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DISTRICT COURT
CLARK COUNTY, NEVADA

TGC/FARKAS FUNDING, LLC,

Plaintiff,

vs.

FIRST 100, LLC, a Nevada limited liability
company; 1st ONE HUNDRED HOLDINGS,
LLC, a Nevada limited liability company,

Defendants.

Case No: A-20-822273-C
Dept. No.: XIII

NOTICE OF APPEAL

NOTICE IS HEREBY given that defendants First 100, LLC and 1st One Hundred Holdings, LLC and non-party Jay Bloom by and through their attorneys of record, the law firm MAIER GUTIERREZ & ASSOCIATES, appeal to the Supreme Court of Nevada from the Findings of Fact, Conclusions of Law and Order Regarding Evidentiary Hearing entered by the Eighth Judicial District

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1 Court on April 7, 2021, granting the order filed by plaintiff TGC/Farkas Funding, LLC, a copy of
2 which is attached hereto as **Exhibit 1**.

3 DATED this 15th day of April, 2021.

4 Respectfully submitted,

5 **MAIER GUTIERREZ & ASSOCIATES**

6 /s/ Joseph A. Gutierrez

7 JASON R. MAIER, ESQ.

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16 *Holdings, LLC, and Jay Bloom*

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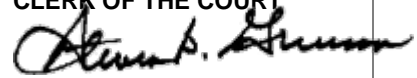
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EXHIBIT 1

EXHIBIT 1



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DISTRICT COURT

CLARK COUNTY, NEVADA

TGC/FARKAS FUNDING, LLC,
Plaintiff,

vs.

FIRST 100, LLC, a Nevada Limited Liability
Company; FIRST ONE HUNDRED
HOLDINGS, LLC, a Nevada limited liability
company aka 1st ONE HUNDRED HOLDINGS
LLC, a Nevada Limited Liability Company,
Defendants.

CASE NO. A-20-822273-C
DEPT. 13

**NOTICE OF ENTRY OF FINDINGS OF
FACT, CONCLUSIONS OF LAW &
ORDER RE EVIDENTIARY HEARING**

**NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW & ORDER
RE EVIDENTIARY HEARING**

PLEASE TAKE NOTICE that a *Findings of Fact, Conclusions of Law & Order Re
Evidentiary Hearing*, a copy of which is attached hereto, was entered in the above-captioned case
on the 7th day of April, 2021.

DATED this 7th day of April, 2021.

GARMAN TURNER GORDON LLP

/s/ Erika Pike Turner
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CERTIFICATE OF SERVICE

The undersigned, hereby certifies that on the 7th day of April, 2021, he served a copy of the
**NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW & ORDER RE
EVIDENTIARY HEARING**, by electronic service in accordance with Administrative Order
14.2, to all interested parties, through the Court's Odyssey E-File & Serve system addressed to:

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I further certify that I served a copy of this document by emailing it and mailing a true and
correct copy thereof via U.S Regular Mail, postage prepaid, addressed to:

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Attorneys for Matthew Farkas

/s/ Max Erwin

An Employee of
GARMAN TURNER GORDON LLP

Heather S. Smith
CLERK OF THE COURT

FFCL

DISTRICT COURT

CLARK COUNTY, NEVADA

TGC/FARKAS FUNDING, LLC,

Plaintiff/Judgment Creditor,

vs.

FIRST 100, LLC, a Nevada Limited Liability
Company; FIRST ONE HUNDRED
HOLDINGS, LLC, a Nevada limited liability
company aka 1st ONE HUNDRED HOLDINGS
LLC, a Nevada Limited Liability Company,

Defendants/ Judgment Debtors.

CASE NO. A-20-822273-C
DEPT. 13

**FINDINGS OF FACT, CONCLUSIONS OF
LAW, & ORDER RE EVIDENTIARY
HEARING**

Hearing Date: March 3 and 10, 2021

FINDINGS OF FACT, CONCLUSIONS OF LAW & ORDER

INTRODUCTION

The above-captioned matter has involved motion practice regarding several items: 1) the December 18, 2020 order to show cause why Defendants/Judgment Debtors, First 100, LLC (“First 100”) and First One Hundred Holdings aka 1st One Hundred Holdings LLC (“1st 100,” and together with First 100, “Defendants”) and Jay Bloom (“Bloom”) should not be found in contempt of court (the “OSC”) for their failures to comply with the Order Confirming Arbitration Award, Denying Countermotion to Modify, and Judgment entered November 17, 2020 (the “Order”), 2) the January 19, 2021 motion to enforce settlement and vacate post-judgment discovery proceedings filed by Defendants (the “Motion to Enforce”), which was denied without prejudice pending the resolution of outstanding questions of fact following the evidentiary hearing, 3) the January 26, 2021 countermotion for sanctions (“Countermotion for Sanctions”) filed by Plaintiff/Judgment Creditor TGC/Farkas Funding, LLC (“Plaintiff”) in conjunction with its opposition to the Motion to Enforce, which was denied without prejudice pending the evidentiary hearing, and 4) the February 19, 2021 motion for sanctions filed by Plaintiff in conjunction with Plaintiff’s motion to compel that was reserved for resolution following the evidentiary hearing (the “Motion for Sanctions”). The Court held the evidentiary

MARK R. DENTON
DISTRICT JUDGE

DEPARTMENT THIRTEEN
LAS VEGAS, NV 89155

1 hearing on March 3, 2021 and March 10, 2021 (the “hearing”) to resolve the Claims. Erika Pike
2 Turner, Esq. of the law firm of Garman Turner Gordon LLP (“GTG”) appeared on behalf of
3 Plaintiff, Joseph Gutierrez, Esq. (“Gutierrez”) of the law firm of Maier Gutierrez & Associates
4 (“MGA”) appeared on behalf of Defendants and Bloom, and evidence was presented by the
5 parties through exhibits and testimony. Based thereon, the Court finds and concludes, as follows:

6 **FINDINGS OF FACT**

7 1. In 2013, Plaintiff was formed for the purpose of facilitating an investment in
8 Defendants consisting of \$1 million from 50% member TGC 100 Investor, LLC, managed by
9 Adam Flatto (“Flatto”), and services (aka sweat equity) from 50% member Matthew Farkas
10 (“Farkas”).¹ In exchange for Plaintiff’s contributions, Plaintiff received a 3% membership
11 interest in Defendants.²

12 2. Defendants are affiliated Nevada limited liability companies governed by nearly
13 identical operating agreements.³ At the hearing, Bloom identified himself as a “director” of
14 Defendants who “participated in the management.”⁴ The Secretary of State documents filed by
15 Bloom on behalf of Defendants do not identify any “directors.”⁵ Defendants’ operating
16 agreements and the Secretary of State records show that since formation, both Defendants have
17 been single manager-managed with SJ Ventures Holding Company, LLC (“SJV”) appointed the
18 sole manager with Bloom as the sole manager of SJV.⁶

19 3. The business of Defendants was to acquire HOA liens and then acquire the
20 underlying properties at foreclosure.⁷ Defendants’ active business concluded in 2016, except for
21 attempts to monetize a judgment obtained in favor of Defendants against Raymond Ngan and his

22 ¹ Exhibit 20, PLTF_154, 170.

23 ² Exhibit 2, PLTF_006.

24 ³ Exhibits 7 and 8; Hearing Transcript of Testimony, March 3, 2021 (“3/3 Trans.”), 8:10-16.

25 ⁴ 3/3 Trans., 160:3-7.

26 ⁵ Exhibits 25-26.

27 ⁶ Exhibit 7, §§ 1.19 (designating SJV as Manager); 6.1 (Management by Manager) and PTF_055; Exhibit 8, §§ 1.19
(designating SJV as Manager); 6.1 (Management by Manager) and PTF_082; see also 3/3 Trans., 221:18-23.

28 ⁷ 3/3 Trans., 159:23-160:2.

1 affiliated entities in 2017 (the “Ngan Judgment”). As Plaintiff did not receive any accounting to
2 show what happened to Defendants’ business or its assets and had questions, on May 2, 2017,
3 Plaintiff made a written demand for the books and records of Defendants pursuant to the terms of
4 Defendants’ operating agreements and NRS 86.241.⁸ Defendants did not provide any documents
5 in response to Plaintiff’s demand, resulting in Plaintiff filing an arbitration demand under a
6 provision of Defendants’ operating agreements requiring that such matters be determined through
7 arbitration with the party bringing the matter required to pay all the upfront costs of the
8 arbitration, subject to reimbursement in the event said party prevailed.⁹

9 4. On September 15, 2020, a 3-arbitrator panel entered a “Decision and AWARD of
10 Arbitration Panel (1) Compelling Production of Company Records; and Ordering
11 Reimbursement of [Plaintiff’s] Attorneys’ Fees and Costs” (the “Arb. Award”).¹⁰ The Arb.
12 Award cited the May 2, 2017 demand as the “initial request for company records that is the
13 subject of the arbitration demand filed by Plaintiff,” and found that Defendants’ response to that
14 May 2, 2017 demand was the “first in a long and bad faith effort by [Defendants] to avoid their
15 statutory and contractual duties to a member to produce requested records.”¹¹

16 5. After moving to Las Vegas in 2013, Farkas (Bloom’s brother-in-law)¹² started
17 working with Bloom on behalf of Defendants and was provided a title of Vice President of
18 Finance and the primary role of raising capital for Defendants consistent with his background
19 experience on Wall Street (investment banker, operating a hedge fund, buying and selling
20 securities).¹³ Farkas left his employment with Defendants in the summer of 2016, and thereafter
21 had very little involvement with Defendants’ operations.¹⁴ During the course of Plaintiff’s efforts

22 ⁸ Exhibit 1.

23 ⁹ Exhibit 2, PLTG_006; Exhibits 7 and 8, § 13.9 (any dispute arising out of or relating to the Operating Agreements
24 “shall solely be settled by arbitration”).

25 ¹⁰ Exhibits 2 and II.

26 ¹¹ Exhibit 2, PLTF_006.

27 ¹² 3/3 Trans., 123:2-13.

28 ¹³ *Id.*, 84:15- 85:5, 15-21, 89:3-5, 123:14-23.

¹⁴ *Id.*, 124:1-125:21, 141:10-15, 152:6-24.

1 to obtain books and records Bloom has requested and Farkas has signed a series of documents
2 purporting to bind Plaintiff to its detriment and then argued for enforcement of those documents
3 based on the fact a signature of Farkas is affixed. This was done despite Plaintiff's affirmative
4 notice that Farkas did not have authority to bind Plaintiff without Flatto's consent delivered on
5 July 13, 2017, to Defendants and MGA, as counsel for Defendants, as well as the registered
6 agent for Defendants,¹⁵ which notice attached a prior notice to Defendants emailed on April 18,
7 2017, and explained to Defendants that Farkas is not the Plaintiff's manager and Farkas does not
8 have the authority to bind Plaintiff.¹⁶

9 6. The Arb. Award conclusively resolved Defendants' multiple arguments that they
10 were not required to produce the records, including Defendants' argument that Farkas had signed
11 a form of redemption agreement that released Defendants from any responsibility to make
12 company records available to Plaintiff.¹⁷ The redemption agreement was deemed irrelevant by
13 the arbitrators, as Farkas did not have the authority to bind Plaintiff without the consent of Flatto,
14 as well as there being a lack of performance by Defendants.¹⁸

15 7. The Arb. Award granted relief in favor of Plaintiff and against Defendants "in all
16 respects" on the claim for books and records of Defendants arising from Defendants' operating
17 agreements and NRS 86.241¹⁹ and ordered Defendants to "forthwith, but no later than ten (10)
18 calendar days from the date of this AWARD, make all the requested documents and information
19 available from both companies to [Plaintiff] for inspection and copying."²⁰ Fees and costs were
20 awarded Plaintiff.²¹ The Arb. Award further provided that the "Award is in full settlement of all
21 claims submitted to this arbitration. All claims not expressly granted herein are hereby
22

23 ¹⁵ Exhibit 26, PLTF_218, and Exhibit 27, PLTF_235.

24 ¹⁶ Exhibit 22.

25 ¹⁷ Exhibit 2, PLTF_007.

26 ¹⁸ *Id.*

27 ¹⁹ *See* Exhibit 1, PLTF_002.

28 ²⁰ Exhibit 2, PLTF_009.

²¹ *Id.*

1 denied.”²²

2 8. Plaintiff commenced this case for the purpose of confirming the Arb. Award. In
3 response to Plaintiff’s motion to confirm Arb. Award, Defendants filed a countermotion to
4 modify the Arb. Award and provide for the imposition of expenses to be paid by Plaintiff as a
5 condition of Defendants furnishing the books and records. Attached to Defendants’
6 countermotion was Bloom’s declaration contending that Defendants had no funds or employees,
7 and the only way for Defendants to obtain and furnish the records in compliance with the Arb.
8 Award would be to have the Court order Plaintiff to first pay expenses.²³ Defendants had an
9 obligation to arbitrate its request for Plaintiff to pay expenses associated with the production of
10 the books and records under the arbitration provision of their operating agreements.²⁴ The Court
11 analyzed Defendants’ attempt to alter the merits of the Arb. Award to award Defendants’ relief
12 that was absent from the Arb. Award, and denied the countermotion to modify the Arb. Award as
13 part of the Order.²⁵

14 9. The Order was entered November 17, 2020, constituting a final, appealable
15 judgment. No appeal was filed by Defendants. On December 18, 2020, the OSC was filed upon
16 Plaintiff’s application citing no compliance or communicated intention to comply with the Order.
17 The OSC scheduled a hearing for January 21, 2021.²⁶ The OSC was served on MGA on
18 December 18, 2020; in addition, Bloom was personally served with the OSC on December 22,
19 2020.²⁷ On December 21, 2020, notices of judgment debtor examinations for each of
20 Defendants and post-judgment discovery were served on MGA.²⁸ Bloom was also personally
21

22 ²² *Id.*

23 ²³ Exhibit 3.

24 ²⁴ Exhibits 7 and 8, § 13.9.

25 ²⁵ Exhibit 4, PLTF_019, ll. 15-27.

26 ²⁶ Exhibit 5.

27 ²⁷ See OSC Certificate of Service (MGA served through Odyssey e-service); Declaration of Service of the OSC on Bloom, filed December 30, 2020.

28 ²⁸ See the December 21, 2020 Notice of Entry of Order for Judgment Debtor Examinations.

1 served with post-judgment discovery under NRCP 69(2) on December 29, 2020.²⁹

2 10. On January 19, 2021, Defendants filed the Motion to Enforce on an order
3 shortening time, arguing that a written settlement agreement dated January 6, 2021 (the
4 “Settlement Agreement”) executed by Farkas, purportedly on behalf of Plaintiff, and by Bloom,
5 on behalf of Defendants, mooted the OSC hearing and post-judgment discovery because it
6 provides for immediate dismissal of the Order, the underlying Arb. Award and other motions
7 pending in this case, with prejudice. In opposition to the Motion to Enforce, Plaintiff argued that
8 the Settlement Agreement is not valid and enforceable for multiple reasons, including that it was
9 executed by Farkas without Flatto’s knowledge or consent and therefore could not bind Plaintiff,
10 and that the circumstances surrounding the Settlement Agreement, including those underlying the
11 Motion to Compel, are further evidence of Defendants’ and Bloom’s contempt of this Court’s
12 Order, warranting sanctions against Defendants and Bloom.

13 11. Defendants’ and Bloom’s response to the OSC filed January 20, 2021
14 incorporated the Motion to Enforce and reiterated the previously denied argument that no
15 production of books and records should be required until Plaintiff first pays demanded expenses
16 associated with the production. Bloom also argued immunity from penalties for contempt as a
17 non-party to the Order.

18 12. The purported Settlement Agreement expressly provides that upon execution of the
19 Settlement Agreement, Plaintiff “will file a dismissal with prejudice of the current actions
20 related to this matter, including the arbitration award and all relation [sic] motions and actions
21 pending in the District Court.”³⁰ In exchange, Defendants agreed to pay Plaintiff \$1 million, plus
22 6% per annum since the date of investment, but contingent on its collection of proceeds from a
23 sale of the Ngan Judgment.³¹ Defendants’ Motion to Enforce seeks specific performance of
24 Plaintiff’s obligation under the Settlement Agreement to effectuate dismissal of this case, with
25 prejudice.

26 ²⁹ See the Declarations of Service of Subpoena on Bloom, filed January 5 and January 7, 2021.

27 ³⁰ Exhibit 13, PLTF_106.

28 ³¹ *Id.*

1 13. On the evening of January 14, 2021, Raffi Nahabedian, Esq. (“Nahabedian”)
2 made the first mention of a settlement to Plaintiff in connection with his demand for substitution
3 of counsel for Plaintiff in the case,³² and by the next day, January 15, 2021, even before the
4 Settlement Agreement was disclosed to Plaintiff, Plaintiff immediately sent notice of repudiation
5 to Defendants through its counsel of record, GTG.³³ On January 19, 2021, the Motion to Enforce
6 was filed, attaching the Settlement Agreement- the first time that the Settlement Agreement was
7 provided Plaintiff after its execution.³⁴ On January 26, 2021, Plaintiff filed an Opposition to the
8 Motion to Enforce, reiterating its repudiation upon the declarations of both Flatto and Farkas.³⁵

9 14. From the January 7, 2021 execution of the Settlement Agreement through the
10 time of Plaintiff’s repudiation (and continuing to the date of the hearing), Defendants did not
11 ever pay, or make any attempt to tender payment to Plaintiff in performance of its obligations
12 under the Settlement Agreement.³⁶ To the contrary, the only evidence of Defendants’
13 performance pursuant to the Settlement Agreement was Bloom’s efforts in conjunction with his
14 counsel to secure dismissal of the Order and underlying Arb. Award to Plaintiff’s detriment.³⁷

15 15. Farkas, as the purported agent, testified clearly that he did not believe he had
16 authority to enter into the Settlement Agreement (or that he was signing a Settlement Agreement
17 on behalf of Plaintiff), and that Bloom understood that.³⁸

18 16. Under the operating agreement for Plaintiff dated October 21, 2013, Farkas was
19 designated the “Administrative Member” with authority to bind Plaintiff, but only “after
20 consultation with, and upon the consent of, all Members [to wit: Flatto for TGC Investor].”³⁹
21 Farkas testified that once Farkas left his employment with Defendants, he effectively stepped out

22 ³² Exhibit 11, PLTF_097.

23 ³³ Exhibit 25.

24 ³⁴ See Exhibit 38, PLTF_405 (Nahabedian’s email).

25 ³⁵ Exhibits FF and J.

26 ³⁶ 3/3 Trans., 71:14-72:3, 138:19-21, 140:7-141:15, 215:15-18, 216:2-4, 18-21, 217:3-13.

27 ³⁷ See, e.g., Exhibit 28.

28 ³⁸ Exhibit FF, ¶ 17, 3/3 Trans., 118:19-119:2, 128:18-131:4, 154:13-15.

³⁹ Exhibit 20, §§ 3.4(a), 4.1(c).

1 of a management role with Plaintiff and left everything to Flatto and counsel, whether or not that
2 was reflected in a formal amendment to Plaintiff's operating agreement.⁴⁰ Further, whether
3 Defendants could rely on the signature of Farkas alone to bind Plaintiff was specifically
4 addressed in multiple communications to Defendants. First, there was the April 18, 2017
5 email,⁴¹ then the July 13, 2017 letter⁴² (attaching the April 18, 2017 email and further stating
6 "Farkas is not the manager." "Farkas does not have the authority to bind [Plaintiff]"), and then
7 there was the Arb. Award's conclusion that a document executed by Farkas was irrelevant
8 without the consent of Flatto as Farkas' signature alone did not bind Plaintiff.⁴³

9 17. Following the entry of the Arb. Award, on September 17, 2020, Farkas delivered
10 his written consent to an amended operating agreement governing Plaintiff, which amendment
11 provides that TGC 100 managed by Flatto had "full, exclusive, and complete discretion, power
12 and authority" . . . "to manage, control, administer and operate the business and affairs of the
13 [Plaintiff]."⁴⁴ Pursuant to the amendment, Farkas was expressly prevented from taking *any*
14 action on behalf of Plaintiff, and Flatto had exclusive authority to bind Plaintiff. The purpose of
15 the amendment was to alleviate pressure on Farkas as a result of his feeling uncomfortable being
16 adverse to his brother-in-law, Bloom.⁴⁵

17 18. The circumstances surrounding how the Settlement Agreement was prepared and
18 executed are also relevant. The Settlement Agreement was drafted by Bloom⁴⁶ and executed by
19 Bloom, as manager of Defendants.⁴⁷ It is dated January 6, 2021 but was executed by Farkas on
20 January 7, 2021 at the same time that Farkas executed other documents sent by Bloom to a UPS

21
22 ⁴⁰ 3/3 Trans., 108:5-17.

23 ⁴¹ Exhibit 21.

24 ⁴² Exhibit 22, PLTF_, 179, 190.

25 ⁴³ Exhibit 2, PLTF_007

26 ⁴⁴ Exhibit 23.

27 ⁴⁵ 3/3 Trans., 67:16-68:23; 131:7-13.

28 ⁴⁶ Id., 193:25-194:2.

⁴⁷ Exhibit 13, PLTF_108.

1 store for Farkas' signing and return.⁴⁸ Farkas did not know he was signing a Settlement
2 Agreement when he signed it,⁴⁹ and there is no evidence he intended to bind Plaintiff to anything
3 when he executed the documents. Notwithstanding the express terms of the Settlement
4 Agreement providing that the signatories were duly authorized,⁵⁰ Farkas did not read that
5 provision (or any provision)⁵¹ and testified he never otherwise represented to Bloom or anyone
6 else that he had authority to enter into the Settlement Agreement on behalf of Plaintiff.⁵² Farkas
7 testified he did not negotiate the terms of the Settlement Agreement with Bloom, which is
8 corroborated by the lack of evidence of any back and forth on terms prior to the agreement being
9 finalized by Bloom.⁵³ There is no evidence Bloom provided Farkas a copy of the Settlement
10 Agreement for Farkas, Flatto or counsel's review prior to sending it to the UPS store with other
11 documents to be signed.⁵⁴ Farkas testified he believed that the documents he signed at the UPS
12 store related to resolution of a threatened claim against him by Defendants in connection with his
13 prior employment and included the retention of personal counsel for him.⁵⁵ This testimony was
14 corroborated by Nahabedian's January 14, 2021 correspondence referencing a threat of adverse
15 action against Farkas from Defendants⁵⁶ and the fact that a form of Release between Farkas and
16 Defendants was executed at the same time as the Settlement Agreement.⁵⁷

17 19. Flatto was clear in his testimony at the hearing that he understood his consent was
18 required for all decisions made by Plaintiff and he did not hold Farkas out as having authority to
19 bind Plaintiff without his consent,⁵⁸ particularly after Plaintiff made its May 2, 2017 demand for

20 ⁴⁸ See, e.g., 3/3 Trans., 137:16-24.

21 ⁴⁹ Exhibit FF, ¶ 16. See 3/3 Trans., 100:15-101-4, 102:14-20, 104:2-5, 115:11-21, 119:9-15, 137:16-24, 156:13-18.

22 ⁵⁰ Exhibit 13, PLTF_107, § 14.

23 ⁵¹ 3/3 Trans., 103:22, 118:3-9, 119:4-7.

24 ⁵² *Id.*, 136:16-19.

25 ⁵³ 3/3 Trans., 137:1-8, 13-15.

