RICHARDSON IN HER
CAPACITY AS THE STATUTORY RECEIVER
FOR SPIRIT COMMERCIAL AUTO RISK
RETENTION GROUP, INC.,

Plaintiff,

vs.

THOMAS MULLIGAN, an individual; CTC
TRANSPORTATION INSURANCE SERVICES
OF MISSOURI, LLC, a Missouri Limited
Liability Company; CTC TRANSPORTATION
INSURANCE SERVICES LLC, a California
Limited Liability Company; CTC
TRANSPORTATION INSURANCE SERVICES
OF HAWAII LLC, a Hawaii Limited Liability
Company; CRITERION CLAIMS SOLUTIONS
OF OMAHA, INC., a Nebraska Corporation;
PAVEL KAPELNIKOV, an individual;
CHELSEA FINANCIAL GROUP, INC., a
California Corporation; CHELSEA FINANCIAL
GROUP, INC., a Missouri Corporation;
CHELSEA FINANCIAL GROUP, INC., a New
Jersey Corporation d/b/a CHELSEA PREMIUM
FINANCE CORPORATION; CHELSEA
FINANCIAL GROUP, INC. a Delaware

CASE NO. A-20-809963-B

DEPT NO. XIII

**ORDER DENYING PLAINTIFF'S
MOTION FOR
RECONSIDERATION AND/OR
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COURT'S JULY 17, 2020 ORDER
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DEFENDANTS' MOTION TO
COMPEL ARBITRATION**

1 Corporation; CHELSEA HOLDING COMPANY,
2 LLC, a Nevada Limited Liability Company;
3 CHELSEA HOLDINGS, LLC, a Nevada Limited
4 Liability Company; FOURGOREAN CAPITAL,
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6 KAPA MANAGEMENT CONSULTING, INC., a
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25 KAPELNIKOV, an individual; QUOTE MY RIG
26 LLC, a New Jersey Limited Liability Company;
27 MATTHEW SIMON, an individual; DANIEL
28 GEORGE, an individual; JOHN MALONEY, an
individual; JAMES MARX, an individual;
CARLOS TORRES, an individual; VIRGINIA
TORRES, an individual; SCOTT McCRAE, an
individual; BRENDA GUFFEY, an individual;
195 GLUTEN FREE LLC, a New Jersey Limited
Liability Company, DOE INDIVIDUALS I-X; and
ROE CORPORATE ENTITIES I-X,

Defendants.

**ORDER DENYING PLAINTIFF'S MOTION FOR RECONSIDERATION AND/OR
CLARIFICATION OF THE COURT'S JULY 17, 2020 ORDER REGARDING THE CTC
DEFENDANTS' MOTION TO COMPEL ARBITRATION**

This matter came before the Court on August 31, 2020 in Chambers with respect to the motion of Plaintiff BARBARA D. RICHARDSON IN HER CAPACITY AS THE STATUTORY RECEIVER FOR SPIRIT COMMERCIAL AUTO RISK RETENTION GROUP, INC. ("Plaintiff" or "Spirit"), seeking Reconsideration and/or Clarification of the Court's July 17, 2020 Order granting the Motion to Compel Arbitration filed by Defendants CTC TRANSPORTATION

1 INSURANCE SERVICES OF MISSOURI, LLC ("CTC-MO"); CTC TRANSPORTATION
2 INSURANCE SERVICES LLC ("CTC-CA"); and CTC TRANSPORTATION INSURANCE
3 SERVICES OF HAWAII LLC ("CTC-HI" and hereafter collectively referred to with CTC-MO
4 and CTC-CA as "CTC").

5 For the following reasons, Plaintiff's Motion is DENIED in its entirety.

6 **I. FINDINGS OF FACT**

7 On February 6, 2020, Plaintiff initiated the present action by filing a Complaint alleging
8 numerous causes of action against many different parties, including CTC, to recover monies that
9 are purportedly owed to Spirit. Specifically, Plaintiff brought the following causes of action
10 against CTC: (i) breach of contract; (ii) breach of fiduciary duty; (iii) breach of the implied
11 covenant of good faith and fair dealing – tortious; (iv) breach of the implied covenant of good faith
12 and fair dealing – contract; (v) Nevada RICO; (vi) unjust enrichment; (vii) fraud; (viii) civil
13 conspiracy; (ix) fraudulent transfer pursuant to NRS 112; (x) voidable transfer pursuant to NRS
14 696B; (xi) recovery of distributions and payments pursuant to NRS 696B; and (xii) recovery of
15 distributions and payments pursuant to NRS 692C.402.