26 ⁵⁴ *Id.*, 211:17-25; 213:15-23.

27 ⁵⁵ See 3/3 Trans., 100:15-101-4, 102:14-20, 104:2-5, 115:11-21, 119:9-15, 137: 16-24, 143:21-25, 156:13-18.

28 ⁵⁶ Exhibit 11, PLTF_097.

⁵⁷ Exhibit 28, PLTF_247-253; *see also* Exhibit 16 (text from Bloom threatening adverse action).

⁵⁸ 3/3 Trans., 35:23-36:20, 69:1-70:5.

1 books and records. This is corroborated by the 2017 communications to Defendants, his
2 declaration in the arbitration, the Arb. Award, and the September 2020 amendment to Plaintiff's
3 operating agreement.⁵⁹ Given the communications from Plaintiff in 2017, the Arb. Award, and
4 no communications to the contrary subsequent to the Arb. Award from Flatto to Defendants, the
5 Court concludes it was unreasonable for Defendants to believe any agreement entered into with
6 Plaintiff without Flatto's consent would be valid and enforceable.

7 20. The circumstances surrounding the execution and attempts to enforce the
8 Settlement Agreement, known to Defendants, further demonstrate that Farkas did not have
9 apparent authority to bind Plaintiff to the terms of the agreement, which circumstances were
10 actively concealed from Plaintiff and its counsel of record until the Motion to Compel was
11 granted and records were produced by Nahabedian. Bloom did not act in good faith in his
12 dealings with Plaintiff, nor did he give heed to any of the opposing restrictions brought to his
13 notice.

14 It was revealed from Nahabedian's records:

- 15 • On January 4, 2021, Bloom contacted Nahabedian, Bloom's personal counsel on
16 another matter,⁶⁰ via phone to discuss Nahabedian representing Plaintiff.⁶¹ Within
17 minutes of hanging up the phone, Nahabedian emailed Bloom an attorney retainer
18 agreement for Farkas to execute *on behalf of Plaintiff* for Nahabedian to
19 represent Plaintiff in this case.⁶² Farkas was never advised Nahabedian was being
20 hired to be Plaintiff's lawyer and he thought Nahabedian was going to be his
21 personal counsel.⁶³ Farkas did not understand that Nahabedian was Bloom's

22 ⁵⁹ Exhibits 2, 21-23, E, ¶ 5; 3/3 Trans. 59:23-60:20.

23 ⁶⁰ See *Nevada Speedway v. Bloom, et al.*, Case No. A-20-809882-B of the Eighth Jud. Dist. Court (showing
24 Nahabedian represented Bloom in the relevant January 2021 time period), 3/3 Trans., 13-15; 3/10 Trans., 45:11-19.
25 Nahabedian was also former counsel for Defendants. 3/10 Trans., 20-22. Further, MGA is Nahabedian's personal
counsel. 3/10 Trans., 45:23-46:1.

26 ⁶¹ Exhibit 30; 3/10 Trans., 48:6-21.

27 ⁶² Exhibit 28, PLTF_240-244.

28 ⁶³ 3/3 Trans., 149:25-150:7.

1 personal counsel.⁶⁴ Bloom was even planning to advance the retainer to
2 Nahabedian (although Nahabedian did not charge one notwithstanding his
3 attorney retainer agreement provides its payment is a condition of his
4 employment).⁶⁵

- 5 • On January 7, 2021, at 1:58 pm, Bloom emailed the following documents
6 (collectively, the “Bloom Documents”) to a UPS store near Farkas’ home: 1) the
7 Settlement Agreement, 2) the Nahabedian attorney retainer agreement, 3) a letter,
8 dated January 6, 2021, directed to Plaintiff’s counsel, GTG, with Farkas
9 purporting to terminate them,⁶⁶ and 4) a Release, Hold Harmless and
10 Indemnification Agreement (“Release”). Together with the attached Bloom
11 Documents, Bloom emailed directions to the UPS store that Farkas would be in,
12 they should print one copy of each of the four documents, and once Farkas signs
13 them, they should scan the signed documents, email than back to Bloom, and mail
14 the hard copies to Bloom.⁶⁷ The Bloom Documents were **not** emailed or otherwise
15 delivered to Farkas (let alone Flatto or GTG) at any time, before or
16 after the UPS store was emailed the Bloom Documents, despite that Bloom knew
17 Farkas’ email address.⁶⁸
- 18 • On January 7, 2021, at 2:40 pm (less than 45 minutes after they were first sent by
19 Bloom), the UPS Store emailed Bloom a copy of the scanned, signed Bloom
20 Documents.⁶⁹ On January 7, 2021, at 2:48 pm, Bloom forwarded the executed
21 Bloom Documents to MGA attorneys Gutierrez and Jason Maier, Esq. (“Maier”),
22 and Nahabedian via email with an exclamation “Here you go!” and follow-up

23 ⁶⁴ 3/3 Trans., 150:25-151:1; 3/10 Trans., 48:6-49:2.

24 ⁶⁵ 3/10 Trans., 35:5-16

25 ⁶⁶ The letter was not written by Farkas, and he did not review or approve of its contents. 3/3 Trans., 148:25-149:24.

26 ⁶⁷ Exhibit 28, PLTF_245.

27 ⁶⁸ See Exhibit 17, PLTF_123.

28 ⁶⁹ Exhibit 28, PLTF_245-261.

1 instructions to “get the Substitution of Attorney and Stip to Dismiss filed *for*
2 *[Plaintiff]* and put this to bed in the next day or two...”⁷⁰ Bloom was directing
3 action on behalf of both Defendants and Plaintiff to effectuate dismissal of the
4 case, despite that he and Defendants were adverse to Plaintiff.

- 5 • On January 8, 2021, Nahabedian informed Bloom and Gutierrez that he needed a
6 substitution of counsel to be executed by Farkas and GTG so that he could
7 effectuate the dismissal, and Bloom explained that getting Farkas to “sign stuff is
8 a pain in the ass.”⁷¹ The next day, Bloom explained to Nahabedian and Gutierrez
9 (together with other MGA attorneys Maier and Danielle Barraza) that his
10 intention was to “put in front of [Farkas]” further documents “for a second set of
11 signatures.” Bloom followed, “I’ll have [Farkas] sign everything tomorrow.”⁷²
- 12 • Nahabedian started to question Farkas’ authority to bind Plaintiff, but only to
13 Bloom and MGA.⁷³ Notwithstanding that Nahabedian had still not had any email,
14 text or one-on-one communication with Farkas in order to confirm his authority,⁷⁴
15 on January 14, 2021, Nahabedian sent correspondence to GTG as counsel for
16 Plaintiff,⁷⁵ representing that he was hired to replace GTG. This correspondence
17 was the first time it was disclosed to Plaintiff that there was an executed settlement
18 agreement,⁷⁶ although the agreement was not attached to Nahabedian’s
19 correspondence. Farkas did not participate in the drafting of Nahabedian’s
20 January 14, 2021 correspondence, and he did not approve it before it was sent.⁷⁷
21 The correspondence was drafted by Maier (Defendants and Bloom’s counsel in

22 ⁷⁰ *Id.* at PLTF_245 (emphasis added).

23 ⁷¹ *Id.* at PLTF_266.

24 ⁷² *Id.* at PLTF_278.

25 ⁷³ *Id.* at PLTF_281, 284, 288.

26 ⁷⁴ Exhibits 28-30; 3/10 Trans., 85:1-9.

27 ⁷⁵ Exhibit 11.

28 ⁷⁶ *Id.* at PLTF-097.

⁷⁷ 3/3 Trans., 144:22-148:24.

1 this case), revised by Nahabedian (Bloom's counsel in another matter purporting
2 to be acting on behalf of Plaintiff), and then approved by Bloom and Gutierrez
3 (also Defendants and Bloom's counsel) before it was sent.⁷⁸

4 21. Farkas and Flatto were conspicuously absent from any communications with
5 Nahabedian for the purpose of effectuating dismissal of the case pursuant to the Settlement
6 Agreement's terms or confirming authority to bind Plaintiff. Confronted at the hearing with the
7 fact that Nahabedian did not communicate with Plaintiff's representative, but communicated
8 with Plaintiff's adversaries, MGA and Bloom, relating to his purported representation of
9 Plaintiff, Nahabedian testified that he took direction from Bloom because Bloom was Farkas'
10 brother-in-law and his "conduit."⁷⁹ This exemplifies the lack of apparent authority from
11 Plaintiff. At all relevant times, Bloom and his companies, Defendants, were adverse to Plaintiff
12 with pending contempt proceedings against them, and under no circumstances should he have
13 been directing Plaintiff's counsel without any member of Plaintiff's participation.

14 22. Although there is dispute between Farkas and Bloom regarding when Bloom was
15 specifically informed that Farkas was removed from having *any* management interest in
16 Plaintiff in September 2020,⁸⁰ Bloom and Nahabedian both knew that Farkas had officially
17 resigned his management position in September 2020 by at least the time the Motion to Enforce
18 was filed.⁸¹ Despite learning of the restriction on Farkas' authority, Bloom and his counsel⁸²
19 were unfazed and moved forward on their enforcement efforts.

20 23. Bloom's refusal to recognize inconvenient limitations on Farkas' authority was
21 shown to be pervasive and reckless. Given the arbitrators' expressly stated determination that

22 ⁷⁸ PLTF_311, 316-317, 318, 323, 328-332.

23 ⁷⁹ 3/10 Trans., 51:17-20.

24 ⁸⁰ Exhibit FF, ¶¶ 8, 17, 3/3 Trans., 136:12-21, 198:2-21, 212:21-22; Exhibit 15, ¶¶ 19-21. At the Hearing, Bloom
25 testified that the January 9-11 time subject of his sworn declaration submitted to the Court in support of the Reply in
26 support of the Motion to Enforce was qualified by "on or about" because the dates were not certain; however, the
27 timing of January 9-11 are actually consistent with the timing that Nahabedian started inquiring about Farkas'
28 authority. Exhibit 28, PLTF_281.

⁸¹ Exhibit 15, ¶¶ 19-21; Exhibit 28, PLTF_366.

⁸² Maier is the only declarant in the Motion to Enforce.

1 Flatto's consent was required to bind Plaintiff (before the September 2020 amendment was
2 entered), the Court finds that no reasonably intelligent person with knowledge of that Arb.
3 Award would once again attempt to enforce an agreement without Flatto's consent. In the
4 hearing, Bloom testified he did not heed the Arb. Award because the evidence relied upon by the
5 arbitrators in the arbitration hearing, to wit: a declaration provided by Farkas, was false.⁸³
6 Farkas testified unequivocally in rebuttal at the hearing that the contents of the declaration
7 submitted to the arbitrators was reviewed by him, approved, and the contents were truthful.⁸⁴
8 Farkas' testimony, as well as the arbitrator's decision, is corroborated by the other documents in
9 evidence, and the Court finds there is no support for Bloom's allegation of perjury.⁸⁵

10 24. Not only did Bloom disregard the Arb. Award, but also the basis for the Arb.
11 Award, including the April 18, 2017 email to Defendants providing notice that Farkas cannot
12 bind Plaintiff without Flatto's consent in addition to the declarations of Flatto and Farkas.⁸⁶
13 Further, on July 13, 2017, Plaintiff also sent written correspondence to MGA⁸⁷ representing
14 Farkas is "not the manager" of Plaintiff and that "Farkas does not have the authority to bind
15 [Plaintiff]."⁸⁸ Bloom did not heed any of the notices of Farkas' restricted authority to bind
16 Plaintiff.

17 25. In the Motion to Enforce, Maier testified⁸⁹ that Farkas had authority based on
18 Plaintiff's engagement letter with GTG, which Farkas executed as a member of Plaintiff "and

19 ⁸³ 3/3 Trans., 201:1-6; *see also* 200:10-20 (disregarding notices of restricted authority of Farkas), 203:2-11 (limiting
20 the holding to the authority to execute the redemption agreement without limitation of a settlement agreement).

21 ⁸⁴ 3/10 Trans., 87:25-88:14.

22 ⁸⁵ *See, e.g.*, Exhibit 21-22 (the 2017 communications to Defendants) and Exhibit A, FIRST0031-32 (the redemption
23 agreement including Farkas' signature as "VP Finance"- the title he had with Defendants, and no reference to
24 Plaintiff).

25 ⁸⁶ Exhibit 2, PLTF_007.

26 ⁸⁷ At the Hearing, Defendants argued that no notice was effective without being sent certified mail pursuant to the
27 Subscription Agreement. However, MGA has been counsel for Defendants even since before the subject disputes
28 arose in May 2017, and MGA was the registered agent for Defendants in July 2017 when the letter was sent.
Exhibit 26, PLTF_218.; Exhibit 27, PLTF_235.

⁸⁸ Exhibit 22.

⁸⁹ Motion to Enforce, 3:1-6.

1 also interlineated a restriction of no litigation against First 100.” Flatto executed the engagement
2 letter along with Farkas as a “member,”⁹⁰ and the interlineation on the engagement letter was
3 made by Flatto’s lawyer and not Farkas, and the interlineation did not restrict litigation, only
4 served to place a cap on fees except to the extent the scope expanded to include litigation.⁹¹

5 26. In addition, Maier testified in support of the Motion to Enforce⁹² that Plaintiff’s
6 operating agreement provided the apparent authority for Farkas to bind Plaintiff to the terms of
7 the Settlement Agreement. Section 3.4 of the operating agreement, which was in effect prior to
8 September 2020, provides that the Administrative Member (Farkas) could not act without first
9 obtaining the consent of the other members (Flatto).⁹³ At Section 4.4, it provides that persons
10 dealing with Plaintiff are entitled to rely conclusively upon the power and authority of the
11 Administrative Member (Farkas until September 2020).⁹⁴ However, by the time of the Motion
12 to Enforce, Defendants and Bloom had received notice of the amendment executed in
13 September 2020 that changed the Administrative Member to Flatto and Flatto was the only
14 person with authority to bind Plaintiff subsequent to that date.⁹⁵ In addition, the entry of the
15 Arb. Award and 2017 communications providing notice of a restriction on Farkas’ authority
16 post-dated the operating agreement, negating Defendants’ ability to conclusively rely upon
17 Farkas’ signature as binding authority under Section 4.4.

18 27. Finally, there was a lack of good faith in Bloom’s dealings with his brother-in-law
19 in order to obtain the signed Bloom Documents with haste and in intentional disregard of the
20 restrictions set forth in the Arb. Award, the April 13, 2017 email and July 13, 2017 letter. At a
21 minimum, Bloom was placed on notice that Plaintiff would dispute any document signed by
22 Farkas without Flatto’s knowledge and consent. Further, given that the Bloom Documents were

23 ⁹⁰ Exhibit 28, PLTF_299-300.

24 ⁹¹ 3/3 Trans., 33:1-19; Exhibit 28, PLTF_298.

25 ⁹² Motion to Enforce, 3:6-11.

26 ⁹³ Exhibit 20, PLTF_159.

27 ⁹⁴ *Id.* at Exhibit 20, PLTF_162.

28 ⁹⁵ *See* fn. 81 above.

1 sent by Bloom to the UPS store for execution and they were returned by the UPS Store in less
2 than an hour signed by Farkas, it was not reasonable for Bloom to believe that that was
3 sufficient time for Farkas to review them, understand what he was signing, somehow
4 communicate the matters to Flatto, receive the benefit of counsel regarding the terms, and
5 receive Flatto's consent.

6 28. Under all the circumstances, the Court finds it was unreasonable for Bloom to
7 ignore the notices of the restrictions that Farkas did not have authority to bind Plaintiff without
8 Flatto's consent, and the Court thus concludes that there was a lack of apparent authority for
9 Farkas to bind Plaintiff to the Settlement Agreement.

10 29. The Settlement Agreement expressly provides that, in exchange for dismissal, if
11 Defendants sell the Ngan Judgment, Defendants will pay Plaintiff \$1,000,000.00, plus 6%
12 interest.⁹⁶ There is no evidence of any actual sale, or even ability to sell⁹⁷ the Ngan Judgment
13 for a sufficient sum to pay Plaintiff \$1,000,000.00 plus interest. Further, Defendants' promise
14 for payment in the future upon a sale of the Ngan Judgment is particularly speculative upon the
15 concession that the Ngan Judgment has not resulted in any collections since its entry in 2017,
16 despite diligent collection efforts from MGA and other collection counsel.⁹⁸

17 30. Further, per Defendants' operating agreements, Plaintiff is already entitled to *pro*
18 *rata* distributions with the other members of the net proceeds from any sale.⁹⁹ Given the "if"
19 qualifier of payment, and no sale amount that could be used to calculate whether Plaintiff would
20 ostensibly receive more or less with the Settlement Agreement than with a distribution as a
21 member, the Settlement Agreement does not support a finding of consideration beyond what
22 Plaintiff could ostensibly already be entitled to recover from Defendants following a sale of the
23 Ngan Judgment if it were to ever occur.

24 ⁹⁶ Exhibit 13, PLTF_106.

25 ⁹⁷ Under Defendants' operating agreements, the sale of the only remaining asset of Defendants would require
26 approval of Defendants' members. Exhibits 7 and 8, §6.1(B)(1).

27 ⁹⁸ 3/3 Trans., 217:18-24. 218:9-15.

28 ⁹⁹ Exhibits 7 and 8, Article V.

1 31. Additionally, the Release was not disclosed until after the hearing on the Motion
2 to Compel. After its discovery, Defendants and Bloom were conspicuously silent on the
3 Release's application, which under the plain terms would eliminate any consideration provided
4 Plaintiff under the Settlement Agreement, by virtue of the express, broad release of the parties
5 to the Release (Farkas and Defendants) as well as their representatives and affiliates from any
6 and all claims, promises, damages or liabilities of every kind and nature whatsoever from the
7 beginning of time until the January 6, 2021 effective date of the Release, covering any future
8 liability under the Settlement Agreement also dated January 6, 2021.

9 32. “A meeting of the minds exists when the parties have agreed upon the contract's
10 essential terms.” *Certified Fire Prot. Inc. v. Precision Constr.*, 128 Nev. 371, 378, 283 P.3d 250,
11 255 (2012).

12 Neither Plaintiff, Flatto, nor Plaintiff's known counsel, GTG, saw or reviewed the
13 Settlement Agreement before it was executed by Farkas.¹⁰⁰ Farkas had not even reviewed it.
14 The only time that Farkas had to review the Settlement Agreement's terms was during those
15 minutes he was at the UPS store and the Settlement Agreement was provided with the other
16 documents for his signature. Even after the Settlement Agreement was executed, Bloom, MGA
17 and Nahabedian did not forward the Settlement Agreement to Farkas, Flatto or GTG. The first
18 time Plaintiff received a copy of the Settlement Agreement was when it was attached to the
19 Motion to Enforce.

20 33. Conceding that Bloom never negotiated the Settlement Agreement with Plaintiff,
21 Bloom's testimony relating to a meeting of the minds on the terms was that Bloom had
22 discussions with Flatto in 2017 and was in receipt of a communication from Flatto to Farkas
23 dated January 23, 2017 (before the May 2, 2017 initial demand for Defendants' books and
24 records), which Farkas forwarded to Bloom on April 27, 2017 asking for a return of his
25 investment.¹⁰¹ The Court finds this email and any related 2017 discussions with Flatto cannot be

26 ¹⁰⁰ 3/3 Trans., 72:15- 73:5.

27 ¹⁰¹ 3/3 Trans., 203:16-25; Exhibit C, FIRST0188.

1 reasonably construed as Flatto's agreement to the terms of the Settlement Agreement, as there
2 had been the passage of over three years' time, and in that time, Plaintiff was forced to file the
3 arbitration and obtain the Order for the production of Defendants' books and records, and the
4 Settlement Agreement provided for immediate dismissal of the fruits of that litigation, with
5 prejudice, a term not subject of Flatto's April 2017 email. Further, the Settlement Agreement
6 does not provide for the payment of funds in exchange for the dismissal of the Order, Arb.
7 Award and other pending matters. Rather, it provides for the payment of funds if they are ever
8 received from a sale of the Ngan Judgment, a sale that is speculative as there is no evidence of
9 any actual sale agreement or proof of funds. The Court finds there was insufficient evidence to
10 establish a meeting of the minds on the Settlement Agreement's essential terms.

11 34. The Motion to Enforce was filed for the express purpose of avoiding the
12 consequence of Defendants and Bloom's contempt of the Order. Given the timing, the Court
13 gives special care to determine if the equities support an order for specific performance. In
14 addition to those inequities discussed above (lack of consideration, claim and issue preclusion,
15 concealment of material facts and bad faith), the Court also finds that there are indicia of duress
16 and fraud here that would prevent specific performance.

17 35. In addition to being the manager of Defendants, Farkas' prior employer, Bloom is
18 within Farkas' family. Even though the parties stood in an adversarial relationship *vis a vis* this
19 case, Bloom and Farkas continued to have their familial connection. Under the circumstances, at
20 a minimum, Bloom had a duty to act with the utmost good faith when dealing with Farkas.
21 Even though the parties stood in an adversarial relationship here, the circumstances surrounding
22 Farkas' execution of the Settlement Agreement demonstrate that the documents sent to the UPS
23 Store for Farkas' execution would not have occurred but-for Bloom's familial relationship with
24 Farkas. As Farkas testified, "[Bloom] is my brother-in-law. He's family. I didn't think he
25 would-he would try to do this..."¹⁰² "I trust him as-a brother in law, and as somebody who was
26 representing to me that he was just trying to help in this part of what was going on....I believe

27 ¹⁰² 3/3 Trans., 116:1-21, 119:9-16.
28

1 that he took advantage of a nuance in the law....I think the way Jay treated me was wrong and
2 manipulative. And I think he knew exactly what he was doing.”¹⁰³

3 36. Farkas was self-effacing throughout his testimony at the Hearing, explaining that it
4 was his fault for trusting Bloom and not reading the documents before signing them.¹⁰⁴ If this
5 was a typical arms’ length transaction with no special duties owed between the persons signing
6 the subject agreement, Farkas’ admitted failure to even review the documents before signing them
7 could be a real issue (assuming he had authority in the first place). However, here, the
8 Court finds that there was a special confidence as a result of a familial relationship that resulted in
9 Farkas’ blind trust in Bloom and Bloom’s representations to him about the Bloom Documents’
10 contents.¹⁰⁵

11 37. Farkas was threatened by Bloom with civil action by Defendants and/or their
12 members if he did not sign the Settlement Agreement and other documents provided to him by
13 Bloom, his family member.¹⁰⁶ Farkas felt that he had no choice but to sign any document that
14 Bloom put in front of him. Farkas involuntarily accepted the Bloom Documents and executed
15 them without diligence because he believed otherwise he would suffer adverse action he could
16 not afford to address—a belief that is completely subjective. Where Defendants were only able
17 to procure Farkas’ signature through the abuse of special confidences, the threat of adverse
18 action and concealment of the true nature and substance of the Bloom Documents being signed,
19 enforcement of the Settlement Agreement against the innocent Plaintiff would be inequitable.

20 38. By its OSC, Plaintiff seeks an order compelling Defendants and their principal,
21 Bloom, to comply with the Order, and to require them to pay the fees and costs incurred in the
22 enforcement of the Order as necessary to redress the non-compliance. This requested relief is
23 authorized pursuant to NRS Chapter 22 (Contempts). *See* NRS 22.010(3) (disobedience or
24 resistance to any lawful writ, order, rule or process issued by the court constitutes contempt) and

25 ¹⁰³ *Id.*, 154:16-155:23, 156:13-18.

26 ¹⁰⁴ *See, e.g.*, 3/3 Trans., 101:7-9, 141:20-25.

27 ¹⁰⁵ *Id.* at 102:17-20.

28 ¹⁰⁶ 3/3 Trans., 100:19-101:6, 116:15-21, 117:7-8, 119:17-18, 132:3-22, 134:18-21.

1 NRS 22.100-110 (penalties for contempt). The Court is addressing and treating the contempt
2 proceedings as civil contempt proceedings.

3 39. The Order required Defendants to produce “all the requested documents and
4 information available from both companies to Plaintiff for inspection and copying, as set forth in
5 the [Arb. Award] and Exhibit 13 to Claimant’s Appendix to Claimant’s Arbitration Brief.”¹⁰⁷
6 “Exhibit 13 to Claimant’s Appendix to Claimant’s Arbitration Brief”¹⁰⁸ provides the following
7 list of documents to be produced by each of the Defendants:

- 8 1) The Company’s company books, inclusive of any and all
9 agreements relating to the Company’s governance (Company operating
10 agreements, amendments, consents and resolutions)
- 11 2) Financial Statements, inclusive of balance sheets and profit & loss
12 statements
- 13 3) General ledger and back up, inclusive of invoices
- 14 4) Documents sufficient to show the Company’s assets and their
15 location
- 16 5) Documents relating to value of the Company and/or the
17 Company’s assets
- 18 6) Documents sufficient to show the Company’s members and their
19 status, inclusive of any redeemed members
- 20 7) Tax returns for the Company
- 21 8) Documents sufficient to show the accounts payable incurred by the
22 Company, paid by the Company, and remaining due from the Company
- 23 9) Documents sufficient to show payments made to the Company
24 managers, members and/or affiliates of any managers or members
- 25 10) Company insurance policies
- 26 11) Documents sufficient to show the status of any Company lawsuits
- 27 12) Documents sufficient to show the use of the Investors’ funds (and
28 any other members’ investment) with the Company

40. It is undisputed that Defendants have not produced to Plaintiff one record or
document within this list since entry of the Order.¹⁰⁹

41. The evidence shows that MGA has custody of certain books and records for
Defendants, and no excuse was provided for the failure of counsel to deliver what is in their
custody to Plaintiff in compliance with the Order.¹¹⁰ Bloom denied having any documents, and

¹⁰⁷ Exhibit 4, p. 3.

¹⁰⁸ Exhibit 6.

¹⁰⁹ 3/3 Trans., 219:4-9.

¹¹⁰ See Exhibit 32; 3/10 Trans., 17:2-18:20.

1 said they are all in the custody of Farkas and/or Defendants' former controller, Henricksen (the
2 "Controller").¹¹¹

3 42. Farkas denies taking any books and records of Defendants with him when he left
4 his employment with Defendants (indeed, if he had taken books and records with him, that
5 would have eliminated the need for Plaintiff to request the production of Defendants' books and
6 records in May 2017).¹¹² There is no record of any request from Defendants to produce
7 documents subsequent to May 2, 2017 or any evidence that Farkas was properly designated a
8 custodian of Defendants' records. To the contrary, Bloom is the only person listed in the
9 Operating Agreement or the records of the Secretary of State as having the managerial
10 responsibilities as well as the duties of the registered agent.¹¹³

11 43. Moreover, the failure to produce even one record demonstrates that the cost of
12 production is not a credible excuse for Defendants' disobedience of the Order. Relatedly, lack of
13 funds is no defense to Defendants' performance where there is no evidence of Defendants'
14 compliance with their own governing documents for the purpose of raising funds to meet the
15 Order obligations. As set forth at Section 4.2 of the Defendants' respective Operating
16 Agreements:¹¹⁴

17 If necessary and appropriate to enable the Company to meet its costs,
18 expenses, obligations, and liabilities, and if no lending source is available,
19 then the Manager shall notify each Class A Member ("Capital Call") of
20 the need for any additional capital contributions, and such capital demand
21 shall be made on each Class A Member in proportion to its Class A
22 Membership Interest....

23 Defendants are not incapable of abiding by the Order; Bloom merely determined to do nothing to
24 comply with the Order.¹¹⁵ Bloom's affiliated SJC is the 45.625% Class A Member of First 100.¹¹⁶

25 ¹¹¹ 3/10 Trans., 14:9-18.

26 ¹¹² 3/3 Trans., 125:9-21, 126:11-25; 3/10 Trans., 87:10-24.

27 ¹¹³ Exhibits 26 and 27.

28 ¹¹⁴ Exhibits 7 and Exhibit 8, p. 8.

¹¹⁵ 3/3 Trans., 74:15-20; 3/10 Trans., 7:13-19.

1 The 23.709% Class A Member of 1st 100, and Bloom's other affiliates, SJC 1, LLC and SJC 2,
2 LLC, have further Class A Member interests of 6.708% and 12.208% in 1st 100, respectively.¹¹⁷
3 Therefore, Bloom's affiliates have the lion's share of any capital call obligation for either entity
4 to meet their performance obligation.

5 44. There is no question here that Bloom had notice of the Order, and he even filed a
6 response to the OSC in conjunction with Defendants. Bloom is the only person appointed under
7 Defendants' operating agreements and with the Nevada Secretary of State to act as the Manager
8 of the companies.¹¹⁸ Throughout Bloom's testimony, he attempted to distance himself from this
9 manager role and its responsibilities to Defendants. However, Defendants are manager-managed,
10 and Bloom is expressly the only person with authority or power under the Defendants' operating
11 agreements to do any act that would be binding on Defendants, or incur any expenditures on
12 behalf Defendants.¹¹⁹ Bloom is not only the only Manager listed in the operating agreements and
13 with the Nevada Secretary of State; he is also the "Registered Agent" with the Nevada Secretary
14 of State.

15 45. In his Response to the OSC, Bloom argues he is absolutely immune from
16 contempt proceedings under NRS 86.371, which provides that no member or manager of a
17 Nevada LLC is individually liable for the debts or liabilities of the company. The subject
18 contempt is not to address the non-payment of the monetary award that is included in the Order;
19 it is solely for disobedience and/or resistance of a Court order requiring certain action solely
20 within Bloom's responsibilities under the Defendants' Operating Agreements and as designated
21 with the Nevada Secretary of State for each of the Defendants.

22 If any of the foregoing Findings of Fact would be more appropriately deemed to be
23 Conclusions of Law, they shall be so deemed.

24 ¹¹⁶ Exhibit 7, p. 28.

25 ¹¹⁷ Exhibit 8, p. 29.

26 ¹¹⁸ Exhibits 7-8, 26-27.

27 ¹¹⁹ Exhibits 7 and 8, Sects. 3.17, 6.1(A).

FROM the foregoing Findings of Fact, the Court makes the following:

CONCLUSIONS OF LAW

1. “A settlement agreement, which is a contract, is governed by principles of contract law.” *Mack v. Estate of Mack*, 125 Nev. 80, 95, 206 P.3d 98, 108 (2009) (internal citations omitted). “As such, a settlement agreement will not be an enforceable contract unless there is ‘an offer and acceptance, meeting of the minds, and consideration.’” *Id.*

Because requests to enforce settlement agreements seek “specific performance,” the actions are equitable in nature. *Park W. Companies, Inc. v. Amazon Constr. Corp.*, 473 P.3d 459 (Nev. 2020) (unpublished disposition) (citing *Calabi v. Gov’t Emps. Ins. Co.*, 728 A.2d 2016, 208 (Md. 1999), 81A C.J.S. *Specific Performance* § 2 (2015) (“The remedy of specific performance is equitable in nature” and therefore “governed by equitable principles”)). In addition to the elements of an enforceable contract being required, specific performance as a remedy under the subject contract is available only when: (1) the terms of the contract are definite and certain; (2) the remedy at law is inadequate; (3) the movant has tendered performance; and (4) the court is willing to order specific performance. *Mayfield v. Koroghli*, 124 Nev. 343, 351, 184 P.3d 362, 367 (2008) (citing *Serpa v. Darling*, 107 Nev. 299, 305, 810 P.2d 778, 782 (1991)).

2. Repudiation of a contract prior to performance by either party excuses any performance under the contract by either party. *See Kahle v. Kostiner*, 85 Nev. 355, 358, 455 P.2d 42, 44 (1969) (repudiation requires “a definite unequivocal and absolute intent not to perform” under the contract). Under the circumstances, the Court concludes that Plaintiff’s repudiation prior to any performance excused any further performance obligation under the Settlement Agreement by either party.

3. To bind Plaintiff in an enforceable settlement agreement, Farkas must have had Plaintiff’s actual or apparent authority. *Simmons Self-Storage v. Rib Roof, Inc.*, 130 Nev. 540, 549, 331 P.3d 850, 856 (2014) (citing *Dixon v. Thatcher*, 103 Nev., 414, 417, 742 P.2d 1029, 1031 (1987)).

4. “An agent acts with actual authority when, at the time of taking action that has

1 legal consequences for the principal, the agent reasonably believes, in accordance with the
2 principal's manifestations to the agent, that the principal wishes the agent so to act.” *Simmons*
3 *Self-Storage*, at 549, 331 P.3d at 856 (citing Restatement (Third) of Agency § 2.01 (2006)).

4 When examining whether actual authority exists, the courts are to focus on an agent's reasonable
5 belief. *Id.* (citing § 2.02 & cmt. e (“Whether an agent's belief is reasonable is determined from
6 the viewpoint of a reasonable person in the agent's situation under all of the circumstances of
7 which the agent has notice.”)).

8 5. Without any appreciation for all that he was signing at the UPS store, Farkas did
9 not consult with Flatto or counsel for Plaintiff regarding the Settlement Agreement.¹²⁰ Farkas’
10 belief he lacked consent to bind Plaintiff to the terms of the Settlement Agreement was
11 reasonable under the circumstances. In particular, at all times, actions taken on behalf of
12 Plaintiff required Flatto’s consent and the failure to obtain the consent of Flatto is conclusive
13 evidence that Farkas’ belief that he lacked authority to bind Plaintiff when he executed the
14 Settlement Agreement was reasonable. Accordingly, the Court concludes Farkas did not have
15 actual authority to bind Plaintiff under the Settlement Agreement.

16 6. An agent has apparent authority where the “principal holds his agent out as
17 possessing or permits him to exercise or to represent himself as possessing” and “there must also
18 be evidence of the principal's knowledge and acquiescence.” *Simmons Self-Storage v. Rib Roof,*
19 *Inc.*, 130 Nev. 540, 550, 331 P.3d 850, 857 (2014)(quoting *Ellis v. Nelson*, 68 Nev. 410, 418–19,
20 233 P.2d 1072, 1076 (1951)). Thus, “[a]pparent authority (when in excess of actual authority)
21 proceeds on the theory of equitable estoppel; it is in effect an estoppel against the [principal] to
22 deny agency when by his conduct he has clothed the agent with apparent authority to act.” *Ellis*
23 *v. Nelson*, 68 Nev. 410, 418–19, 233 P.2d 1072, 1076 (1951). Moreover, to be clothed with
24 apparent authority, there “must also be evidence of the principal's knowledge and acquiescence in
25 them.” *Id.* There is no authority “simply because the party claiming has acted upon his
26 conclusions.” *Id.* There can only be apparent authority, “where a person of ordinary prudence,
27 conversant with business usages and the nature of the particular business, acting in good faith.

28 ¹²⁰ 3/3 Trans., 72:19-23.

1 and giving heed not only to opposing inferences but also to all restrictions which are brought
2 to his notice, would reasonably rely.” *Id.* (emphasis added) (noting that where inferences against
3 the existence of apparent authority are as equally reasonable as those supporting it, a party may
4 not rely on apparent authority).

5 7. “[A] party claiming apparent authority of an agent as a basis for contract
6 formation must prove (1) that he subjectively believed that the agent had authority to act for the
7 principal and (2) that his subjective belief in the agent's authority was objectively reasonable.”
8 *Great Am. Ins. Co. v. Gen. Builders, Inc.*, 113 Nev. 346, 352, 934 P.2d 257, 261 (1997).
9 Reasonable reliance on the agent’s authority “is a necessary element.” *Id.*; *Forrest Tr. v. Fid.*
10 *Title Agency of Nevada, Inc.*, 281 P.3d 1173 (Nev. 2009). In determining reasonableness, “the
11 party who claims reliance must not have closed his eyes to warnings or inconsistent
12 circumstances.” *Great Am. Ins. Co.*, 113 Nev. at 352, 934 P.2d at 261, (citing *Tsouras v.*
13 *Southwest Plumbing and Heating*, 94 Nev. 748, 751, 587 P.2d 1321, 1322 (1978)) (emphasis
14 added). As the Nevada Supreme Court has explained, “the reasonable reliance requirement
15 [includes] the performance of due diligence” to learn the veracity of representations of
16 authority.” *In re Cay Clubs*, 130 Nev. 920, 932–33, 340 P.3d 563, 571–72 (2014) (emphasis
17 added).

18 8. The Settlement Agreement is not the first time that Bloom has directed Farkas to
19 sign a document and then taken the position that Farkas’ signature bound Plaintiff to its detriment.
20 The question of Farkas’ authority to bind Plaintiff without Flatto’s consent was raised in
21 the arbitration, and it was resolved **against Defendants** as part of the Arb. Award. Thus, even
22 before Plaintiff amended its operating agreement in September 2020 to remove Farkas, it was
23 clearly established by the arbitrators that Farkas had no authority to bind Plaintiff without the
24 consent of Flatto.

25 9. *Res judicata* precludes Defendants’ reiterated argument that Farkas’ signature on
26 a document is sufficient to bind Plaintiff to its detriment. *Univ. of Nev. v. Tarkanian*, 110 Nev.
27 581, 598, 879 P.2d 1180, 1191 (1994) (defining *res judicata* as encompassing both issue and
28 claim preclusion doctrines). The issue of Farkas’ authority to bind Plaintiff without Flatto’s

1 consent- the same issue at bar--was previously raised and decided in the Arb. Award, confirmed
2 by the Order. As the Order is a final judgment that was appealable, the finality of the
3 determination is concrete and immutable here. *See Kirsch v. Traver*, 134 Nev. 163, 166, 414
4 P.3d 818, 821 (2018) (defining “final judgment” for the purpose of analyzing *res judicata* as
5 being procedurally definite without any reservation for future determination following the parties
6 having an opportunity to be heard, a reasoned opinion supporting the determination, and that the
7 determination having been subject to appeal) (citing *Univ. of Nev. v. Tarkanian*, 110 Nev. at 598,
8 879 P.2d at 1191, *holding modified on other grounds by Exec. Mgmt., Ltd. v. Ticor Title Ins.*
9 *Co.*, 114 Nev. 823, 963 P.2d 465 (1998)).

10 10. As a matter of law, as established by the Order confirming the Arb. Award,
11 Farkas did not have apparent authority to bind Plaintiff absent Flatto’s consent, and here, the
12 failure to obtain Flatto’s consent to the Settlement Agreement is undisputed. On this basis
13 alone, Farkas did not have actual or apparent authority to bind Plaintiff under the Settlement
14 Agreement.

15 11. The Court therefore concludes there was no good faith basis for Bloom’s
16 intentional disregard of the Arb. Award and Order thereon and reliance by Bloom on Farkas’
17 signature on the Settlement Agreement was not reasonable.

18 12. “Consideration is the exchange of a promise or performance, bargained for by the
19 parties.” *Jones v. SunTrust Mortg., Inc.*, 128 Nev. 188, 191, 274 P.3d 762, 764 (2012).
20 In addition to consideration being an essential element of any contract, gross inadequacy of
21 consideration may be relevant to issues of capacity, fraud, mistake, misrepresentation, duress, or
22 undue influence in addition to being relevant to whether there is an essential element of a
23 contract. *Oh v. Wilson*, 112 Nev. 38, 41–42, 910 P.2d 276, 278–79 (1996) (*citing* Restatement
24 (Second) of Contracts § 79 cmt. c (1979)). Inadequacy of consideration is often said to be a
25 “badge of fraud,” justifying a denial of specific performance. *Id.*

26 13. The Court concludes that there is such inadequacy of consideration to Plaintiff in
27 exchange for dismissal of its hard-fought rights under the Order that it justifies denial of the
28 requested specific performance.

1 14. A special relationship arises in any situation where “kinship or professional,
2 business, or social relationships between the parties” results in one party gaining the confidence of
3 another and purporting to advise or act consistently with the other party’s interest. *Perry v.*
4 *Jordan*, 111 Nev. 943, 947, 900 P.2d 335, 337–338 (1995) (citations omitted). An equitable duty
5 is owed as a result of such a confidential relationship, which is akin to a fiduciary duty. *See*
6 *Executive Mgmt., Ltd. v. Ticor Title Ins. Co.*, 114 Nev. 823, 841, 963 P.2d 465, 477 (1998) (citing
7 *Long v. Towne*, 98 Nev. 11, 13, 639 P.2d 528, 529–30 (1982)). Constructive fraud is the breach
8 of that equitable duty, which the law declares fraudulent because of its tendency to deceive others
9 to violate confidence. *Id.*

10 15. In equity and good conscience, Bloom was bound to act in good faith and with
11 due regard to the interests of Farkas who was reposing his confidence in Bloom. *Perry*, 111 Nev.
12 at 946–47, 900 P.3d 337 (citing *Long*, 98 Nev. at 13, 639 P.2d at 529–30). Particularly in light
13 of the Arb. Award, Bloom had a duty to at least disclose to Farkas (as well as Flatto) his plan to
14 settle this case under the Settlement Agreement and have the Order, underlying Arb. Award and
15 pending OSC dismissed, with prejudice. Bloom should have emailed or otherwise provided a
16 copy of the documents to Farkas so Farkas could consult with Flatto and counsel. Not only did
17 Bloom conceal the true facts from Farkas, but he took active steps so that the true facts would
18 never have to be revealed until after the case was dismissed, inclusive of hiring Farkas separate
19 counsel to orchestrate dismissal in the shadows rather than send GTG the Settlement Agreement.

20 16. Duress is a valid basis to set aside a contract or avoid specific performance. *Kaur*
21 *v. Singh*, 136 Nev. Adv. Op. 77, 477 P.3d 358, 362 (2020); *Levy v. Levy*, 96 Nev. 902, 903–04,
22 620 P.2d 860, 861 (1980) (recognizing duress as a basis to set aside a settlement). “The coercion
23 or duress exception applies when “(1) . . . one side involuntarily accepted the terms of another;
24 (2) . . . circumstances permitted no other alternative; and (3) . . . circumstances were the result of
25 coercive acts of the opposite party.” *Nevada Ass’n Servs., Inc. v. Eighth Jud. Dist. Ct.*, 130 Nev.
26 949, 956, 338 P.3d 1250, 1255 (2014).

27 17. An improper threat can exist when a party is threatened with civil action,
28 especially when there are circumstances of emotional consequences. Restatement (Second) of

1 Contracts § 175, cmt. b (1981). “[A] party's manifestation of assent is induced by duress if the
2 duress substantially contributes to his decision to manifest his assent. *Id.*, cmt. c. “The test is
3 subjective and the question is, did the threat actually induce assent on the part of the person
4 claiming to be the victim of duress.” *Id.* In making the determination, courts consider, “the age,
5 background and relationship of the parties” and the rule is designed to protect “persons of a weak
6 or cowardly nature.” *Id.*; *see also Schmidt v. Merriweather*, 82 Nev. 372, 376, 418 P.2d 991, 993
7 (1966).

8 18. A threat is improper if “what is threatened is the use of civil process and the threat
9 is made in bad faith.” Restatement (Second) of Contracts § 176 (1)(c). Accordingly, when
10 evaluating duress, bad faith of one party is relevant as to another party’s capacity to contract.
11 *Barbara Ann Hollier Tr. v. Shack*, 131 Nev. 582, 587, 356 P.3d 1085, 1088 (2015); Restatement
12 (Second) of Contracts § 205 cmt. c (1981) (“Bad faith in negotiation, although not within the
13 scope of [the implied covenant of good faith and fair dealing], may be subject to
14 sanctions. Particular forms of bad faith in bargaining are the subjects of rules as to capacity to
15 contract, mutual assent and consideration and of rules as to invalidating causes such as fraud
16 and duress.”).

17 19. Defendants’ contempt of the Order through resistance and/or disobedience of the
18 Order is clearly established.

19 20. Bloom, as the sole natural person legally associated with Defendants, did not
20 testify to any efforts to marshal Defendants’ books and records for production to Plaintiff, except
21 to obtain a letter dated February 12, 2021 (nearly two months after the OSC was entered),
22 providing that the Controller was seeking payment to compile and produce Defendants’
23 records.¹²¹ Defendants’ requested condition of Plaintiff’s payment of expenses incurred by
24 Defendants to comply with its Order obligation is barred by *res judicata*. Again, the Order
25 confirming the Arb. Award, a final judgment, precludes a second action on the underlying claim
26 or any part of it. *Univ. of Nev.*, at 599, 879 P.2d at 1191. Issue preclusion applies to any issue

27 ¹²¹ Exhibit V.
28

1 actually raised and decided in the judgment. *Id.* Claim preclusion “embraces all grounds of
2 recovery that were asserted in a suit, as well as those that could have been asserted, and thus, [it]
3 has a broader reach” than the issue preclusion doctrine. *Id.* at 600, 879 P.2d at 1192.

4 21. The very purpose of the issue preclusion doctrine is “to prevent multiple litigation
5 causing vexation and expense to the parties and wasted judicial resources by precluding parties
6 from relitigating issues.” *Kirsch v. Traver*, 134 Nev. 163, 166, 414 P.3d 818, 821 (2018); *see*
7 *also Alcantara ex rel. Alcantara v. Wal-Mart Stores, Inc.*, 130 Nev. 252, 258, 321 P.3d 912, 916
8 (2014) (issue preclusion is appropriately applied to conserve judicial resources, maintain
9 consistency, and avoid harassment or oppression of the adverse party (citing *Berkson v. LePome*,
10 245 P.3d 560, 566 (Nev. 2010))).

11 22. Plaintiff’s demand for Defendants’ books and records under the terms of
12 Defendants’ operating agreements and NRS 86.241 resulting in the Order was arbitrated, and the
13 arbitrators ruled in favor of Plaintiff and against Defendants on the entirety of the claim, and
14 even awarded Plaintiff fees and costs.¹²² Defendants’ claimed expenses associated with the
15 demand for production was required to be arbitrated,¹²³ and there was clearly no award of
16 expenses in favor of Defendants following the arbitration. Ignoring their obligation to arbitrate
17 any request for expenses associated with the production of documents in the arbitration,
18 Defendants waited until Plaintiff’s Motion to Confirm Arb. Award to seek to modify the Arb.
19 Award to include a condition for production of the ordered books and records on Plaintiff’s prior
20 payment for Defendants’ expenses associated with production.¹²⁴ The Court made reasoned
21 conclusions regarding the procedural infirmity of bringing the request for relief to the Court
22 when the relief was not awarded by the arbitrators, and DENIED it as part of the Order.¹²⁵ The
23 Order is a final judgment not subject to any appeal, and as it specifically addressed and resolved
24 Defendants’ argument for a condition of Plaintiff’s payment of expenses of production, the Order

25 ¹²² Exhibit 4.

26 ¹²³ Exhibits 7 and 8, Sect. 13.9 (Dispute Resolution provision).

27 ¹²⁴ Exhibit 3 (the Declaration of Bloom in support of the Countermotion to Modify Arbitration Award).