16 On May 14, 2020, CTC filed a Motion to Compel Arbitration with respect to all the claims
17 asserted against CTC by Plaintiff. On July 17, 2020, this Court entered an Order granting CTC's
18 Motion to Compel Arbitration in its entirety and dismissed CTC from this case with prejudice (the
19 "Order to Compel"). On July 30, 2020, Plaintiff filed a Motion for Reconsideration and/or
20 Clarification of the Court's July 17, 2020 Order Regarding the CTC Defendants' Motion to
21 Compel Arbitration (the "Motion").

22 **II. CONCLUSIONS OF LAW**

23 "A district court may reconsider a previously decided issue if substantially different
24 evidence is subsequently introduced or the decision is clearly erroneous." *Masonry & Tile*
25 *Contractors v. Jolley, Urga & Wirth Ass'n*, 113 Nev. 737, 741, 941 P.2d 486, 489 (1997). "Only
26 in very rare instances in which new issues of fact or law are raised supporting a ruling contrary to
27 the ruling already reached should a motion for rehearing be granted." *Moore v. Las Vegas*, 92
28 Nev. 402, 405, 551 P.2d 244, 246 (1976). *See also Mustafa v. Clark Cty. Sch. Dist.*, 157 F.3d

1 1169, 1179 (9th Cir. 1998) (leave for reconsideration may be granted upon the showing of newly
2 discovered evidence, clear error or manifest injustice, or an intervening change in controlling law).
3 Further, points and contentions not raised in the first instance cannot be raised on rehearing.
4 *Carmar Drive Tr. v. Bank of Am., N.A.*, 132 Nev. 952, 386 P.3d 988 (2016) (citing *Edward J.*
5 *Achrem, Chtd. v. Expressway Plaza Ltd. Pshp.*, 112 Nev. 737, 742, 917 P.2d 447, 450 (1996)).
6 Put simply, a motion for reconsideration is not the proper vehicle for rehashing old arguments and
7 is not intended to give an unhappy litigant one additional chance to sway the judge. *Campbell v.*
8 *Nev. Prop. 1, LLC*, No. 2:10-cv-2169-RLH-PAL, 2012 U.S. Dist. LEXIS 192, at *3 (D. Nev. Jan.
9 3, 2012) (internal citations omitted).

10 Plaintiff's Motion is denied because it does not raise any new issues of fact or law, or
11 otherwise show that the Court's Order to Compel was clearly erroneous in any way. The Order to
12 Compel comports with controlling Nevada Supreme Court authority, as well as other relevant
13 precedent from the state and federal courts of Nevada and the District of Columbia, in holding
14 that: (i) the arbitration provision in the Program Administration Agreement between Spirit and
15 CTC, dated July 1, 2016 (the "CTC Agreement"), is valid and enforceable pursuant to the Federal
16 Arbitration Act, and the result would be the same pursuant to both District of Columbia and
17 Nevada law; (ii) the arbitration provision in the CTC Agreement is not the product of a criminal
18 enterprise; (iii) the Federal Arbitration Act is not reverse preempted by the Nevada Insurers
19 Liquidation Act under the McCarren-Ferguson Act; (iv) NRS 696B.200 has no bearing on the
20 enforceability of the arbitration provision in the CTC Agreement pursuant to the Federal
21 Arbitration Act; (v) the fact that the Complaint is brought on Spirit's behalf by Richardson, in her
22 capacity as receiver, has no bearing on the enforceability of the arbitration provision in the CTC
23 Agreement as she "stands in the shoes" of Spirit; (vi) all of Plaintiff's claims against CTC arise
24 out of the CTC Agreement and are subject to arbitration; and (vii) CTC is not a necessary party to
25 this proceeding and judicial economy does not compel CTC to remain a party to this action.

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1 IT IS HEREBY ORDERED that the Motion is DENIED.

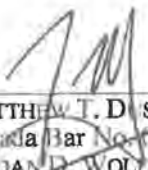
2 DATED this _____ day of _____, 2020. ^{Dated this 16th day of September, 2020}

3 
4 DISTRICT JUDGE

5 Respectfully submitted by:

6 SALTZMAN MUGAN DUSHOFF

899 63E 5547 F232
Mark R. Denton
District Court Judge

7 
8 By MATTHEW T. DUSHOFF, ESQ.
9 Nevada Bar No. 004975
10 JORDAN D. WOLFF, ESQ.
11 Nevada Bar No. 0114968
12 1835 Village Center Circle
13 Las Vegas, Nevada 89134