28 ¹²⁵ Exhibit 4, p. 2:11-25; 3:15-16.

1 itself defeats any argument from Defendants that production of the documents pursuant to the
2 Order is in any way conditioned on payment of any purported expenses demanded by
3 Defendants.

4 23. Under the circumstances, the Court concludes that Plaintiff's non-payment of
5 expenses demanded on February 12, 2021 is not a valid excuse for Defendants' disobedience
6 and/or resistance of the subject Order. The books and records must be produced forthwith and
7 without the imposition of any conditions.

8 24. Bloom argues that since he is not a party to the Order in his individual capacity, he
9 should not be a party to these contempt proceedings. The relevant authority provides otherwise.
10 The Nevada contempt statutes (NRS Chapter 22) as well as relevant Nevada Rules of
11 Civil Procedure ("NRCPP") are directed *to conduct* of persons resisting or disobeying enforceable
12 Court orders and does not limit its reach to the defendants alone. Limited liability companies
13 such as Defendants engage in conduct through responsible persons- here, there is only Bloom
14 and his counsel working at his direction. *See, e.g.*, NRCPP 69 (describing procedures for
15 execution on judgment to include obtaining discovery from any person); NRCPP 71 ("When an
16 order grants relief . . . [that] may be enforced against a nonparty, the procedure for enforcing the
17 order is the same as for a party."); NRCPP 37(b) (providing for orders compelling compliance and
18 sanctions for failure of a "party or its officers, directors or managing agents" to comply with
19 court discovery orders).

20 25. The "responsible party" rule is longstanding, providing that the contempt powers
21 of the Courts reach through the corporate veil to command not only the entity, but those who are
22 officially responsible for the conduct of its affairs. If a person is apprised of the Order directed
23 to the entity, prevents compliance or fails to take appropriate action within their power for the
24 performance of the corporate duty, they are guilty of disobedience and may be punished for
25 contempt. *Wilson v. United States*, 221 U.S. 361, 377 (1911) ("When a copy of the writ which
26 has been ordered is served upon the clerk of the board, it will be served on the corporation, and
27 be equivalent to a command that the persons who may be members of the board shall do what is
28 required. If the members fail to obey, those guilty of disobedience may, if necessary, be

1 punished for the contempt While the board is proceeded against in its corporate capacity,
2 the individual members are punished in their natural capacities for failure to do what the law
3 requires of them as representatives of the corporation.”); *Electrical Workers Pension Trust Fund*
4 *of Local Union #58, IBEW v. Gary’s Elec. Service Co.*, 340 F.3d 373, 380 (6th Cir. 2003)
5 (holding that sole officer of the defendant, who was not himself a party, could be held in
6 contempt for the defendant’s failure to obey the court’s judgment and order). In order to hold an
7 officer, director or other managing agent in contempt, the movant must show that he had notice
8 of the order and its contents. *Id.*

9 26. A non-party who fails to produce documents in compliance with a Court order
10 will be jointly and severally liable for disobedience when he is found to have abetted the
11 disobedience or is legally identified with the responsible party. *See Luv n Care Ltd. v. Laurain*,
12 2019 WL 4279028, at * 4 (D. Nev. Sept. 10, 2019) (finding the managing member jointly and
13 severally liable for contempt and payment of fees and costs), (citing *United States v. Wilson*;
14 *Electrical Workers Pension Trust Fund of Local Union #58*; *United States v. Laurins*, 857 F.2d
15 529, 535 (9th Cir. 1988) (“A nonparty may be liable for contempt if he or she either abets or is
16 legally identified with the named defendant. . . . **An order to a corporation binds those who are**
17 **legally responsible for the conduct of its affairs.**”) (emphasis added)); *Peterson v. Highland*
18 *Music, Inc.*, 140 F.3d 1313, 1323–24 (9th Cir. 1988); *NLRB v. Sequoia Dist. Council of*
19 *Carpenters*, 568 F.2d 628, 633 (9th Cir. 1977); *1st Tech, LLC v. Rational Enter., Ltd.*, 2008 WL
20 4571057, at *8 (D. Nev. July 29, 2008). Put another way, an order to an entity binds those who
21 are legally responsible for the conduct of its affairs. *Luv n Care Ltd.*, at *4 (citing *Laurins*).

22 27. As such, once Bloom had notice of the Order, he could not delegate the
23 responsibility for performance on a third party, but he himself had to take reasonable steps to
24 provide the records in compliance with the Order in his capacity as the sole person legally
25 associated with Defendants and responsible for the books and records of Defendants, as manager
26 of Defendants’ manager.

27 28. As set forth above, the “responsible party” rule applies to contempt proceedings;
28 otherwise there would never be a consequence for an entity’s non-compliance, particularly here

1 when there are no formalities being followed and, at least at this juncture, Bloom is the *alter ego*
2 of Defendants. Bloom ignores the holding of the Nevada Supreme Court in *Gardner on Behalf*
3 *of L.G. v. Eighth Judicial Dist. Court in & for Cty. of Clark*, 133 Nev. 730, 735, 405 P.3d 651,
4 655–56 (2017), which explained that those bases for corporate veil piercing, such as *alter ego*,
5 illegality or other unlawfulness, will equally apply to a Nevada LLC. “As recognized by courts
6 across the country, LLCs provide the same sort of possibilities for abuse as corporations, and
7 creditors of LLCs need the same ability to pierce the LLCs' veil when such abuse exists.” *Id.*,
8 133 Nev. at 736, 405 P.3d 656.

9 Related to *alter ego*, NRS 86.376 then specifically provides, as follows:

- 10 1. Except as otherwise specifically provided by statute or agreement, no
11 person other than the limited-liability company is individually liable for a debt or
12 liability of the limited-liability company unless the person acts as the alter ego of
13 the limited-liability company.
14 2. A person acts as the alter ego of a limited-liability company only if:
15 (a) The limited-liability company is influenced and governed by the person;
16 (b) There is such unity of interest and ownership that the limited-liability
17 company and the person are inseparable from each other; and
18 (c) Adherence to the notion of the limited-liability company being an entity
19 separate from the person would sanction fraud or promote manifest injustice.
20 3. The question of whether a person acts as the alter ego of a limited-liability
21 company must be determined by the court as a matter of law.

22 29. Both Defendants are in “default” status with the Nevada Secretary of State. The
23 testimony of Bloom demonstrated that Defendants have no continued operations, there are no
24 employees, there are no bank accounts, there are no records being maintained as required under
25 the operating agreements or NRS 86.241, and there is no active governance of any kind.¹²⁶
26 While Bloom self-servingly represents that there are “directors” and “officers” of Defendants, he
27 concedes, as he must, that there were no writings to reflect that any director or officer has any
28 authority to bind Defendants instead of Bloom. In addition, equity must be applied such that
Bloom will not be immune from consequences for his intentional conduct for the purpose of

¹²⁶ See, e.g., 3/3 Trans., 220:9-11, 226:2-4, 3/10 Trans., 12:10-19, 14:9-17, 15:16-25; Exhibits 7-8, § 2.3 (providing the company shall maintain records, including at the principal office or registered office, both c/o Bloom); Exhibits 26-27.

1 disobeying and/or resisting the Order. Therefore, in addition to the “responsible party” rule that
2 applies to contempt, there should be no immunity for liability when, as here, Bloom is
3 Defendants’ *alter ego*.

4 30. Furthermore, the Nevada Supreme Court has explained the broad, independent
5 authority of the Court to enforce its decrees independent of the rules or statutes, including
6 sanctions for non-compliance by non-parties with its orders and legal processes. *See Halverson*
7 *v. Hardcastle*, 123 Nev. 245, 261–62, 163 P.3d 428, 440–441 (2007) (“the court has inherent
8 power to protect the dignity and decency of its proceedings and to enforce its decrees, and thus it
9 may issue contempt orders and sanction . . . for litigation abuses. Further, courts have inherent
10 power to prevent injustice and to preserve the integrity of the judicial process . . .”).

11 31. Under the Court’s inherent authority to enforce its decrees against those appearing
12 and demonstrating disregard for its Order, the “responsible party” rule recognized in the common
13 law, Nevada’s contempt statutes, Nevada’s Rules of Civil Procedure, as well as NRS 86.376,
14 Bloom is a proper party to the subject contempt proceedings.

15 32. The Settlement Agreement was a sham, never designed to result in any fair benefit
16 to Plaintiff, and, if effectuated with the dismissal of the Order, underlying Arb. Award
17 and pending contempt motions, with prejudice, the ramifications to Plaintiff would have been
18 unacceptable under law or equity. The Eighth Judicial District Court has enacted its own rule,
19 EDCR 7.60(b) to provide the Court further express authority to impose sanctions upon a party,
20 including attorneys’ fees, when a party, without just cause, presents a motion to the Court that is
21 “obviously frivolous, unnecessary or unwarranted,” or “so multiplies the proceedings in a case as
22 to increase costs unreasonably and vexatiously.”

23 33. The Court determines that sanctions are properly awarded against Defendants
24 inclusive of the reasonable fees and costs expended by Plaintiff relating to the Motion to Enforce
25 and Response to OSC.

26 34. The expenses associated with addressing the re-litigated defenses asserted by
27 Defendants and Bloom were then unnecessarily increased by Bloom’s wrongful direction to not
28

1 permit the disclosure of any communications between or among Nahabedian and Bloom and/or
2 MGA, regardless of whether they related to Plaintiff and this action.¹²⁷

3 35. Sanctions are awardable under NRCP 37 for failure to provide discovery.

4 Any of the foregoing Conclusions of Law that would more appropriately be deemed to be
5 Findings of Fact shall be so deemed.

6 **ORDER**

7 NOW, THEREFORE, based upon the Foregoing Findings of Fact and Conclusions of
8 Law, the Court makes the following rulings:

9 1) The Court declines to reverse its prior denial of the Motion to Enforce.

10 2) Based on its determination that Defendants and Bloom disobeyed and resisted the Order
11 in contempt of Court (civil), the Court orders immediate compliance. In order to purge their
12 contempt, Defendants, and any manager, representative or other agent of Defendants receiving
13 notice of this order shall take all reasonable steps to comply with the Order, and within 10 days
14 of notice of entry of this order, shall produce the following books and records for Defendants to
15 Plaintiff¹²⁸ at their expense:¹²⁹

- 16 1) Each of Defendants' company books, inclusive of any and all agreements
17 relating to governance (operating agreements, amendments, consents and
18 resolutions);
19 2) Financial Statements, inclusive of balance sheets and profit & loss
20 statements;
21 3) General ledger and back up, inclusive of invoices;
22 4) Documents sufficient to show each of Defendants' assets and their
23 location;
24 5) Documents relating to value of each of each of Defendants and/or their
25 assets;
26 6) Documents sufficient to show Defendants' members and their status,
27 inclusive of any redeemed members;
28 7) Tax returns for each of Defendants;
8) Documents sufficient to show the accounts payable incurred, paid and
remaining due for each of Defendants;

¹²⁷ Exhibit 28, PLTF_480, and the Motion to Compel.

¹²⁸ The list of documents ordered to be produced in the Arbitration Award is set forth at Exhibits 6 and QQ, and was expressly incorporated into the Order.

¹²⁹ There are indemnification provisions in Defendants' operating agreements that Bloom and anyone "serving at his direction" to comply with the Order could ostensibly enforce. Exhibits 7-8, Article VII.

- 1 9) Documents sufficient to show payments made to each of Defendants'
2 managers, members and/or affiliates of any managers or members;
3 10) Each of Defendants' insurance policies
4 11) Documents sufficient to show the status of any lawsuits involving either of
5 Defendants; and
6 12) Documents sufficient to show the use of investors' funds (and any other
7 members' investment) for each of Defendants.

8 For any documents not produced within 10 days of entry of this order, there shall be certification
9 from Bloom establishing all steps taken to marshal and produce the documents, where the
10 documents are located, why they were not provided by the deadline and when they will be
11 provided.

12 3) Also, the Court orders reimbursement of Plaintiff's reasonable fees and costs
13 incurred in connection with the finding of contempt pursuant to the OSC, the Countermotion for
14 Sanctions, and the Motion for Sanctions, as follows:

15 Based on the determination that Defendants and Bloom disobeyed and resisted the Order
16 in contempt of Court (civil), and the Motion to Enforce was a tool of that contempt as
17 orchestrated by Bloom in disregard of the Arb. Award confirmed by the Order, the Court orders
18 Defendants and Bloom are jointly and severally responsible for the payment of all the reasonable
19 fees and costs incurred by Plaintiff since entry of the Order for the purpose of coercing
20 compliance with the Order in order to make them whole, inclusive of responding to the Motion to
21 Enforce and bringing the Motion to Compel.

22 Within 10 days of entry of this order, counsel for Plaintiff shall provide a declaration and
23 supporting documentation as necessary to meet the factors outlined in *Brunzell v. Golden Gate*
24 *National Bank*, 85 Nev. 345, 55 P.2d 31 (1969), and delineating the fees and costs expended in
25 relating to the Motion to Compel, Motion to Enforce and OSC, following which, there will be an
26 opportunity to respond to Plaintiff's submission within 10 days of service of Plaintiff's
27 supplement, and Plaintiff can file a reply within 7 days thereof. The Court will then consider the
28 submissions and enter its further order on the amount of fees and costs to be awarded, and
payment will be due within thirty (30) days thereafter.

4) Any failure to comply with the Order compelling compliance and requiring
payment of the expenses incurred shall be subject to appropriate consequences. A status check is

1 scheduled for May 24, 2021 at 9:00 a.m.

Dated this 7th day of April, 2021

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Mark R. Denton
District Court Judge

1 **CSERV**

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3 DISTRICT COURT
CLARK COUNTY, NEVADA

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6 TGC/Farkas Funding, LLC,
Plaintiff(s)

CASE NO: A-20-822273-C

7 vs.

DEPT. NO. Department 13

8
9 First 100, LLC, Defendant(s)

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11 **AUTOMATED CERTIFICATE OF SERVICE**

12 This automated certificate of service was generated by the Eighth Judicial District
13 Court. The foregoing Findings of Fact, Conclusions of Law and Judgment was served via the
14 court's electronic eFile system to all recipients registered for e-Service on the above entitled
case as listed below:

15 Service Date: 4/7/2021

16 Dylan Ciciliano dciciliano@gtg.legal

17 Erika Turner eturner@gtg.legal

18 MGA Docketing docket@mgalaw.com

19 Tonya Binns tbinns@gtg.legal

20 Bart Larsen blarsen@shea.law

21 Max Erwin merwin@gtg.legal

22
23 If indicated below, a copy of the above mentioned filings were also served by mail
24 via United States Postal Service, postage prepaid, to the parties listed below at their last
25 known addresses on 4/8/2021
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Joseph Gutierrez

Maier Gutierrez & Associates
Attn: Joseph A. Gutierrez
8816 Spanish Ridge Avenue
Las Vegas, NV, 89148

DISTRICT COURT
CASE SUMMARY
CASE NO. A-20-822273-C

TGC/Farkas Funding, LLC, Plaintiff(s)
vs.
First 100, LLC, Defendant(s)

§
§
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§
§

Location: **Department 13**
Judicial Officer: **Denton, Mark R.**
Filed on: **10/01/2020**
Cross-Reference Case Number: **A822273**

CASE INFORMATION

Case Type: **Other Civil Matters**

Case Flags: **Appealed to Supreme Court**

DATE

CASE ASSIGNMENT

Current Case Assignment

Case Number A-20-822273-C
Court Department 13
Date Assigned 10/01/2020
Judicial Officer Denton, Mark R.







PARTY INFORMATION

		<i>Lead Attorneys</i>
Plaintiff	TGC/Farkas Funding, LLC	Turner, Erika Pike <i>Retained</i> 725-777-3000(W)
Defendant	First 100, LLC	Maier, Jason R., ESQ <i>Retained</i> 702-629-7900(W)
	First One Hundred Holdings, LLC	Gutierrez, Joseph A. <i>Retained</i> 702-629-7900(W)

DATE

EVENTS & ORDERS OF THE COURT

INDEX

10/01/2020	 Motion Filed By: Plaintiff TGC/Farkas Funding, LLC <i>Motion to Confirm Arbitration Award</i>
10/01/2020	 Notice of Appearance Party: Plaintiff TGC/Farkas Funding, LLC <i>NOTICE OF APPEARANCE</i>
10/01/2020	 Clerk's Notice of Hearing <i>Notice of Hearing</i>
10/02/2020	 Certificate of Service Filed by: Plaintiff TGC/Farkas Funding, LLC <i>Certificate of Service</i>
10/06/2020	 Errata Filed By: Plaintiff TGC/Farkas Funding, LLC <i>Errata to Motion to Confirm Arbitration Award</i>
10/08/2020	 Affidavit of Service Filed By: Plaintiff TGC/Farkas Funding, LLC

DISTRICT COURT
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CASE NO. A-20-822273-C

Affidavit of Process Server - First 100 LLC













10/09/2020	 Affidavit of Service Filed By: Plaintiff TGC/Farkas Funding, LLC <i>Affidavit of Service - First One Hundred Holdings, LLC aka 1st One Hundred Holdings LLC</i>
10/15/2020	 Initial Appearance Fee Disclosure Filed By: Defendant First 100, LLC; Defendant First One Hundred Holdings, LLC <i>Initial Appearance Fee Disclosure (NRS Chapter 19)</i>
10/15/2020	 Opposition and Countermotion Filed By: Defendant First 100, LLC; Defendant First One Hundred Holdings, LLC <i>Defendants' Limited Opposition to Motion to Confirm Arbitration Award and Countermotion to Modify Award Per NRS 38.242</i>
10/26/2020	 Reply Filed by: Plaintiff TGC/Farkas Funding, LLC <i>Plaintiff's Reply to Defendants' Limited Opposition to Motion to Confirm Arbitration Award and Opposition to Defendants' Countermotion to Modify Award Per NRS 38.242</i>
10/29/2020	 Minute Order (11:00 AM) (Judicial Officer: Denton, Mark R.) <i>Re: BlueJeans Appearance</i> Minute Order - No Hearing Held; <i>Minute Order - No Hearing Held</i>
11/02/2020	Motion (9:00 AM) (Judicial Officer: Denton, Mark R.) <i>Plaintiff Motion to Confirm Arbitration Award</i> Granted; <i>Granted</i>
11/02/2020	Opposition and Countermotion (9:00 AM) (Judicial Officer: Denton, Mark R.) <i>Defendants' Limited Opposition to Motion to Confirm Arbitration Award and Countermotion to Modify Award Per NRS 38.242</i> Denied; <i>Denied</i>
11/02/2020	 All Pending Motions (9:00 AM) (Judicial Officer: Denton, Mark R.) Matter Heard; <i>Matter Heard</i>
11/17/2020	 Order Granting Motion <i>Order Granting Plaintiff's Motion to Confirm Arbitration Award and Denying Defendants' Countermotion to Modify Award; and Judgment</i>
11/17/2020	 Notice of Entry of Order Filed By: Plaintiff TGC/Farkas Funding, LLC <i>Notice of Entry of Order Granting Plaintiff's Motion to Confirm Arbitration Award and Denying Defendants' Countermotion to Modify Award; and Judgment</i>
11/17/2020	Judgment Upon Arbitration Award (Judicial Officer: Denton, Mark R.) Debtors: First 100, LLC (Defendant), First One Hundred Holdings, LLC (Defendant) Creditors: TGC/Farkas Funding, LLC (Plaintiff) Judgment: 11/17/2020, Docketed: 11/17/2020 Total Judgment: 23,975.00
11/17/2020	 Memorandum of Costs and Disbursements Filed By: Plaintiff TGC/Farkas Funding, LLC

DISTRICT COURT
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CASE NO. A-20-822273-C

Memorandum of Costs and Disbursements

11/17/2020	 Motion for Attorney Fees Filed By: Plaintiff TGC/Farkas Funding, LLC <i>Motion for Attorneys Fees and Costs</i>
11/17/2020	 Clerk's Notice of Hearing <i>Notice of Hearing</i>
11/24/2020	 Opposition Filed By: Defendant First 100, LLC <i>Defendants' Opposition to Motion for Attorney's Fees and Costs</i>
12/14/2020	 Reply in Support Filed By: Plaintiff TGC/Farkas Funding, LLC <i>Reply in Support of Motion for Attorneys Fees and Costs</i>
12/16/2020	 Minute Order (1:45 PM) (Judicial Officer: Denton, Mark R.) <i>Re: Motion for Attorneys Fees and Costs</i> Minute Order - No Hearing Held; <i>Minute Order - No Hearing Held</i>
12/18/2020	 Ex Parte Application Party: Plaintiff TGC/Farkas Funding, LLC <i>Plaintiff's Ex Parte Application for Order to Show Cause Why Defendants and Jay Bloom Should Not Be Held in Contempt of Court</i>
12/18/2020	 Ex Parte Application for Examination of Judgment Debtor Filed By: Plaintiff TGC/Farkas Funding, LLC <i>Plaintiff's Ex Parte Application for Judgment Debtor Exam of First 100, LLC</i>
12/18/2020	 Ex Parte Application for Examination of Judgment Debtor Filed By: Plaintiff TGC/Farkas Funding, LLC <i>Plaintiff's Ex Parte Application for Judgment Debtor First One Hundred Holdings, LLC aka 1st One Hundred Holdings LLC</i>
12/18/2020	 Order for Judgment Debtor Examination <i>Order Granting Plaintiff's Ex Parte Application for Judgment Debtor Examination of First 100, LLC</i>
12/18/2020	 Order for Judgment Debtor Examination <i>Order Granting Plaintiff's Ex Parte Application for Judgment Debtor Examination of First One Hundred Holdings, LLC aka 1st One Hundred Holdings LLC</i>
12/18/2020	 Order to Show Cause <i>Order Granting Plaintiff's Ex Parte Application for Order to Show Cause Why Defendants and Jay Bloom Should Not Be Held in Contempt of Court</i>
12/21/2020	CANCELED Motion for Attorney Fees and Costs (9:00 AM) (Judicial Officer: Denton, Mark R.) <i>Vacated</i> <i>Motion for Attorneys Fees and Costs</i>
12/21/2020	 Notice of Entry of Order Filed By: Plaintiff TGC/Farkas Funding, LLC

DISTRICT COURT
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CASE NO. A-20-822273-C

	<i>Notice of Order Granting Plaintiff's Ex Parte Application for Judgment Debtor Examination of First 100, LLC</i>
12/21/2020	 Notice of Entry of Order Filed By: Plaintiff TGC/Farkas Funding, LLC <i>Notice of Order Granting Plaintiff's Ex Parte Application for Judgment Debtor Examination of First One Hundred Holdings, LLC aka 1st One Hundred Holdings LLC</i>
12/21/2020	 Notice of Entry of Order Filed By: Plaintiff TGC/Farkas Funding, LLC <i>Notice of Entry of Order Granting Plaintiff's Ex Parte Application for Order to Show Cause Why Defendants and Jay Bloom Should Not Be Held in Contempt of Court</i>
12/21/2020	 Writ Electronically Issued Party: Plaintiff TGC/Farkas Funding, LLC <i>Writ of Execution</i>
12/24/2020	 Minute Order (7:00 AM) (Judicial Officer: Denton, Mark R.) <i>Re: Motion for Attorneys Fees and Costs</i> Minute Order - No Hearing Held; <i>Minute Order - No Hearing Held</i>
12/30/2020	 Affidavit of Service Filed By: Plaintiff TGC/Farkas Funding, LLC <i>Declaration of Service - Jay Bloom</i>
01/05/2021	 Affidavit of Service Filed By: Plaintiff TGC/Farkas Funding, LLC <i>Amended Declaration of Service - Subpoena (Jay Bloom)</i>
01/05/2021	 Declaration Filed By: Plaintiff TGC/Farkas Funding, LLC <i>Declaration of Diana Brown - Subpoena (Jay Bloom)</i>
01/05/2021	 Affidavit of Service Filed By: Plaintiff TGC/Farkas Funding, LLC <i>Declaration of Service - Subpoena (Jay Bloom)</i>
01/19/2021	 Minute Order (2:30 PM) (Judicial Officer: Denton, Mark R.) <i>Re: BlueJeans Appearance</i> Minute Order - No Hearing Held; <i>Minute Order - No Hearing Held</i>
01/19/2021	 Motion <i>Defendants' Motion to Enforce Settlement Agreement and Vacate Post-Judgment Discovery Proceedings on Ex Parte Order Shortening Time</i>
01/20/2021	 Response Filed by: Defendant First 100, LLC; Defendant First One Hundred Holdings, LLC <i>Defendants and Non-Party Jay Bloom's Response to Order to Show Cause</i>
01/20/2021	 Supplement Filed by: Plaintiff TGC/Farkas Funding, LLC <i>Supplement to Plaintiff's Ex Parte Application for Order to Show Cause Why Defendants and Jay Bloom Should Not Be Held in Contempt of Court</i>

DISTRICT COURT
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01/21/2021	 Show Cause Hearing (9:00 AM) (Judicial Officer: Denton, Mark R.) 01/21/2021, 01/28/2021 Matter Continued; Hearing Set; Matter Continued; Hearing Set; <i>Matter Continued</i>
01/26/2021	 Minute Order (11:45 AM) (Judicial Officer: Denton, Mark R.) <i>Re: BlueJeans Appearance</i> Minute Order - No Hearing Held; <i>Minute Order - No Hearing Held</i>
01/26/2021	 Opposition and Countermotion Filed By: Plaintiff TGC/Farkas Funding, LLC <i>Opposition to Defendants Motion to Enforce Settlement and Vacate Post-Judgment Discovery Proceedings; and Countermotion 1) to Strike the Affidavit of Jason Maier, and 2) For Sanctions</i>
01/26/2021	 Appendix Filed By: Plaintiff TGC/Farkas Funding, LLC <i>Appendix of Exhibits to Opposition to Defendants Motion to Enforce Settlement and Vacate Post-Judgment Discovery Proceedings; and Countermotion 1) to Strike the Affidavit of Jason Maier, and 2) For Sanctions</i>
01/27/2021	 Order Granting Filed By: Plaintiff TGC/Farkas Funding, LLC <i>Order Granting Plaintiff's Motion for Attorneys' Fees and Costs</i>
01/27/2021	 Notice of Entry of Order Filed By: Plaintiff TGC/Farkas Funding, LLC <i>Notice of Entry of Order Granting Plaintiff's Motion for Attorneys Fees and Costs</i>
01/27/2021	 Reply in Support Filed By: Defendant First 100, LLC <i>DEFENDANTS REPLY IN SUPPORT OF MOTION TO ENFORCE SETTLEMENT AGREEMENT AND VACATE POST-JUDGMENT DISCOVERY PROCEEDINGS AND OPPOSITION TO COUNTERMOTION TO STRIKE THE AFFIDAVIT OF JASON MAIER AND OPPOSITION TO COUNTERMOTION FOR SANCTIONS</i>
01/27/2021	Judgment Plus Legal Interest (Judicial Officer: Denton, Mark R.) Debtors: First 100, LLC (Defendant), First One Hundred Holdings, LLC (Defendant) Creditors: TGC/Farkas Funding, LLC (Plaintiff) Judgment: 01/27/2021, Docketed: 01/28/2021 Total Judgment: 9,060.20
01/28/2021	Motion to Enforce (9:00 AM) (Judicial Officer: Denton, Mark R.) <i>Defendant's Motion to Enforce Settlement Agreement and Vacate Post-Judgment Discovery Proceedings on Ex-Parte Order Shortening Time</i> Denied Without Prejudice; <i>Denied Without Prejudice</i>
01/28/2021	Countermotion (9:00 AM) (Judicial Officer: Denton, Mark R.) <i>Opposition to Defendants Motion to Enforce Settlement and Vacate Post-Judgment Discovery Proceedings; and Countermotion 1) to Strike the Affidavit of Jason Maier, and 2) For Sanctions</i> Denied Without Prejudice;

DISTRICT COURT
CASE SUMMARY
CASE NO. A-20-822273-C

Denied Without Prejudice

01/28/2021	 All Pending Motions (9:00 AM) (Judicial Officer: Denton, Mark R.) Matter Heard; <i>Matter Heard</i>
01/29/2021	 Recorders Transcript of Hearing <i>Recorder's Transcript of Hearing Re: Show Cause Hearing; Defendant's Motion to Enforce Settlement Agreement and Vacate Post-Judgment Discovery Proceedings on Ex Parte Order Shortening Time</i>
02/01/2021	 Order <i>Order Scheduling Evidentiary Hearing</i>
02/05/2021	 Notice Filed By: Plaintiff TGC/Farkas Funding, LLC <i>Notice of Subpoena</i>
02/05/2021	 Acceptance of Service Filed By: Plaintiff TGC/Farkas Funding, LLC <i>Acceptance of Service</i>
02/09/2021	 Order Filed By: Plaintiff TGC/Farkas Funding, LLC <i>Order</i>
02/09/2021	 Notice of Entry of Order Filed By: Plaintiff TGC/Farkas Funding, LLC <i>Notice of Entry of Order</i>
02/11/2021	 Affidavit of Service Filed By: Plaintiff TGC/Farkas Funding, LLC <i>Declaration of Service for Subpoena (Jay Bloom)</i>
02/11/2021	 Notice Filed By: Plaintiff TGC/Farkas Funding, LLC <i>Notice of Subpoena</i>
02/18/2021	 Affidavit of Service Filed By: Plaintiff TGC/Farkas Funding, LLC <i>Declaration of Service for Subpoena - Raffi Nahabedian</i>
02/22/2021	 Motion to Compel Filed By: Plaintiff TGC/Farkas Funding, LLC <i>Motion to Compel and for Sanctions; and Application for Ex-Parte Order Shortening Time</i>
02/22/2021	 Notice of Entry Filed By: Plaintiff TGC/Farkas Funding, LLC <i>Notice of Entry of Motion to Compel and for Sanctions; and Application for Ex- Parte Order Shortening Time</i>
02/25/2021	 Minute Order (11:15 AM) (Judicial Officer: Denton, Mark R.) <i>Re: BlueJeans Appearance</i> Minute Order - No Hearing Held;

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Minute Order - No Hearing Held



02/25/2021	 Supplement Filed by: Plaintiff TGC/Farkas Funding, LLC <i>Supplement to Motion to Compel and for Sanctions; and Application for Ex- Parte Order Shortening Time</i>
02/26/2021	 Trial Subpoena Filed by: Plaintiff TGC/Farkas Funding, LLC <i>Trial subpoena</i>
02/26/2021	 Opposition and Countermotion Filed By: Defendant First 100, LLC; Defendant First One Hundred Holdings, LLC <i>Opposition to Motion to Compel and for Sanctions Against Non-Party Jay Bloom and His Counsel and Countermotion for Protective Order and Sanctions Pursuant to NRS 18.010(2)(b)</i>
02/26/2021	 Opposition to Motion to Compel Filed By: Other Nahabedian, Raffi A. <i>Non-Party Raffi A. Nahabedian's Opposition to Motion to Compel and for Sanctions</i>
03/01/2021	Motion to Compel (9:00 AM) (Judicial Officer: Denton, Mark R.) <i>Motion to Compel and for Sanctions; and Application for Ex-Parte Order Shortening Time</i> Granted; <i>Granted</i>
03/01/2021	Opposition and Countermotion (9:00 AM) (Judicial Officer: Denton, Mark R.) <i>Opposition to Motion to Compel and for Sanctions Against Non-Party Jay Bloom and His Counsel and Countermotion for Protective Order and Sanctions Pursuant to NRS 18.010(2)(b)</i> Denied; <i>Denied</i>
03/01/2021	 All Pending Motions (9:00 AM) (Judicial Officer: Denton, Mark R.) Matter Heard; <i>Matter Heard</i>
03/01/2021	 Minute Order (2:30 PM) (Judicial Officer: Denton, Mark R.) <i>Re: BlueJeans Appearance</i> Minute Order - No Hearing Held; <i>Minute Order - No Hearing Held</i>
03/01/2021	 Memorandum Filed By: Plaintiff TGC/Farkas Funding, LLC <i>Pre-Hearing Memorandum of Points & Authorities RE: Order to Show Cause Why Defendants and Jay Bloom Should Not Be Held in Contempt of Court</i>
03/01/2021	 Errata Filed By: Plaintiff TGC/Farkas Funding, LLC <i>Errata to Supplemental to Motion to Compel and For Sanctions; and Application for Ex-Parte Order Shortening</i>
03/02/2021	 Objection Filed By: Plaintiff TGC/Farkas Funding, LLC <i>TGC/Farkas Funding, LLC s Objections to Judgment Debtors Evidentiary Hearing Exhibits Q, R, S, and T</i>
03/02/2021	 Memorandum

DISTRICT COURT
CASE SUMMARY
CASE NO. A-20-822273-C

Filed By: Defendant First 100, LLC; Defendant First One Hundred Holdings, LLC
Defendants' Pre-Hearing Memo Re: Motion to Enforce Settlement Agreement and Cause as to Why First 100 and Non-Party Jay Bloom Should Not Be Held in Contempt

03/03/2021	 Evidentiary Hearing (9:00 AM) (Judicial Officer: Denton, Mark R.) 03/03/2021, 03/10/2021 Matter Continued; Court Finds for Plaintiff; Matter Continued; Court Finds for Plaintiff; <i>Matter Continued</i>
03/09/2021	 Minute Order (8:15 AM) (Judicial Officer: Denton, Mark R.) <i>Re: BlueJeans Appearance</i> Minute Order - No Hearing Held; <i>Minute Order - No Hearing Held</i>
03/11/2021	 Order Granting <i>Order Granting Plaintiff's Motion to Compel and Denying Countermotion for Protective Order and Sanctions Pursuant to NRS 18.010(2)(b)</i>
03/11/2021	 Notice of Entry of Order Filed By: Plaintiff TGC/Farkas Funding, LLC <i>Notice of Entry of Order Granting Plaintiff's Motion to Compel and Denying Countermotion for Protective Order and Sanctions Pursuant to NRS 18.010(2)(b)</i>
03/17/2021	 Recorders Transcript of Hearing <i>Recorder's Transcript of Hearing Re: Evidentiary Hearing - March 3, 2021</i>
03/17/2021	 Recorders Transcript of Hearing <i>Recorder's Transcript of Hearing Re: Evidentiary Hearing - March 10, 2021</i>
03/19/2021	 Findings of Fact, Conclusions of Law and Judgment Filed by: Plaintiff TGC/Farkas Funding, LLC <i>Proposed Findings of Fact, Conclusions of Law, & Order</i>
03/19/2021	 Findings of Fact, Conclusions of Law and Order Filed By: Defendant First 100, LLC <i>PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER GRANTING RELIEF IN FAVOR OF FIRST 100, LLC AND 1ST ONE HUNDRED HOLDINGS, LLC</i>
04/07/2021	 Findings of Fact, Conclusions of Law and Judgment <i>Findings of Fact, Conclusions of Law & Order Re Evidentiary Hearing</i>
04/07/2021	 Notice of Entry of Findings of Fact, Conclusions of Law Filed By: Plaintiff TGC/Farkas Funding, LLC <i>Notice of Entry of Findings of Fact, Conclusions of Law & Order Re Evidentiary Hearing</i>
04/09/2021	 Declaration Filed By: Plaintiff TGC/Farkas Funding, LLC <i>Declaration of Erika Pike Turner, Esq. in Support of Award of Fees and Costs</i>
04/13/2021	 Notice Filed By: Plaintiff TGC/Farkas Funding, LLC <i>Witness Matthew Farkas' Notice and Certification Regarding Findings of Fact, Conclusions of</i>

DISTRICT COURT
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CASE NO. A-20-822273-C

	<i>Law & Order Re Evidentiary Hearing</i>	
04/15/2021	 Notice of Appeal Filed By: Defendant First 100, LLC; Defendant First One Hundred Holdings, LLC <i>Notice of Appeal</i>	
04/16/2021	 Receipt of Copy Filed by: Defendant First 100, LLC; Defendant First One Hundred Holdings, LLC <i>Receipt of Copy</i>	
05/24/2021	Status Check (9:00 AM) (Judicial Officer: Denton, Mark R.)	

DATE	FINANCIAL INFORMATION	
	Defendant First 100, LLC	
	Total Charges	277.00
	Total Payments and Credits	277.00
	Balance Due as of 4/19/2021	0.00
	Plaintiff TGC/Farkas Funding, LLC	
	Total Charges	280.00
	Total Payments and Credits	280.00
	Balance Due as of 4/19/2021	0.00

DISTRICT COURT CIVIL COVER SHEET

County, Nevada
Case No. _____
(Assigned by Clerk's Office)

CASE NO: A-20-822273-C
Department 13

I. Party Information (provide both home and mailing addresses if different)

Plaintiff(s) (name/address/phone): <p style="text-align: center;">TGC/FARKAS FUNDING, LLC</p>	Defendant(s) (name/address/phone): <p style="text-align: center;">FIRST 100, LLC; FIRST ONE HUNDRED HOLDINGS, LLC</p>
Attorney (name/address/phone): <p style="text-align: center;">Garman Turner Gordon LLP 7251 Amigo Street, Suite 210, Las Vegas, NV 89119 Tel: (725) 777-3000/Fax: (725) 777-3112</p>	Attorney (name/address/phone):

II. Nature of Controversy (please select the one most applicable filing type below)

Civil Case Filing Types

Real Property Landlord/Tenant <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Other Landlord/Tenant Title to Property <input type="checkbox"/> Judicial Foreclosure <input type="checkbox"/> Other Title to Property Other Real Property <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property	Negligence <input type="checkbox"/> Auto <input type="checkbox"/> Premises Liability <input type="checkbox"/> Other Negligence Malpractice <input type="checkbox"/> Medical/Dental <input type="checkbox"/> Legal <input type="checkbox"/> Accounting <input type="checkbox"/> Other Malpractice	Torts Other Torts <input type="checkbox"/> Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Employment Tort <input type="checkbox"/> Insurance Tort <input type="checkbox"/> Other Tort
Probate Probate (select case type and estate value) <input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside <input type="checkbox"/> Trust/Conservatorship <input type="checkbox"/> Other Probate Estate Value <input type="checkbox"/> Over \$200,000 <input type="checkbox"/> Between \$100,000 and \$200,000 <input type="checkbox"/> Under \$100,000 or Unknown <input type="checkbox"/> Under \$2,500	Construction Defect & Contract Construction Defect <input type="checkbox"/> Chapter 40 <input type="checkbox"/> Other Construction Defect Contract Case <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Building and Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Collection of Accounts <input type="checkbox"/> Employment Contract <input checked="" type="checkbox"/> Other Contract	Judicial Review/Appeal Judicial Review <input type="checkbox"/> Foreclosure Mediation Case <input type="checkbox"/> Petition to Seal Records <input type="checkbox"/> Mental Competency Nevada State Agency Appeal <input type="checkbox"/> Department of Motor Vehicle <input type="checkbox"/> Worker's Compensation <input type="checkbox"/> Other Nevada State Agency Appeal Other <input type="checkbox"/> Appeal from Lower Court <input type="checkbox"/> Other Judicial Review/Appeal
Civil Writ Civil Writ <input type="checkbox"/> Writ of Habeas Corpus <input type="checkbox"/> Writ of Mandamus <input type="checkbox"/> Writ of Quo Warrant <input type="checkbox"/> Writ of Prohibition <input type="checkbox"/> Other Civil Writ		Other Civil Filing Other Civil Filing <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Foreign Judgment <input checked="" type="checkbox"/> Other Civil Matters

Business Court filings should be filed using the Business Court civil coversheet.

October 1, 2020

Date

/s/ Erika Pike Turner

Signature of initiating party or representative

See other side for family-related case filings.

Heather S. Smith
CLERK OF THE COURT

FFCL

DISTRICT COURT

CLARK COUNTY, NEVADA

TGC/FARKAS FUNDING, LLC,

Plaintiff/Judgment Creditor,

vs.

FIRST 100, LLC, a Nevada Limited Liability
Company; FIRST ONE HUNDRED
HOLDINGS, LLC, a Nevada limited liability
company aka 1st ONE HUNDRED HOLDINGS
LLC, a Nevada Limited Liability Company,

Defendants/ Judgment Debtors.

CASE NO. A-20-822273-C
DEPT. 13

**FINDINGS OF FACT, CONCLUSIONS OF
LAW, & ORDER RE EVIDENTIARY
HEARING**

Hearing Date: March 3 and 10, 2021

FINDINGS OF FACT, CONCLUSIONS OF LAW & ORDER

INTRODUCTION

The above-captioned matter has involved motion practice regarding several items: 1) the December 18, 2020 order to show cause why Defendants/Judgment Debtors, First 100, LLC (“First 100”) and First One Hundred Holdings aka 1st One Hundred Holdings LLC (“1st 100,” and together with First 100, “Defendants”) and Jay Bloom (“Bloom”) should not be found in contempt of court (the “OSC”) for their failures to comply with the Order Confirming Arbitration Award, Denying Countermotion to Modify, and Judgment entered November 17, 2020 (the “Order”), 2) the January 19, 2021 motion to enforce settlement and vacate post-judgment discovery proceedings filed by Defendants (the “Motion to Enforce”), which was denied without prejudice pending the resolution of outstanding questions of fact following the evidentiary hearing, 3) the January 26, 2021 countermotion for sanctions (“Countermotion for Sanctions”) filed by Plaintiff/Judgment Creditor TGC/Farkas Funding, LLC (“Plaintiff”) in conjunction with its opposition to the Motion to Enforce, which was denied without prejudice pending the evidentiary hearing, and 4) the February 19, 2021 motion for sanctions filed by Plaintiff in conjunction with Plaintiff’s motion to compel that was reserved for resolution following the evidentiary hearing (the “Motion for Sanctions”). The Court held the evidentiary

1 hearing on March 3, 2021 and March 10, 2021 (the “hearing”) to resolve the Claims. Erika Pike
2 Turner, Esq. of the law firm of Garman Turner Gordon LLP (“GTG”) appeared on behalf of
3 Plaintiff, Joseph Gutierrez, Esq. (“Gutierrez”) of the law firm of Maier Gutierrez & Associates
4 (“MGA”) appeared on behalf of Defendants and Bloom, and evidence was presented by the
5 parties through exhibits and testimony. Based thereon, the Court finds and concludes, as follows:

6 **FINDINGS OF FACT**

7 1. In 2013, Plaintiff was formed for the purpose of facilitating an investment in
8 Defendants consisting of \$1 million from 50% member TGC 100 Investor, LLC, managed by
9 Adam Flatto (“Flatto”), and services (aka sweat equity) from 50% member Matthew Farkas
10 (“Farkas”).¹ In exchange for Plaintiff’s contributions, Plaintiff received a 3% membership
11 interest in Defendants.²

12 2. Defendants are affiliated Nevada limited liability companies governed by nearly
13 identical operating agreements.³ At the hearing, Bloom identified himself as a “director” of
14 Defendants who “participated in the management.”⁴ The Secretary of State documents filed by
15 Bloom on behalf of Defendants do not identify any “directors.”⁵ Defendants’ operating
16 agreements and the Secretary of State records show that since formation, both Defendants have
17 been single manager-managed with SJ Ventures Holding Company, LLC (“SJV”) appointed the
18 sole manager with Bloom as the sole manager of SJV.⁶

19 3. The business of Defendants was to acquire HOA liens and then acquire the
20 underlying properties at foreclosure.⁷ Defendants’ active business concluded in 2016, except for
21 attempts to monetize a judgment obtained in favor of Defendants against Raymond Ngan and his

22 ¹ Exhibit 20, PLTF_154, 170.

23 ² Exhibit 2, PLTF_006.

24 ³ Exhibits 7 and 8; Hearing Transcript of Testimony, March 3, 2021 (“3/3 Trans.”), 8:10-16.

25 ⁴ 3/3 Trans., 160:3-7.

26 ⁵ Exhibits 25-26.

27 ⁶ Exhibit 7, §§ 1.19 (designating SJV as Manager); 6.1 (Management by Manager) and PTF_055; Exhibit 8, §§ 1.19
(designating SJV as Manager); 6.1 (Management by Manager) and PTF_082; see also 3/3 Trans., 221:18-23.

28 ⁷ 3/3 Trans., 159:23-160:2.

1 affiliated entities in 2017 (the “Ngan Judgment”). As Plaintiff did not receive any accounting to
2 show what happened to Defendants’ business or its assets and had questions, on May 2, 2017,
3 Plaintiff made a written demand for the books and records of Defendants pursuant to the terms of
4 Defendants’ operating agreements and NRS 86.241.⁸ Defendants did not provide any documents
5 in response to Plaintiff’s demand, resulting in Plaintiff filing an arbitration demand under a
6 provision of Defendants’ operating agreements requiring that such matters be determined through
7 arbitration with the party bringing the matter required to pay all the upfront costs of the
8 arbitration, subject to reimbursement in the event said party prevailed.⁹

9 4. On September 15, 2020, a 3-arbitrator panel entered a “Decision and AWARD of
10 Arbitration Panel (1) Compelling Production of Company Records; and Ordering
11 Reimbursement of [Plaintiff’s] Attorneys’ Fees and Costs” (the “Arb. Award”).¹⁰ The Arb.
12 Award cited the May 2, 2017 demand as the “initial request for company records that is the
13 subject of the arbitration demand filed by Plaintiff,” and found that Defendants’ response to that
14 May 2, 2017 demand was the “first in a long and bad faith effort by [Defendants] to avoid their
15 statutory and contractual duties to a member to produce requested records.”¹¹

16 5. After moving to Las Vegas in 2013, Farkas (Bloom’s brother-in-law)¹² started
17 working with Bloom on behalf of Defendants and was provided a title of Vice President of
18 Finance and the primary role of raising capital for Defendants consistent with his background
19 experience on Wall Street (investment banker, operating a hedge fund, buying and selling
20 securities).¹³ Farkas left his employment with Defendants in the summer of 2016, and thereafter
21 had very little involvement with Defendants’ operations.¹⁴ During the course of Plaintiff’s efforts

22 ⁸ Exhibit 1.

23 ⁹ Exhibit 2, PLTG_006; Exhibits 7 and 8, § 13.9 (any dispute arising out of or relating to the Operating Agreements
24 “shall solely be settled by arbitration”).

25 ¹⁰ Exhibits 2 and II.

26 ¹¹ Exhibit 2, PLTF_006.

27 ¹² 3/3 Trans., 123:2-13.

28 ¹³ *Id.*, 84:15- 85:5, 15-21, 89:3-5, 123:14-23.

¹⁴ *Id.*, 124:1-125:21, 141:10-15, 152:6-24.