14 Attorneys for Defendants
15 CTC TRANSPORTATION INSURANCE
16 SERVICES OF MISSOURI, LLC; CTC
17 TRANSPORTATION INSURANCE
18 SERVICES LLC; and CTC
19 TRANSPORTATION INSURANCE
20 SERVICES OF HAWAII LLC

21 APPROVED ~~DISAPPROVED~~

22 GREENBERG TRAURIG, LLP

23 By
24 MARK E. FERRARIO, ESQ.
25 Nevada Bar No. 1625
26 ERIC W. SWANIS, ESQ.
27 Nevada Bar No. 6840
28 DONALD L. PRUNTY, ESQ.
Nevada Bar No. 8230
3773 Howard Hughes Parkway, Suite 400 N
Las Vegas, NV 89169

Attorneys for Plaintiff

Barbara D. Richardson, etc. v. Thomas Mulligan, et al./Case No. A-20-809963-B
Order Denying Plaintiff's Motion for Reconsideration and/or Clarification of the Court's July 17, 2020
Order Regarding the CTC Defendants' Motion to Compel Arbitration

1 CSERV

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA

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5
6 Barbara Richardson, Plaintiff(s) CASE NO: A-20-809963-B
7 vs. DEPT. NO. Department 13
8 Thomas Mulligan, Defendant(s)
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

11 This automated certificate of service was generated by the Eighth Judicial District
12 Court. The foregoing Order Denying Motion was served via the court's electronic eFile
13 system to all recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 9/16/2020

15 William Urga	wru@juwlaw.com
16 David Malley	djm@juwlaw.com
17 Tamara Peterson	tpeterson@petersonbaker.com
18 Nikki Baker	nbaker@petersonbaker.com
19 Erin Parcells	eparcells@petersonbaker.com
20 Joshua Dickey	jdickey@baileykennedy.com
21 Michael Ernst	mre@juwlaw.com
22 John Bailey	jbailey@baileykennedy.com
23 Bailey Kennedy, LLP	bkfederaldownloads@baileykennedy.com
24 Andrea Rosehill	rosehilla@gtlaw.com
25 Mark Ferrario	ferrariom@gtlaw.com
26	
27	
28	

1	Megan Sheffield	sheffieldm@gtlaw.com
2	Kara Hendricks	hendricksk@gtlaw.com
3	Efile Las Vegas	efilelasvegas@wilsonelser.com
4	Whitney Welch-Kirmse	welchkirmsew@gtlaw.com
5	Sheri Thome	sheri.thome@wilsonelser.com
6	LVGT docketing	lvlitdock@gtlaw.com
7	Linda Schone	ls@juwlaw.com
8	Copy Room	efile@alversontaylor.com
9	Trevor Waite	twaite@alversontaylor.com
10	Kurt Bonds	kbonds@alversontaylor.com
11	Olivia Swibies	oswibies@nevadafirm.com
12	Alejandro Pestonit	apestonit@nevadafirm.com
13	Richard Holley, Esq.	rholley@nevadafirm.com
14	Sean Owens	sowens@grsm.com
15	Nicole Hrustyk	nicole.hrustyk@wilsonelser.com
16	Mary Langsner	mlangsner@nevadafirm.com
17	Gayle Angulo	gangulo@grsm.com
18	Robert Larsen	rlarsen@grsm.com
19	Wing Wong	wwong@grsm.com
20	Andrea Flintz	flintza@gtlaw.com
21	Thomas McGrath	tmcgrath@tysonmendes.com
22	Scarlett Fisher	sfisher@tysonmendes.com
23	Christopher Lund	clund@tysonmendes.com
24		
25		
26		
27		
28		

1	Lani Maile	lani.maile@wilsonelser.com
2	Evelyn Gaddi	escobargaddie@gtlaw.com
3	E-serve GRSM	WL_LVSupport@grsm.com
4	Rachel Wise	rachel.wise@wilsonelser.com
5	Rebecca Crooker	rcrooker@baileykennedy.com
6	David Astur	dastur@petersonbaker.com
7	Christina Espinosa	cespinosa@tysonmendes.com
8	L. Christopher Rose	lcr@h2law.com
9	Julia Diaz	jd@h2law.com
10	Kyle Ewing	ewingk@gtlaw.com
11	Denise Doyle	service@cb-firm.com
12	Matthew Dushoff	mdushoff@nvbusinesslaw.com
13	Jordan Wolff	jwolff@nvbusinesslaw.com
14	Susan Owens	sao@h2law.com
15	Kirill Mikhaylov	kvm@h2law.com
16	William Gonzales	wag@h2law.com
17		
18		
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