1 to obtain books and records Bloom has requested and Farkas has signed a series of documents
2 purporting to bind Plaintiff to its detriment and then argued for enforcement of those documents
3 based on the fact a signature of Farkas is affixed. This was done despite Plaintiff's affirmative
4 notice that Farkas did not have authority to bind Plaintiff without Flatto's consent delivered on
5 July 13, 2017, to Defendants and MGA, as counsel for Defendants, as well as the registered
6 agent for Defendants,¹⁵ which notice attached a prior notice to Defendants emailed on April 18,
7 2017, and explained to Defendants that Farkas is not the Plaintiff's manager and Farkas does not
8 have the authority to bind Plaintiff.¹⁶

9 6. The Arb. Award conclusively resolved Defendants' multiple arguments that they
10 were not required to produce the records, including Defendants' argument that Farkas had signed
11 a form of redemption agreement that released Defendants from any responsibility to make
12 company records available to Plaintiff.¹⁷ The redemption agreement was deemed irrelevant by
13 the arbitrators, as Farkas did not have the authority to bind Plaintiff without the consent of Flatto,
14 as well as there being a lack of performance by Defendants.¹⁸

15 7. The Arb. Award granted relief in favor of Plaintiff and against Defendants "in all
16 respects" on the claim for books and records of Defendants arising from Defendants' operating
17 agreements and NRS 86.241¹⁹ and ordered Defendants to "forthwith, but no later than ten (10)
18 calendar days from the date of this AWARD, make all the requested documents and information
19 available from both companies to [Plaintiff] for inspection and copying."²⁰ Fees and costs were
20 awarded Plaintiff.²¹ The Arb. Award further provided that the "Award is in full settlement of all
21 claims submitted to this arbitration. All claims not expressly granted herein are hereby

22
23 ¹⁵ Exhibit 26, PLTF_218, and Exhibit 27, PLTF_235.

24 ¹⁶ Exhibit 22.

25 ¹⁷ Exhibit 2, PLTF_007.

26 ¹⁸ *Id.*

27 ¹⁹ *See* Exhibit 1, PLTF_002.

28 ²⁰ Exhibit 2, PLTF_009.

²¹ *Id.*

1 denied.”²²

2 8. Plaintiff commenced this case for the purpose of confirming the Arb. Award. In
3 response to Plaintiff’s motion to confirm Arb. Award, Defendants filed a countermotion to
4 modify the Arb. Award and provide for the imposition of expenses to be paid by Plaintiff as a
5 condition of Defendants furnishing the books and records. Attached to Defendants’
6 countermotion was Bloom’s declaration contending that Defendants had no funds or employees,
7 and the only way for Defendants to obtain and furnish the records in compliance with the Arb.
8 Award would be to have the Court order Plaintiff to first pay expenses.²³ Defendants had an
9 obligation to arbitrate its request for Plaintiff to pay expenses associated with the production of
10 the books and records under the arbitration provision of their operating agreements.²⁴ The Court
11 analyzed Defendants’ attempt to alter the merits of the Arb. Award to award Defendants’ relief
12 that was absent from the Arb. Award, and denied the countermotion to modify the Arb. Award as
13 part of the Order.²⁵

14 9. The Order was entered November 17, 2020, constituting a final, appealable
15 judgment. No appeal was filed by Defendants. On December 18, 2020, the OSC was filed upon
16 Plaintiff’s application citing no compliance or communicated intention to comply with the Order.
17 The OSC scheduled a hearing for January 21, 2021.²⁶ The OSC was served on MGA on
18 December 18, 2020; in addition, Bloom was personally served with the OSC on December 22,
19 2020.²⁷ On December 21, 2020, notices of judgment debtor examinations for each of
20 Defendants and post-judgment discovery were served on MGA.²⁸ Bloom was also personally

21
22 ²² *Id.*

23 ²³ Exhibit 3.

24 ²⁴ Exhibits 7 and 8, § 13.9.

25 ²⁵ Exhibit 4, PLTF_019, ll. 15-27.

26 ²⁶ Exhibit 5.

27 ²⁷ See OSC Certificate of Service (MGA served through Odyssey e-service); Declaration of Service of the OSC on Bloom, filed December 30, 2020.

28 ²⁸ See the December 21, 2020 Notice of Entry of Order for Judgment Debtor Examinations.

1 served with post-judgment discovery under NRCP 69(2) on December 29, 2020.²⁹

2 10. On January 19, 2021, Defendants filed the Motion to Enforce on an order
3 shortening time, arguing that a written settlement agreement dated January 6, 2021 (the
4 “Settlement Agreement”) executed by Farkas, purportedly on behalf of Plaintiff, and by Bloom,
5 on behalf of Defendants, mooted the OSC hearing and post-judgment discovery because it
6 provides for immediate dismissal of the Order, the underlying Arb. Award and other motions
7 pending in this case, with prejudice. In opposition to the Motion to Enforce, Plaintiff argued that
8 the Settlement Agreement is not valid and enforceable for multiple reasons, including that it was
9 executed by Farkas without Flatto’s knowledge or consent and therefore could not bind Plaintiff,
10 and that the circumstances surrounding the Settlement Agreement, including those underlying the
11 Motion to Compel, are further evidence of Defendants’ and Bloom’s contempt of this Court’s
12 Order, warranting sanctions against Defendants and Bloom.

13 11. Defendants’ and Bloom’s response to the OSC filed January 20, 2021
14 incorporated the Motion to Enforce and reiterated the previously denied argument that no
15 production of books and records should be required until Plaintiff first pays demanded expenses
16 associated with the production. Bloom also argued immunity from penalties for contempt as a
17 non-party to the Order.

18 12. The purported Settlement Agreement expressly provides that upon execution of the
19 Settlement Agreement, Plaintiff “will file a dismissal with prejudice of the current actions
20 related to this matter, including the arbitration award and all relation [sic] motions and actions
21 pending in the District Court.”³⁰ In exchange, Defendants agreed to pay Plaintiff \$1 million, plus
22 6% per annum since the date of investment, but contingent on its collection of proceeds from a
23 sale of the Ngan Judgment.³¹ Defendants’ Motion to Enforce seeks specific performance of
24 Plaintiff’s obligation under the Settlement Agreement to effectuate dismissal of this case, with
25 prejudice.

26 ²⁹ See the Declarations of Service of Subpoena on Bloom, filed January 5 and January 7, 2021.

27 ³⁰ Exhibit 13, PLTF_106.

28 ³¹ *Id.*

1 13. On the evening of January 14, 2021, Raffi Nahabedian, Esq. (“Nahabedian”)
2 made the first mention of a settlement to Plaintiff in connection with his demand for substitution
3 of counsel for Plaintiff in the case,³² and by the next day, January 15, 2021, even before the
4 Settlement Agreement was disclosed to Plaintiff, Plaintiff immediately sent notice of repudiation
5 to Defendants through its counsel of record, GTG.³³ On January 19, 2021, the Motion to Enforce
6 was filed, attaching the Settlement Agreement- the first time that the Settlement Agreement was
7 provided Plaintiff after its execution.³⁴ On January 26, 2021, Plaintiff filed an Opposition to the
8 Motion to Enforce, reiterating its repudiation upon the declarations of both Flatto and Farkas.³⁵

9 14. From the January 7, 2021 execution of the Settlement Agreement through the
10 time of Plaintiff’s repudiation (and continuing to the date of the hearing), Defendants did not
11 ever pay, or make any attempt to tender payment to Plaintiff in performance of its obligations
12 under the Settlement Agreement.³⁶ To the contrary, the only evidence of Defendants’
13 performance pursuant to the Settlement Agreement was Bloom’s efforts in conjunction with his
14 counsel to secure dismissal of the Order and underlying Arb. Award to Plaintiff’s detriment.³⁷

15 15. Farkas, as the purported agent, testified clearly that he did not believe he had
16 authority to enter into the Settlement Agreement (or that he was signing a Settlement Agreement
17 on behalf of Plaintiff), and that Bloom understood that.³⁸

18 16. Under the operating agreement for Plaintiff dated October 21, 2013, Farkas was
19 designated the “Administrative Member” with authority to bind Plaintiff, but only “after
20 consultation with, and upon the consent of, all Members [to wit: Flatto for TGC Investor].”³⁹
21 Farkas testified that once Farkas left his employment with Defendants, he effectively stepped out

22 ³² Exhibit 11, PLTF_097.

23 ³³ Exhibit 25.

24 ³⁴ See Exhibit 38, PLTF_405 (Nahabedian’s email).

25 ³⁵ Exhibits FF and J.

26 ³⁶ 3/3 Trans., 71:14-72:3, 138:19-21, 140:7-141:15, 215:15-18, 216:2-4, 18-21, 217:3-13.

27 ³⁷ See, e.g., Exhibit 28.

28 ³⁸ Exhibit FF, ¶ 17, 3/3 Trans., 118:19-119:2, 128:18-131:4, 154:13-15.

³⁹ Exhibit 20, §§ 3.4(a), 4.1(c).

1 of a management role with Plaintiff and left everything to Flatto and counsel, whether or not that
2 was reflected in a formal amendment to Plaintiff's operating agreement.⁴⁰ Further, whether
3 Defendants could rely on the signature of Farkas alone to bind Plaintiff was specifically
4 addressed in multiple communications to Defendants. First, there was the April 18, 2017
5 email,⁴¹ then the July 13, 2017 letter⁴² (attaching the April 18, 2017 email and further stating
6 "Farkas is not the manager." "Farkas does not have the authority to bind [Plaintiff]"), and then
7 there was the Arb. Award's conclusion that a document executed by Farkas was irrelevant
8 without the consent of Flatto as Farkas' signature alone did not bind Plaintiff.⁴³

9 17. Following the entry of the Arb. Award, on September 17, 2020, Farkas delivered
10 his written consent to an amended operating agreement governing Plaintiff, which amendment
11 provides that TGC 100 managed by Flatto had "full, exclusive, and complete discretion, power
12 and authority" . . . "to manage, control, administer and operate the business and affairs of the
13 [Plaintiff]."⁴⁴ Pursuant to the amendment, Farkas was expressly prevented from taking *any*
14 action on behalf of Plaintiff, and Flatto had exclusive authority to bind Plaintiff. The purpose of
15 the amendment was to alleviate pressure on Farkas as a result of his feeling uncomfortable being
16 adverse to his brother-in-law, Bloom.⁴⁵

17 18. The circumstances surrounding how the Settlement Agreement was prepared and
18 executed are also relevant. The Settlement Agreement was drafted by Bloom⁴⁶ and executed by
19 Bloom, as manager of Defendants.⁴⁷ It is dated January 6, 2021 but was executed by Farkas on
20 January 7, 2021 at the same time that Farkas executed other documents sent by Bloom to a UPS

21
22 ⁴⁰ 3/3 Trans., 108:5-17.

23 ⁴¹ Exhibit 21.

24 ⁴² Exhibit 22, PLTF_, 179, 190.

25 ⁴³ Exhibit 2, PLTF_007

26 ⁴⁴ Exhibit 23.

27 ⁴⁵ 3/3 Trans., 67:16-68:23; 131:7-13.

28 ⁴⁶ Id., 193:25-194:2.

⁴⁷ Exhibit 13, PLTF_108.

1 store for Farkas' signing and return.⁴⁸ Farkas did not know he was signing a Settlement
2 Agreement when he signed it,⁴⁹ and there is no evidence he intended to bind Plaintiff to anything
3 when he executed the documents. Notwithstanding the express terms of the Settlement
4 Agreement providing that the signatories were duly authorized,⁵⁰ Farkas did not read that
5 provision (or any provision)⁵¹ and testified he never otherwise represented to Bloom or anyone
6 else that he had authority to enter into the Settlement Agreement on behalf of Plaintiff.⁵² Farkas
7 testified he did not negotiate the terms of the Settlement Agreement with Bloom, which is
8 corroborated by the lack of evidence of any back and forth on terms prior to the agreement being
9 finalized by Bloom.⁵³ There is no evidence Bloom provided Farkas a copy of the Settlement
10 Agreement for Farkas, Flatto or counsel's review prior to sending it to the UPS store with other
11 documents to be signed.⁵⁴ Farkas testified he believed that the documents he signed at the UPS
12 store related to resolution of a threatened claim against him by Defendants in connection with his
13 prior employment and included the retention of personal counsel for him.⁵⁵ This testimony was
14 corroborated by Nahabedian's January 14, 2021 correspondence referencing a threat of adverse
15 action against Farkas from Defendants⁵⁶ and the fact that a form of Release between Farkas and
16 Defendants was executed at the same time as the Settlement Agreement.⁵⁷

17 19. Flatto was clear in his testimony at the hearing that he understood his consent was
18 required for all decisions made by Plaintiff and he did not hold Farkas out as having authority to
19 bind Plaintiff without his consent,⁵⁸ particularly after Plaintiff made its May 2, 2017 demand for

20 ⁴⁸ See, e.g., 3/3 Trans., 137:16-24.

21 ⁴⁹ Exhibit FF, ¶ 16. See 3/3 Trans., 100:15-101-4, 102:14-20, 104:2-5, 115:11-21, 119:9-15, 137:16-24, 156:13-18.

22 ⁵⁰ Exhibit 13, PLTF_107, § 14.

23 ⁵¹ 3/3 Trans., 103:22, 118:3-9, 119:4-7.

24 ⁵² *Id.*, 136:16-19.

25 ⁵³ 3/3 Trans., 137:1-8, 13-15.

26 ⁵⁴ *Id.*, 211:17-25; 213:15-23.

27 ⁵⁵ See 3/3 Trans., 100:15-101-4, 102:14-20, 104:2-5, 115:11-21, 119:9-15, 137: 16-24, 143:21-25, 156:13-18.

28 ⁵⁶ Exhibit 11, PLTF_097.

⁵⁷ Exhibit 28, PLTF_247-253; *see also* Exhibit 16 (text from Bloom threatening adverse action).

⁵⁸ 3/3 Trans., 35:23-36:20, 69:1-70:5.

1 books and records. This is corroborated by the 2017 communications to Defendants, his
2 declaration in the arbitration, the Arb. Award, and the September 2020 amendment to Plaintiff's
3 operating agreement.⁵⁹ Given the communications from Plaintiff in 2017, the Arb. Award, and
4 no communications to the contrary subsequent to the Arb. Award from Flatto to Defendants, the
5 Court concludes it was unreasonable for Defendants to believe any agreement entered into with
6 Plaintiff without Flatto's consent would be valid and enforceable.

7 20. The circumstances surrounding the execution and attempts to enforce the
8 Settlement Agreement, known to Defendants, further demonstrate that Farkas did not have
9 apparent authority to bind Plaintiff to the terms of the agreement, which circumstances were
10 actively concealed from Plaintiff and its counsel of record until the Motion to Compel was
11 granted and records were produced by Nahabedian. Bloom did not act in good faith in his
12 dealings with Plaintiff, nor did he give heed to any of the opposing restrictions brought to his
13 notice.

14 It was revealed from Nahabedian's records:

- 15 • On January 4, 2021, Bloom contacted Nahabedian, Bloom's personal counsel on
16 another matter,⁶⁰ via phone to discuss Nahabedian representing Plaintiff.⁶¹ Within
17 minutes of hanging up the phone, Nahabedian emailed Bloom an attorney retainer
18 agreement for Farkas to execute *on behalf of Plaintiff* for Nahabedian to
19 represent Plaintiff in this case.⁶² Farkas was never advised Nahabedian was being
20 hired to be Plaintiff's lawyer and he thought Nahabedian was going to be his
21 personal counsel.⁶³ Farkas did not understand that Nahabedian was Bloom's

22 ⁵⁹ Exhibits 2, 21-23, E, ¶ 5; 3/3 Trans. 59:23-60:20.

23 ⁶⁰ See *Nevada Speedway v. Bloom, et al.*, Case No. A-20-809882-B of the Eighth Jud. Dist. Court (showing
24 Nahabedian represented Bloom in the relevant January 2021 time period), 3/3 Trans., 13-15; 3/10 Trans., 45:11-19.
25 Nahabedian was also former counsel for Defendants. 3/10 Trans., 20-22. Further, MGA is Nahabedian's personal
counsel. 3/10 Trans., 45:23-46:1.

26 ⁶¹ Exhibit 30; 3/10 Trans., 48:6-21.

27 ⁶² Exhibit 28, PLTF_240-244.

28 ⁶³ 3/3 Trans., 149:25-150:7.

1 personal counsel.⁶⁴ Bloom was even planning to advance the retainer to
2 Nahabedian (although Nahabedian did not charge one notwithstanding his
3 attorney retainer agreement provides its payment is a condition of his
4 employment).⁶⁵

- 5 • On January 7, 2021, at 1:58 pm, Bloom emailed the following documents
6 (collectively, the “Bloom Documents”) to a UPS store near Farkas’ home: 1) the
7 Settlement Agreement, 2) the Nahabedian attorney retainer agreement, 3) a letter,
8 dated January 6, 2021, directed to Plaintiff’s counsel, GTG, with Farkas
9 purporting to terminate them,⁶⁶ and 4) a Release, Hold Harmless and
10 Indemnification Agreement (“Release”). Together with the attached Bloom
11 Documents, Bloom emailed directions to the UPS store that Farkas would be in,
12 they should print one copy of each of the four documents, and once Farkas signs
13 them, they should scan the signed documents, email than back to Bloom, and mail
14 the hard copies to Bloom.⁶⁷ The Bloom Documents were **not** emailed or otherwise
15 delivered to Farkas (let alone Flatto or GTG) at any time, before or
16 after the UPS store was emailed the Bloom Documents, despite that Bloom knew
17 Farkas’ email address.⁶⁸
- 18 • On January 7, 2021, at 2:40 pm (less than 45 minutes after they were first sent by
19 Bloom), the UPS Store emailed Bloom a copy of the scanned, signed Bloom
20 Documents.⁶⁹ On January 7, 2021, at 2:48 pm, Bloom forwarded the executed
21 Bloom Documents to MGA attorneys Gutierrez and Jason Maier, Esq. (“Maier”),
22 and Nahabedian via email with an exclamation “Here you go!” and follow-up

23 ⁶⁴ 3/3 Trans., 150:25-151:1; 3/10 Trans., 48:6-49:2.

24 ⁶⁵ 3/10 Trans., 35:5-16

25 ⁶⁶ The letter was not written by Farkas, and he did not review or approve of its contents. 3/3 Trans., 148:25-149:24.

26 ⁶⁷ Exhibit 28, PLTF_245.

27 ⁶⁸ See Exhibit 17, PLTF_123.

28 ⁶⁹ Exhibit 28, PLTF_245-261.

1 instructions to “get the Substitution of Attorney and Stip to Dismiss filed *for*
2 *[Plaintiff]* and put this to bed in the next day or two...”⁷⁰ Bloom was directing
3 action on behalf of both Defendants and Plaintiff to effectuate dismissal of the
4 case, despite that he and Defendants were adverse to Plaintiff.

- 5 • On January 8, 2021, Nahabedian informed Bloom and Gutierrez that he needed a
6 substitution of counsel to be executed by Farkas and GTG so that he could
7 effectuate the dismissal, and Bloom explained that getting Farkas to “sign stuff is
8 a pain in the ass.”⁷¹ The next day, Bloom explained to Nahabedian and Gutierrez
9 (together with other MGA attorneys Maier and Danielle Barraza) that his
10 intention was to “put in front of [Farkas]” further documents “for a second set of
11 signatures.” Bloom followed, “I’ll have [Farkas] sign everything tomorrow.”⁷²
- 12 • Nahabedian started to question Farkas’ authority to bind Plaintiff, but only to
13 Bloom and MGA.⁷³ Notwithstanding that Nahabedian had still not had any email,
14 text or one-on-one communication with Farkas in order to confirm his authority,⁷⁴
15 on January 14, 2021, Nahabedian sent correspondence to GTG as counsel for
16 Plaintiff,⁷⁵ representing that he was hired to replace GTG. This correspondence
17 was the first time it was disclosed to Plaintiff that there was an executed settlement
18 agreement,⁷⁶ although the agreement was not attached to Nahabedian’s
19 correspondence. Farkas did not participate in the drafting of Nahabedian’s
20 January 14, 2021 correspondence, and he did not approve it before it was sent.⁷⁷
21 The correspondence was drafted by Maier (Defendants and Bloom’s counsel in

22 ⁷⁰ *Id.* at PLTF_245 (emphasis added).

23 ⁷¹ *Id.* at PLTF_266.

24 ⁷² *Id.* at PLTF_278.

25 ⁷³ *Id.* at PLTF_281, 284, 288.

26 ⁷⁴ Exhibits 28-30; 3/10 Trans., 85:1-9.

27 ⁷⁵ Exhibit 11.

28 ⁷⁶ *Id.* at PLTF-097.

⁷⁷ 3/3 Trans., 144:22-148:24.

1 this case), revised by Nahabedian (Bloom's counsel in another matter purporting
2 to be acting on behalf of Plaintiff), and then approved by Bloom and Gutierrez
3 (also Defendants and Bloom's counsel) before it was sent.⁷⁸

4 21. Farkas and Flatto were conspicuously absent from any communications with
5 Nahabedian for the purpose of effectuating dismissal of the case pursuant to the Settlement
6 Agreement's terms or confirming authority to bind Plaintiff. Confronted at the hearing with the
7 fact that Nahabedian did not communicate with Plaintiff's representative, but communicated
8 with Plaintiff's adversaries, MGA and Bloom, relating to his purported representation of
9 Plaintiff, Nahabedian testified that he took direction from Bloom because Bloom was Farkas'
10 brother-in-law and his "conduit."⁷⁹ This exemplifies the lack of apparent authority from
11 Plaintiff. At all relevant times, Bloom and his companies, Defendants, were adverse to Plaintiff
12 with pending contempt proceedings against them, and under no circumstances should he have
13 been directing Plaintiff's counsel without any member of Plaintiff's participation.

14 22. Although there is dispute between Farkas and Bloom regarding when Bloom was
15 specifically informed that Farkas was removed from having *any* management interest in
16 Plaintiff in September 2020,⁸⁰ Bloom and Nahabedian both knew that Farkas had officially
17 resigned his management position in September 2020 by at least the time the Motion to Enforce
18 was filed.⁸¹ Despite learning of the restriction on Farkas' authority, Bloom and his counsel⁸²
19 were unfazed and moved forward on their enforcement efforts.

20 23. Bloom's refusal to recognize inconvenient limitations on Farkas' authority was
21 shown to be pervasive and reckless. Given the arbitrators' expressly stated determination that

22 ⁷⁸ PLTF_311, 316-317, 318, 323, 328-332.

23 ⁷⁹ 3/10 Trans., 51:17-20.

24 ⁸⁰ Exhibit FF, ¶¶ 8, 17, 3/3 Trans., 136:12-21, 198:2-21, 212:21-22; Exhibit 15, ¶¶ 19-21. At the Hearing, Bloom
25 testified that the January 9-11 time subject of his sworn declaration submitted to the Court in support of the Reply in
26 support of the Motion to Enforce was qualified by "on or about" because the dates were not certain; however, the
27 timing of January 9-11 are actually consistent with the timing that Nahabedian started inquiring about Farkas'
28 authority. Exhibit 28, PLTF_281.

⁸¹ Exhibit 15, ¶¶ 19-21; Exhibit 28, PLTF_366.

⁸² Maier is the only declarant in the Motion to Enforce.

1 Flatto's consent was required to bind Plaintiff (before the September 2020 amendment was
2 entered), the Court finds that no reasonably intelligent person with knowledge of that Arb.
3 Award would once again attempt to enforce an agreement without Flatto's consent. In the
4 hearing, Bloom testified he did not heed the Arb. Award because the evidence relied upon by the
5 arbitrators in the arbitration hearing, to wit: a declaration provided by Farkas, was false.⁸³
6 Farkas testified unequivocally in rebuttal at the hearing that the contents of the declaration
7 submitted to the arbitrators was reviewed by him, approved, and the contents were truthful.⁸⁴
8 Farkas' testimony, as well as the arbitrator's decision, is corroborated by the other documents in
9 evidence, and the Court finds there is no support for Bloom's allegation of perjury.⁸⁵

10 24. Not only did Bloom disregard the Arb. Award, but also the basis for the Arb.
11 Award, including the April 18, 2017 email to Defendants providing notice that Farkas cannot
12 bind Plaintiff without Flatto's consent in addition to the declarations of Flatto and Farkas.⁸⁶
13 Further, on July 13, 2017, Plaintiff also sent written correspondence to MGA⁸⁷ representing
14 Farkas is "not the manager" of Plaintiff and that "Farkas does not have the authority to bind
15 [Plaintiff]."⁸⁸ Bloom did not heed any of the notices of Farkas' restricted authority to bind
16 Plaintiff.

17 25. In the Motion to Enforce, Maier testified⁸⁹ that Farkas had authority based on
18 Plaintiff's engagement letter with GTG, which Farkas executed as a member of Plaintiff "and
19

20 ⁸³ 3/3 Trans., 201:1-6; *see also* 200:10-20 (disregarding notices of restricted authority of Farkas), 203:2-11 (limiting
the holding to the authority to execute the redemption agreement without limitation of a settlement agreement).

21 ⁸⁴ 3/10 Trans., 87:25-88:14.

22 ⁸⁵ *See, e.g.*, Exhibit 21-22 (the 2017 communications to Defendants) and Exhibit A, FIRST0031-32 (the redemption
agreement including Farkas' signature as "VP Finance"- the title he had with Defendants, and no reference to
Plaintiff).

23 ⁸⁶ Exhibit 2, PLTF_007.

24 ⁸⁷ At the Hearing, Defendants argued that no notice was effective without being sent certified mail pursuant to the
Subscription Agreement. However, MGA has been counsel for Defendants even since before the subject disputes
25 arose in May 2017, and MGA was the registered agent for Defendants in July 2017 when the letter was sent.
Exhibit 26, PLTF_218.; Exhibit 27, PLTF_235.

26 ⁸⁸ Exhibit 22.

27 ⁸⁹ Motion to Enforce, 3:1-6.

1 also interlineated a restriction of no litigation against First 100.” Flatto executed the engagement
2 letter along with Farkas as a “member,”⁹⁰ and the interlineation on the engagement letter was
3 made by Flatto’s lawyer and not Farkas, and the interlineation did not restrict litigation, only
4 served to place a cap on fees except to the extent the scope expanded to include litigation.⁹¹

5 26. In addition, Maier testified in support of the Motion to Enforce⁹² that Plaintiff’s
6 operating agreement provided the apparent authority for Farkas to bind Plaintiff to the terms of
7 the Settlement Agreement. Section 3.4 of the operating agreement, which was in effect prior to
8 September 2020, provides that the Administrative Member (Farkas) could not act without first
9 obtaining the consent of the other members (Flatto).⁹³ At Section 4.4, it provides that persons
10 dealing with Plaintiff are entitled to rely conclusively upon the power and authority of the
11 Administrative Member (Farkas until September 2020).⁹⁴ However, by the time of the Motion
12 to Enforce, Defendants and Bloom had received notice of the amendment executed in
13 September 2020 that changed the Administrative Member to Flatto and Flatto was the only
14 person with authority to bind Plaintiff subsequent to that date.⁹⁵ In addition, the entry of the
15 Arb. Award and 2017 communications providing notice of a restriction on Farkas’ authority
16 post-dated the operating agreement, negating Defendants’ ability to conclusively rely upon
17 Farkas’ signature as binding authority under Section 4.4.

18 27. Finally, there was a lack of good faith in Bloom’s dealings with his brother-in-law
19 in order to obtain the signed Bloom Documents with haste and in intentional disregard of the
20 restrictions set forth in the Arb. Award, the April 13, 2017 email and July 13, 2017 letter. At a
21 minimum, Bloom was placed on notice that Plaintiff would dispute any document signed by
22 Farkas without Flatto’s knowledge and consent. Further, given that the Bloom Documents were

23 ⁹⁰ Exhibit 28, PLTF_299-300.

24 ⁹¹ 3/3 Trans., 33:1-19; Exhibit 28, PLTF_298.

25 ⁹² Motion to Enforce, 3:6-11.

26 ⁹³ Exhibit 20, PLTF_159.

27 ⁹⁴ *Id.* at Exhibit 20, PLTF_162.

28 ⁹⁵ *See* fn. 81 above.

1 sent by Bloom to the UPS store for execution and they were returned by the UPS Store in less
2 than an hour signed by Farkas, it was not reasonable for Bloom to believe that that was
3 sufficient time for Farkas to review them, understand what he was signing, somehow
4 communicate the matters to Flatto, receive the benefit of counsel regarding the terms, and
5 receive Flatto's consent.

6 28. Under all the circumstances, the Court finds it was unreasonable for Bloom to
7 ignore the notices of the restrictions that Farkas did not have authority to bind Plaintiff without
8 Flatto's consent, and the Court thus concludes that there was a lack of apparent authority for
9 Farkas to bind Plaintiff to the Settlement Agreement.

10 29. The Settlement Agreement expressly provides that, in exchange for dismissal, if
11 Defendants sell the Ngan Judgment, Defendants will pay Plaintiff \$1,000,000.00, plus 6%
12 interest.⁹⁶ There is no evidence of any actual sale, or even ability to sell⁹⁷ the Ngan Judgment
13 for a sufficient sum to pay Plaintiff \$1,000,000.00 plus interest. Further, Defendants' promise
14 for payment in the future upon a sale of the Ngan Judgment is particularly speculative upon the
15 concession that the Ngan Judgment has not resulted in any collections since its entry in 2017,
16 despite diligent collection efforts from MGA and other collection counsel.⁹⁸

17 30. Further, per Defendants' operating agreements, Plaintiff is already entitled to *pro*
18 *rata* distributions with the other members of the net proceeds from any sale.⁹⁹ Given the "if"
19 qualifier of payment, and no sale amount that could be used to calculate whether Plaintiff would
20 ostensibly receive more or less with the Settlement Agreement than with a distribution as a
21 member, the Settlement Agreement does not support a finding of consideration beyond what
22 Plaintiff could ostensibly already be entitled to recover from Defendants following a sale of the
23 Ngan Judgment if it were to ever occur.

24 ⁹⁶ Exhibit 13, PLTF_106.

25 ⁹⁷ Under Defendants' operating agreements, the sale of the only remaining asset of Defendants would require
26 approval of Defendants' members. Exhibits 7 and 8, §6.1(B)(1).

27 ⁹⁸ 3/3 Trans., 217:18-24. 218:9-15.

28 ⁹⁹ Exhibits 7 and 8, Article V.

1 31. Additionally, the Release was not disclosed until after the hearing on the Motion
2 to Compel. After its discovery, Defendants and Bloom were conspicuously silent on the
3 Release's application, which under the plain terms would eliminate any consideration provided
4 Plaintiff under the Settlement Agreement, by virtue of the express, broad release of the parties
5 to the Release (Farkas and Defendants) as well as their representatives and affiliates from any
6 and all claims, promises, damages or liabilities of every kind and nature whatsoever from the
7 beginning of time until the January 6, 2021 effective date of the Release, covering any future
8 liability under the Settlement Agreement also dated January 6, 2021.

9 32. “A meeting of the minds exists when the parties have agreed upon the contract's
10 essential terms.” *Certified Fire Prot. Inc. v. Precision Constr.*, 128 Nev. 371, 378, 283 P.3d 250,
11 255 (2012).

12 Neither Plaintiff, Flatto, nor Plaintiff's known counsel, GTG, saw or reviewed the
13 Settlement Agreement before it was executed by Farkas.¹⁰⁰ Farkas had not even reviewed it.
14 The only time that Farkas had to review the Settlement Agreement's terms was during those
15 minutes he was at the UPS store and the Settlement Agreement was provided with the other
16 documents for his signature. Even after the Settlement Agreement was executed, Bloom, MGA
17 and Nahabedian did not forward the Settlement Agreement to Farkas, Flatto or GTG. The first
18 time Plaintiff received a copy of the Settlement Agreement was when it was attached to the
19 Motion to Enforce.

20 33. Conceding that Bloom never negotiated the Settlement Agreement with Plaintiff,
21 Bloom's testimony relating to a meeting of the minds on the terms was that Bloom had
22 discussions with Flatto in 2017 and was in receipt of a communication from Flatto to Farkas
23 dated January 23, 2017 (before the May 2, 2017 initial demand for Defendants' books and
24 records), which Farkas forwarded to Bloom on April 27, 2017 asking for a return of his
25 investment.¹⁰¹ The Court finds this email and any related 2017 discussions with Flatto cannot be

26 ¹⁰⁰ 3/3 Trans., 72:15- 73:5.

27 ¹⁰¹ 3/3 Trans., 203:16-25; Exhibit C, FIRST0188.

1 reasonably construed as Flatto's agreement to the terms of the Settlement Agreement, as there
2 had been the passage of over three years' time, and in that time, Plaintiff was forced to file the
3 arbitration and obtain the Order for the production of Defendants' books and records, and the
4 Settlement Agreement provided for immediate dismissal of the fruits of that litigation, with
5 prejudice, a term not subject of Flatto's April 2017 email. Further, the Settlement Agreement
6 does not provide for the payment of funds in exchange for the dismissal of the Order, Arb.
7 Award and other pending matters. Rather, it provides for the payment of funds if they are ever
8 received from a sale of the Ngan Judgment, a sale that is speculative as there is no evidence of
9 any actual sale agreement or proof of funds. The Court finds there was insufficient evidence to
10 establish a meeting of the minds on the Settlement Agreement's essential terms.

11 34. The Motion to Enforce was filed for the express purpose of avoiding the
12 consequence of Defendants and Bloom's contempt of the Order. Given the timing, the Court
13 gives special care to determine if the equities support an order for specific performance. In
14 addition to those inequities discussed above (lack of consideration, claim and issue preclusion,
15 concealment of material facts and bad faith), the Court also finds that there are indicia of duress
16 and fraud here that would prevent specific performance.

17 35. In addition to being the manager of Defendants, Farkas' prior employer, Bloom is
18 within Farkas' family. Even though the parties stood in an adversarial relationship *vis a vis* this
19 case, Bloom and Farkas continued to have their familial connection. Under the circumstances, at
20 a minimum, Bloom had a duty to act with the utmost good faith when dealing with Farkas.
21 Even though the parties stood in an adversarial relationship here, the circumstances surrounding
22 Farkas' execution of the Settlement Agreement demonstrate that the documents sent to the UPS
23 Store for Farkas' execution would not have occurred but-for Bloom's familial relationship with
24 Farkas. As Farkas testified, "[Bloom] is my brother-in-law. He's family. I didn't think he
25 would-he would try to do this..."¹⁰² "I trust him as-a brother in law, and as somebody who was
26 representing to me that he was just trying to help in this part of what was going on....I believe

27 ¹⁰² 3/3 Trans., 116:1-21, 119:9-16.
28

1 that he took advantage of a nuance in the law....I think the way Jay treated me was wrong and
2 manipulative. And I think he knew exactly what he was doing.”¹⁰³

3 36. Farkas was self-effacing throughout his testimony at the Hearing, explaining that it
4 was his fault for trusting Bloom and not reading the documents before signing them.¹⁰⁴ If this
5 was a typical arms’ length transaction with no special duties owed between the persons signing
6 the subject agreement, Farkas’ admitted failure to even review the documents before signing them
7 could be a real issue (assuming he had authority in the first place). However, here, the
8 Court finds that there was a special confidence as a result of a familial relationship that resulted in
9 Farkas’ blind trust in Bloom and Bloom’s representations to him about the Bloom Documents’
10 contents.¹⁰⁵

11 37. Farkas was threatened by Bloom with civil action by Defendants and/or their
12 members if he did not sign the Settlement Agreement and other documents provided to him by
13 Bloom, his family member.¹⁰⁶ Farkas felt that he had no choice but to sign any document that
14 Bloom put in front of him. Farkas involuntarily accepted the Bloom Documents and executed
15 them without diligence because he believed otherwise he would suffer adverse action he could
16 not afford to address—a belief that is completely subjective. Where Defendants were only able
17 to procure Farkas’ signature through the abuse of special confidences, the threat of adverse
18 action and concealment of the true nature and substance of the Bloom Documents being signed,
19 enforcement of the Settlement Agreement against the innocent Plaintiff would be inequitable.

20 38. By its OSC, Plaintiff seeks an order compelling Defendants and their principal,
21 Bloom, to comply with the Order, and to require them to pay the fees and costs incurred in the
22 enforcement of the Order as necessary to redress the non-compliance. This requested relief is
23 authorized pursuant to NRS Chapter 22 (Contempts). *See* NRS 22.010(3) (disobedience or
24 resistance to any lawful writ, order, rule or process issued by the court constitutes contempt) and

25 ¹⁰³ *Id.*, 154:16-155:23, 156:13-18.

26 ¹⁰⁴ *See, e.g.*, 3/3 Trans., 101:7-9, 141:20-25.

27 ¹⁰⁵ *Id.* at 102:17-20.

28 ¹⁰⁶ 3/3 Trans., 100:19-101:6, 116:15-21, 117:7-8, 119:17-18, 132:3-22, 134:18-21.

1 NRS 22.100-110 (penalties for contempt). The Court is addressing and treating the contempt
2 proceedings as civil contempt proceedings.

3 39. The Order required Defendants to produce “all the requested documents and
4 information available from both companies to Plaintiff for inspection and copying, as set forth in
5 the [Arb. Award] and Exhibit 13 to Claimant’s Appendix to Claimant’s Arbitration Brief.”¹⁰⁷
6 “Exhibit 13 to Claimant’s Appendix to Claimant’s Arbitration Brief”¹⁰⁸ provides the following
7 list of documents to be produced by each of the Defendants:

- 8 1) The Company’s company books, inclusive of any and all
9 agreements relating to the Company’s governance (Company operating
10 agreements, amendments, consents and resolutions)
- 11 2) Financial Statements, inclusive of balance sheets and profit & loss
12 statements
- 13 3) General ledger and back up, inclusive of invoices
- 14 4) Documents sufficient to show the Company’s assets and their
15 location
- 16 5) Documents relating to value of the Company and/or the
17 Company’s assets
- 18 6) Documents sufficient to show the Company’s members and their
19 status, inclusive of any redeemed members
- 20 7) Tax returns for the Company
- 21 8) Documents sufficient to show the accounts payable incurred by the
22 Company, paid by the Company, and remaining due from the Company
- 23 9) Documents sufficient to show payments made to the Company
24 managers, members and/or affiliates of any managers or members
- 25 10) Company insurance policies
- 26 11) Documents sufficient to show the status of any Company lawsuits
- 27 12) Documents sufficient to show the use of the Investors’ funds (and
28 any other members’ investment) with the Company

40. It is undisputed that Defendants have not produced to Plaintiff one record or
document within this list since entry of the Order.¹⁰⁹

41. The evidence shows that MGA has custody of certain books and records for
Defendants, and no excuse was provided for the failure of counsel to deliver what is in their
custody to Plaintiff in compliance with the Order.¹¹⁰ Bloom denied having any documents, and

¹⁰⁷ Exhibit 4, p. 3.

¹⁰⁸ Exhibit 6.

¹⁰⁹ 3/3 Trans., 219:4-9.

¹¹⁰ See Exhibit 32; 3/10 Trans., 17:2-18:20.

1 said they are all in the custody of Farkas and/or Defendants' former controller, Henricksen (the
2 "Controller").¹¹¹

3 42. Farkas denies taking any books and records of Defendants with him when he left
4 his employment with Defendants (indeed, if he had taken books and records with him, that
5 would have eliminated the need for Plaintiff to request the production of Defendants' books and
6 records in May 2017).¹¹² There is no record of any request from Defendants to produce
7 documents subsequent to May 2, 2017 or any evidence that Farkas was properly designated a
8 custodian of Defendants' records. To the contrary, Bloom is the only person listed in the
9 Operating Agreement or the records of the Secretary of State as having the managerial
10 responsibilities as well as the duties of the registered agent.¹¹³

11 43. Moreover, the failure to produce even one record demonstrates that the cost of
12 production is not a credible excuse for Defendants' disobedience of the Order. Relatedly, lack of
13 funds is no defense to Defendants' performance where there is no evidence of Defendants'
14 compliance with their own governing documents for the purpose of raising funds to meet the
15 Order obligations. As set forth at Section 4.2 of the Defendants' respective Operating
16 Agreements:¹¹⁴

17 If necessary and appropriate to enable the Company to meet its costs,
18 expenses, obligations, and liabilities, and if no lending source is available,
19 then the Manager shall notify each Class A Member ("Capital Call") of
20 the need for any additional capital contributions, and such capital demand
21 shall be made on each Class A Member in proportion to its Class A
22 Membership Interest....

23 Defendants are not incapable of abiding by the Order; Bloom merely determined to do nothing to
24 comply with the Order.¹¹⁵ Bloom's affiliated SJC is the 45.625% Class A Member of First 100.¹¹⁶

25 ¹¹¹ 3/10 Trans., 14:9-18.

26 ¹¹² 3/3 Trans., 125:9-21, 126:11-25; 3/10 Trans., 87:10-24.

27 ¹¹³ Exhibits 26 and 27.

28 ¹¹⁴ Exhibits 7 and Exhibit 8, p. 8.

¹¹⁵ 3/3 Trans., 74:15-20; 3/10 Trans., 7:13-19.

1 The 23.709% Class A Member of 1st 100, and Bloom's other affiliates, SJC 1, LLC and SJC 2,
2 LLC, have further Class A Member interests of 6.708% and 12.208% in 1st 100, respectively.¹¹⁷
3 Therefore, Bloom's affiliates have the lion's share of any capital call obligation for either entity
4 to meet their performance obligation.

5 44. There is no question here that Bloom had notice of the Order, and he even filed a
6 response to the OSC in conjunction with Defendants. Bloom is the only person appointed under
7 Defendants' operating agreements and with the Nevada Secretary of State to act as the Manager
8 of the companies.¹¹⁸ Throughout Bloom's testimony, he attempted to distance himself from this
9 manager role and its responsibilities to Defendants. However, Defendants are manager-managed,
10 and Bloom is expressly the only person with authority or power under the Defendants' operating
11 agreements to do any act that would be binding on Defendants, or incur any expenditures on
12 behalf Defendants.¹¹⁹ Bloom is not only the only Manager listed in the operating agreements and
13 with the Nevada Secretary of State; he is also the "Registered Agent" with the Nevada Secretary
14 of State.

15 45. In his Response to the OSC, Bloom argues he is absolutely immune from
16 contempt proceedings under NRS 86.371, which provides that no member or manager of a
17 Nevada LLC is individually liable for the debts or liabilities of the company. The subject
18 contempt is not to address the non-payment of the monetary award that is included in the Order;
19 it is solely for disobedience and/or resistance of a Court order requiring certain action solely
20 within Bloom's responsibilities under the Defendants' Operating Agreements and as designated
21 with the Nevada Secretary of State for each of the Defendants.

22 If any of the foregoing Findings of Fact would be more appropriately deemed to be
23 Conclusions of Law, they shall be so deemed.

24 ¹¹⁶ Exhibit 7, p. 28.

25 ¹¹⁷ Exhibit 8, p. 29.

26 ¹¹⁸ Exhibits 7-8, 26-27.

27 ¹¹⁹ Exhibits 7 and 8, Sects. 3.17, 6.1(A).

FROM the foregoing Findings of Fact, the Court makes the following:

CONCLUSIONS OF LAW

1. “A settlement agreement, which is a contract, is governed by principles of contract law.” *Mack v. Estate of Mack*, 125 Nev. 80, 95, 206 P.3d 98, 108 (2009) (internal citations omitted). “As such, a settlement agreement will not be an enforceable contract unless there is ‘an offer and acceptance, meeting of the minds, and consideration.’” *Id.*

Because requests to enforce settlement agreements seek “specific performance,” the actions are equitable in nature. *Park W. Companies, Inc. v. Amazon Constr. Corp.*, 473 P.3d 459 (Nev. 2020) (unpublished disposition) (citing *Calabi v. Gov’t Emps. Ins. Co.*, 728 A.2d 2016, 208 (Md. 1999), 81A C.J.S. *Specific Performance* § 2 (2015) (“The remedy of specific performance is equitable in nature” and therefore “governed by equitable principles”)). In addition to the elements of an enforceable contract being required, specific performance as a remedy under the subject contract is available only when: (1) the terms of the contract are definite and certain; (2) the remedy at law is inadequate; (3) the movant has tendered performance; and (4) the court is willing to order specific performance. *Mayfield v. Koroghli*, 124 Nev. 343, 351, 184 P.3d 362, 367 (2008) (citing *Serpa v. Darling*, 107 Nev. 299, 305, 810 P.2d 778, 782 (1991)).

2. Repudiation of a contract prior to performance by either party excuses any performance under the contract by either party. *See Kahle v. Kostiner*, 85 Nev. 355, 358, 455 P.2d 42, 44 (1969) (repudiation requires “a definite unequivocal and absolute intent not to perform” under the contract). Under the circumstances, the Court concludes that Plaintiff’s repudiation prior to any performance excused any further performance obligation under the Settlement Agreement by either party.

3. To bind Plaintiff in an enforceable settlement agreement, Farkas must have had Plaintiff’s actual or apparent authority. *Simmons Self-Storage v. Rib Roof, Inc.*, 130 Nev. 540, 549, 331 P.3d 850, 856 (2014) (citing *Dixon v. Thatcher*, 103 Nev., 414, 417, 742 P.2d 1029, 1031 (1987)).

4. “An agent acts with actual authority when, at the time of taking action that has

1 legal consequences for the principal, the agent reasonably believes, in accordance with the
2 principal's manifestations to the agent, that the principal wishes the agent so to act.” *Simmons*
3 *Self-Storage*, at 549, 331 P.3d at 856 (citing Restatement (Third) of Agency § 2.01 (2006)).

4 When examining whether actual authority exists, the courts are to focus on an agent's reasonable
5 belief. *Id.* (citing § 2.02 & cmt. e (“Whether an agent's belief is reasonable is determined from
6 the viewpoint of a reasonable person in the agent's situation under all of the circumstances of
7 which the agent has notice.”)).

8 5. Without any appreciation for all that he was signing at the UPS store, Farkas did
9 not consult with Flatto or counsel for Plaintiff regarding the Settlement Agreement.¹²⁰ Farkas’
10 belief he lacked consent to bind Plaintiff to the terms of the Settlement Agreement was
11 reasonable under the circumstances. In particular, at all times, actions taken on behalf of
12 Plaintiff required Flatto’s consent and the failure to obtain the consent of Flatto is conclusive
13 evidence that Farkas’ belief that he lacked authority to bind Plaintiff when he executed the
14 Settlement Agreement was reasonable. Accordingly, the Court concludes Farkas did not have
15 actual authority to bind Plaintiff under the Settlement Agreement.

16 6. An agent has apparent authority where the “principal holds his agent out as
17 possessing or permits him to exercise or to represent himself as possessing” and “there must also
18 be evidence of the principal's knowledge and acquiescence.” *Simmons Self-Storage v. Rib Roof,*
19 *Inc.*, 130 Nev. 540, 550, 331 P.3d 850, 857 (2014)(quoting *Ellis v. Nelson*, 68 Nev. 410, 418–19,
20 233 P.2d 1072, 1076 (1951)). Thus, “[a]pparent authority (when in excess of actual authority)
21 proceeds on the theory of equitable estoppel; it is in effect an estoppel against the [principal] to
22 deny agency when by his conduct he has clothed the agent with apparent authority to act.” *Ellis*
23 *v. Nelson*, 68 Nev. 410, 418–19, 233 P.2d 1072, 1076 (1951). Moreover, to be clothed with
24 apparent authority, there “must also be evidence of the principal's knowledge and acquiescence in
25 them.” *Id.* There is no authority “simply because the party claiming has acted upon his
26 conclusions.” *Id.* There can only be apparent authority, “where a person of ordinary prudence,
27 conversant with business usages and the nature of the particular business, acting in good faith.

28 ¹²⁰ 3/3 Trans., 72:19-23.

1 and giving heed not only to opposing inferences but also to all restrictions which are brought
2 to his notice, would reasonably rely.” *Id.* (emphasis added) (noting that where inferences against
3 the existence of apparent authority are as equally reasonable as those supporting it, a party may
4 not rely on apparent authority).

5 7. “[A] party claiming apparent authority of an agent as a basis for contract
6 formation must prove (1) that he subjectively believed that the agent had authority to act for the
7 principal and (2) that his subjective belief in the agent’s authority was objectively reasonable.”
8 *Great Am. Ins. Co. v. Gen. Builders, Inc.*, 113 Nev. 346, 352, 934 P.2d 257, 261 (1997).
9 Reasonable reliance on the agent’s authority “is a necessary element.” *Id.*; *Forrest Tr. v. Fid.*
10 *Title Agency of Nevada, Inc.*, 281 P.3d 1173 (Nev. 2009). In determining reasonableness, “the
11 party who claims reliance must not have closed his eyes to warnings or inconsistent
12 circumstances.” *Great Am. Ins. Co.*, 113 Nev. at 352, 934 P.2d at 261, (citing *Tsouras v.*
13 *Southwest Plumbing and Heating*, 94 Nev. 748, 751, 587 P.2d 1321, 1322 (1978)) (emphasis
14 added). As the Nevada Supreme Court has explained, “the reasonable reliance requirement
15 [includes] the performance of due diligence” to learn the veracity of representations of
16 authority.” *In re Cay Clubs*, 130 Nev. 920, 932–33, 340 P.3d 563, 571–72 (2014) (emphasis
17 added).

18 8. The Settlement Agreement is not the first time that Bloom has directed Farkas to
19 sign a document and then taken the position that Farkas’ signature bound Plaintiff to its detriment.
20 The question of Farkas’ authority to bind Plaintiff without Flatto’s consent was raised in
21 the arbitration, and it was resolved **against Defendants** as part of the Arb. Award. Thus, even
22 before Plaintiff amended its operating agreement in September 2020 to remove Farkas, it was
23 clearly established by the arbitrators that Farkas had no authority to bind Plaintiff without the
24 consent of Flatto.

25 9. *Res judicata* precludes Defendants’ reiterated argument that Farkas’ signature on
26 a document is sufficient to bind Plaintiff to its detriment. *Univ. of Nev. v. Tarkanian*, 110 Nev.
27 581, 598, 879 P.2d 1180, 1191 (1994) (defining *res judicata* as encompassing both issue and
28 claim preclusion doctrines). The issue of Farkas’ authority to bind Plaintiff without Flatto’s

1 consent- the same issue at bar--was previously raised and decided in the Arb. Award, confirmed
2 by the Order. As the Order is a final judgment that was appealable, the finality of the
3 determination is concrete and immutable here. *See Kirsch v. Traver*, 134 Nev. 163, 166, 414
4 P.3d 818, 821 (2018) (defining “final judgment” for the purpose of analyzing *res judicata* as
5 being procedurally definite without any reservation for future determination following the parties
6 having an opportunity to be heard, a reasoned opinion supporting the determination, and that the
7 determination having been subject to appeal) (citing *Univ. of Nev. v. Tarkanian*, 110 Nev. at 598,
8 879 P.2d at 1191, *holding modified on other grounds by Exec. Mgmt., Ltd. v. Ticor Title Ins.*
9 *Co.*, 114 Nev. 823, 963 P.2d 465 (1998)).

10 10. As a matter of law, as established by the Order confirming the Arb. Award,
11 Farkas did not have apparent authority to bind Plaintiff absent Flatto’s consent, and here, the
12 failure to obtain Flatto’s consent to the Settlement Agreement is undisputed. On this basis
13 alone, Farkas did not have actual or apparent authority to bind Plaintiff under the Settlement
14 Agreement.

15 11. The Court therefore concludes there was no good faith basis for Bloom’s
16 intentional disregard of the Arb. Award and Order thereon and reliance by Bloom on Farkas’
17 signature on the Settlement Agreement was not reasonable.

18 12. “Consideration is the exchange of a promise or performance, bargained for by the
19 parties.” *Jones v. SunTrust Mortg., Inc.*, 128 Nev. 188, 191, 274 P.3d 762, 764 (2012).
20 In addition to consideration being an essential element of any contract, gross inadequacy of
21 consideration may be relevant to issues of capacity, fraud, mistake, misrepresentation, duress, or
22 undue influence in addition to being relevant to whether there is an essential element of a
23 contract. *Oh v. Wilson*, 112 Nev. 38, 41–42, 910 P.2d 276, 278–79 (1996) (*citing* Restatement
24 (Second) of Contracts § 79 cmt. c (1979)). Inadequacy of consideration is often said to be a
25 “badge of fraud,” justifying a denial of specific performance. *Id.*

26 13. The Court concludes that there is such inadequacy of consideration to Plaintiff in
27 exchange for dismissal of its hard-fought rights under the Order that it justifies denial of the
28 requested specific performance.

1 14. A special relationship arises in any situation where “kinship or professional,
2 business, or social relationships between the parties” results in one party gaining the confidence of
3 another and purporting to advise or act consistently with the other party’s interest. *Perry v.*
4 *Jordan*, 111 Nev. 943, 947, 900 P.2d 335, 337–338 (1995) (citations omitted). An equitable duty
5 is owed as a result of such a confidential relationship, which is akin to a fiduciary duty. *See*
6 *Executive Mgmt., ltd. v. Ticor Title Ins. Co.*, 114 Nev. 823, 841, 963 P.2d 465, 477 (1998) (citing
7 *Long v. Towne*, 98 Nev. 11, 13, 639 P.2d 528, 529–30 (1982)). Constructive fraud is the breach
8 of that equitable duty, which the law declares fraudulent because of its tendency to deceive others
9 to violate confidence. *Id.*

10 15. In equity and good conscience, Bloom was bound to act in good faith and with
11 due regard to the interests of Farkas who was reposing his confidence in Bloom. *Perry*, 111 Nev.
12 at 946–47, 900 P.3d 337 (citing *Long*, 98 Nev. at 13, 639 P.2d at 529–30). Particularly in light
13 of the Arb. Award, Bloom had a duty to at least disclose to Farkas (as well as Flatto) his plan to
14 settle this case under the Settlement Agreement and have the Order, underlying Arb. Award and
15 pending OSC dismissed, with prejudice. Bloom should have emailed or otherwise provided a
16 copy of the documents to Farkas so Farkas could consult with Flatto and counsel. Not only did
17 Bloom conceal the true facts from Farkas, but he took active steps so that the true facts would
18 never have to be revealed until after the case was dismissed, inclusive of hiring Farkas separate
19 counsel to orchestrate dismissal in the shadows rather than send GTG the Settlement Agreement.

20 16. Duress is a valid basis to set aside a contract or avoid specific performance. *Kaur*
21 *v. Singh*, 136 Nev. Adv. Op. 77, 477 P.3d 358, 362 (2020); *Levy v. Levy*, 96 Nev. 902, 903–04,
22 620 P.2d 860, 861 (1980) (recognizing duress as a basis to set aside a settlement). “The coercion
23 or duress exception applies when “(1) . . . one side involuntarily accepted the terms of another;
24 (2) . . . circumstances permitted no other alternative; and (3) . . . circumstances were the result of
25 coercive acts of the opposite party.” *Nevada Ass’n Servs., Inc. v. Eighth Jud. Dist. Ct.*, 130 Nev.
26 949, 956, 338 P.3d 1250, 1255 (2014).

27 17. An improper threat can exist when a party is threatened with civil action,
28 especially when there are circumstances of emotional consequences. Restatement (Second) of

1 Contracts § 175, cmt. b (1981). “[A] party's manifestation of assent is induced by duress if the
2 duress substantially contributes to his decision to manifest his assent. *Id.*, cmt. c. “The test is
3 subjective and the question is, did the threat actually induce assent on the part of the person
4 claiming to be the victim of duress.” *Id.* In making the determination, courts consider, “the age,
5 background and relationship of the parties” and the rule is designed to protect “persons of a weak
6 or cowardly nature.” *Id.*; *see also Schmidt v. Merriweather*, 82 Nev. 372, 376, 418 P.2d 991, 993
7 (1966).

8 18. A threat is improper if “what is threatened is the use of civil process and the threat
9 is made in bad faith.” Restatement (Second) of Contracts § 176 (1)(c). Accordingly, when
10 evaluating duress, bad faith of one party is relevant as to another party’s capacity to contract.
11 *Barbara Ann Hollier Tr. v. Shack*, 131 Nev. 582, 587, 356 P.3d 1085, 1088 (2015); Restatement
12 (Second) of Contracts § 205 cmt. c (1981) (“Bad faith in negotiation, although not within the
13 scope of [the implied covenant of good faith and fair dealing], may be subject to
14 sanctions. Particular forms of bad faith in bargaining are the subjects of rules as to capacity to
15 contract, mutual assent and consideration and of rules as to invalidating causes such as fraud
16 and duress.”).

17 19. Defendants’ contempt of the Order through resistance and/or disobedience of the
18 Order is clearly established.

19 20. Bloom, as the sole natural person legally associated with Defendants, did not
20 testify to any efforts to marshal Defendants’ books and records for production to Plaintiff, except
21 to obtain a letter dated February 12, 2021 (nearly two months after the OSC was entered),
22 providing that the Controller was seeking payment to compile and produce Defendants’
23 records.¹²¹ Defendants’ requested condition of Plaintiff’s payment of expenses incurred by
24 Defendants to comply with its Order obligation is barred by *res judicata*. Again, the Order
25 confirming the Arb. Award, a final judgment, precludes a second action on the underlying claim
26 or any part of it. *Univ. of Nev.*, at 599, 879 P.2d at 1191. Issue preclusion applies to any issue

27 ¹²¹ Exhibit V.
28

1 actually raised and decided in the judgment. *Id.* Claim preclusion “embraces all grounds of
2 recovery that were asserted in a suit, as well as those that could have been asserted, and thus, [it]
3 has a broader reach” than the issue preclusion doctrine. *Id.* at 600, 879 P.2d at 1192.

4 21. The very purpose of the issue preclusion doctrine is “to prevent multiple litigation
5 causing vexation and expense to the parties and wasted judicial resources by precluding parties
6 from relitigating issues.” *Kirsch v. Traver*, 134 Nev. 163, 166, 414 P.3d 818, 821 (2018); *see*
7 *also Alcantara ex rel. Alcantara v. Wal-Mart Stores, Inc.*, 130 Nev. 252, 258, 321 P.3d 912, 916
8 (2014) (issue preclusion is appropriately applied to conserve judicial resources, maintain
9 consistency, and avoid harassment or oppression of the adverse party (citing *Berkson v. LePome*,
10 245 P.3d 560, 566 (Nev. 2010))).

11 22. Plaintiff’s demand for Defendants’ books and records under the terms of
12 Defendants’ operating agreements and NRS 86.241 resulting in the Order was arbitrated, and the
13 arbitrators ruled in favor of Plaintiff and against Defendants on the entirety of the claim, and
14 even awarded Plaintiff fees and costs.¹²² Defendants’ claimed expenses associated with the
15 demand for production was required to be arbitrated,¹²³ and there was clearly no award of
16 expenses in favor of Defendants following the arbitration. Ignoring their obligation to arbitrate
17 any request for expenses associated with the production of documents in the arbitration,
18 Defendants waited until Plaintiff’s Motion to Confirm Arb. Award to seek to modify the Arb.
19 Award to include a condition for production of the ordered books and records on Plaintiff’s prior
20 payment for Defendants’ expenses associated with production.¹²⁴ The Court made reasoned
21 conclusions regarding the procedural infirmity of bringing the request for relief to the Court
22 when the relief was not awarded by the arbitrators, and DENIED it as part of the Order.¹²⁵ The
23 Order is a final judgment not subject to any appeal, and as it specifically addressed and resolved
24 Defendants’ argument for a condition of Plaintiff’s payment of expenses of production, the Order

25 ¹²² Exhibit 4.

26 ¹²³ Exhibits 7 and 8, Sect. 13.9 (Dispute Resolution provision).

27 ¹²⁴ Exhibit 3 (the Declaration of Bloom in support of the Countermotion to Modify Arbitration Award).

28 ¹²⁵ Exhibit 4, p. 2:11-25; 3:15-16.

1 itself defeats any argument from Defendants that production of the documents pursuant to the
2 Order is in any way conditioned on payment of any purported expenses demanded by
3 Defendants.

4 23. Under the circumstances, the Court concludes that Plaintiff's non-payment of
5 expenses demanded on February 12, 2021 is not a valid excuse for Defendants' disobedience
6 and/or resistance of the subject Order. The books and records must be produced forthwith and
7 without the imposition of any conditions.

8 24. Bloom argues that since he is not a party to the Order in his individual capacity, he
9 should not be a party to these contempt proceedings. The relevant authority provides otherwise.
10 The Nevada contempt statutes (NRS Chapter 22) as well as relevant Nevada Rules of
11 Civil Procedure ("NRCPP") are directed *to conduct* of persons resisting or disobeying enforceable
12 Court orders and does not limit its reach to the defendants alone. Limited liability companies
13 such as Defendants engage in conduct through responsible persons- here, there is only Bloom
14 and his counsel working at his direction. *See, e.g.*, NRCPP 69 (describing procedures for
15 execution on judgment to include obtaining discovery from any person); NRCPP 71 ("When an
16 order grants relief . . . [that] may be enforced against a nonparty, the procedure for enforcing the
17 order is the same as for a party."); NRCPP 37(b) (providing for orders compelling compliance and
18 sanctions for failure of a "party or its officers, directors or managing agents" to comply with
19 court discovery orders).

20 25. The "responsible party" rule is longstanding, providing that the contempt powers
21 of the Courts reach through the corporate veil to command not only the entity, but those who are
22 officially responsible for the conduct of its affairs. If a person is apprised of the Order directed
23 to the entity, prevents compliance or fails to take appropriate action within their power for the
24 performance of the corporate duty, they are guilty of disobedience and may be punished for
25 contempt. *Wilson v. United States*, 221 U.S. 361, 377 (1911) ("When a copy of the writ which
26 has been ordered is served upon the clerk of the board, it will be served on the corporation, and
27 be equivalent to a command that the persons who may be members of the board shall do what is
28 required. If the members fail to obey, those guilty of disobedience may, if necessary, be

1 punished for the contempt While the board is proceeded against in its corporate capacity,
2 the individual members are punished in their natural capacities for failure to do what the law
3 requires of them as representatives of the corporation.”); *Electrical Workers Pension Trust Fund*
4 *of Local Union #58, IBEW v. Gary’s Elec. Service Co.*, 340 F.3d 373, 380 (6th Cir. 2003)
5 (holding that sole officer of the defendant, who was not himself a party, could be held in
6 contempt for the defendant’s failure to obey the court’s judgment and order). In order to hold an
7 officer, director or other managing agent in contempt, the movant must show that he had notice
8 of the order and its contents. *Id.*

9 26. A non-party who fails to produce documents in compliance with a Court order
10 will be jointly and severally liable for disobedience when he is found to have abetted the
11 disobedience or is legally identified with the responsible party. *See Luv n Care Ltd. v. Laurain*,
12 2019 WL 4279028, at * 4 (D. Nev. Sept. 10, 2019) (finding the managing member jointly and
13 severally liable for contempt and payment of fees and costs), (citing *United States v. Wilson*;
14 *Electrical Workers Pension Trust Fund of Local Union #58*; *United States v. Laurins*, 857 F.2d
15 529, 535 (9th Cir. 1988) (“A nonparty may be liable for contempt if he or she either abets or is
16 legally identified with the named defendant. . . . **An order to a corporation binds those who are**
17 **legally responsible for the conduct of its affairs.**”) (emphasis added)); *Peterson v. Highland*
18 *Music, Inc.*, 140 F.3d 1313, 1323–24 (9th Cir. 1988); *NLRB v. Sequoia Dist. Council of*
19 *Carpenters*, 568 F.2d 628, 633 (9th Cir. 1977); *1st Tech, LLC v. Rational Enter., Ltd.*, 2008 WL
20 4571057, at *8 (D. Nev. July 29, 2008). Put another way, an order to an entity binds those who
21 are legally responsible for the conduct of its affairs. *Luv n Care Ltd.*, at *4 (citing *Laurins*).

22 27. As such, once Bloom had notice of the Order, he could not delegate the
23 responsibility for performance on a third party, but he himself had to take reasonable steps to
24 provide the records in compliance with the Order in his capacity as the sole person legally
25 associated with Defendants and responsible for the books and records of Defendants, as manager
26 of Defendants’ manager.

27 28. As set forth above, the “responsible party” rule applies to contempt proceedings;
28 otherwise there would never be a consequence for an entity’s non-compliance, particularly here

1 when there are no formalities being followed and, at least at this juncture, Bloom is the *alter ego*
2 of Defendants. Bloom ignores the holding of the Nevada Supreme Court in *Gardner on Behalf*
3 *of L.G. v. Eighth Judicial Dist. Court in & for Cty. of Clark*, 133 Nev. 730, 735, 405 P.3d 651,
4 655–56 (2017), which explained that those bases for corporate veil piercing, such as *alter ego*,
5 illegality or other unlawfulness, will equally apply to a Nevada LLC. “As recognized by courts
6 across the country, LLCs provide the same sort of possibilities for abuse as corporations, and
7 creditors of LLCs need the same ability to pierce the LLCs' veil when such abuse exists.” *Id.*,
8 133 Nev. at 736, 405 P.3d 656.

9 Related to *alter ego*, NRS 86.376 then specifically provides, as follows:

- 10 1. Except as otherwise specifically provided by statute or agreement, no
11 person other than the limited-liability company is individually liable for a debt or
12 liability of the limited-liability company unless the person acts as the alter ego of
13 the limited-liability company.
14 2. A person acts as the alter ego of a limited-liability company only if:
15 (a) The limited-liability company is influenced and governed by the person;
16 (b) There is such unity of interest and ownership that the limited-liability
17 company and the person are inseparable from each other; and
18 (c) Adherence to the notion of the limited-liability company being an entity
19 separate from the person would sanction fraud or promote manifest injustice.
20 3. The question of whether a person acts as the alter ego of a limited-liability
21 company must be determined by the court as a matter of law.

22 29. Both Defendants are in “default” status with the Nevada Secretary of State. The
23 testimony of Bloom demonstrated that Defendants have no continued operations, there are no
24 employees, there are no bank accounts, there are no records being maintained as required under
25 the operating agreements or NRS 86.241, and there is no active governance of any kind.¹²⁶
26 While Bloom self-servingly represents that there are “directors” and “officers” of Defendants, he
27 concedes, as he must, that there were no writings to reflect that any director or officer has any
28 authority to bind Defendants instead of Bloom. In addition, equity must be applied such that
Bloom will not be immune from consequences for his intentional conduct for the purpose of

¹²⁶ See, e.g., 3/3 Trans., 220:9-11, 226:2-4, 3/10 Trans., 12:10-19, 14:9-17, 15:16-25; Exhibits 7-8, § 2.3 (providing the company shall maintain records, including at the principal office or registered office, both c/o Bloom); Exhibits 26-27.

1 disobeying and/or resisting the Order. Therefore, in addition to the “responsible party” rule that
2 applies to contempt, there should be no immunity for liability when, as here, Bloom is
3 Defendants’ *alter ego*.

4 30. Furthermore, the Nevada Supreme Court has explained the broad, independent
5 authority of the Court to enforce its decrees independent of the rules or statutes, including
6 sanctions for non-compliance by non-parties with its orders and legal processes. *See Halverson*
7 *v. Hardcastle*, 123 Nev. 245, 261–62, 163 P.3d 428, 440–441 (2007) (“the court has inherent
8 power to protect the dignity and decency of its proceedings and to enforce its decrees, and thus it
9 may issue contempt orders and sanction . . . for litigation abuses. Further, courts have inherent
10 power to prevent injustice and to preserve the integrity of the judicial process . . .”).

11 31. Under the Court’s inherent authority to enforce its decrees against those appearing
12 and demonstrating disregard for its Order, the “responsible party” rule recognized in the common
13 law, Nevada’s contempt statutes, Nevada’s Rules of Civil Procedure, as well as NRS 86.376,
14 Bloom is a proper party to the subject contempt proceedings.

15 32. The Settlement Agreement was a sham, never designed to result in any fair benefit
16 to Plaintiff, and, if effectuated with the dismissal of the Order, underlying Arb. Award
17 and pending contempt motions, with prejudice, the ramifications to Plaintiff would have been
18 unacceptable under law or equity. The Eighth Judicial District Court has enacted its own rule,
19 EDCR 7.60(b) to provide the Court further express authority to impose sanctions upon a party,
20 including attorneys’ fees, when a party, without just cause, presents a motion to the Court that is
21 “obviously frivolous, unnecessary or unwarranted,” or “so multiplies the proceedings in a case as
22 to increase costs unreasonably and vexatiously.”

23 33. The Court determines that sanctions are properly awarded against Defendants
24 inclusive of the reasonable fees and costs expended by Plaintiff relating to the Motion to Enforce
25 and Response to OSC.

26 34. The expenses associated with addressing the re-litigated defenses asserted by
27 Defendants and Bloom were then unnecessarily increased by Bloom’s wrongful direction to not
28

1 permit the disclosure of any communications between or among Nahabedian and Bloom and/or
2 MGA, regardless of whether they related to Plaintiff and this action.¹²⁷

3 35. Sanctions are awardable under NRCP 37 for failure to provide discovery.

4 Any of the foregoing Conclusions of Law that would more appropriately be deemed to be
5 Findings of Fact shall be so deemed.

6 **ORDER**

7 NOW, THEREFORE, based upon the Foregoing Findings of Fact and Conclusions of
8 Law, the Court makes the following rulings:

9 1) The Court declines to reverse its prior denial of the Motion to Enforce.

10 2) Based on its determination that Defendants and Bloom disobeyed and resisted the Order
11 in contempt of Court (civil), the Court orders immediate compliance. In order to purge their
12 contempt, Defendants, and any manager, representative or other agent of Defendants receiving
13 notice of this order shall take all reasonable steps to comply with the Order, and within 10 days
14 of notice of entry of this order, shall produce the following books and records for Defendants to
15 Plaintiff¹²⁸ at their expense:¹²⁹

- 16 1) Each of Defendants' company books, inclusive of any and all agreements
17 relating to governance (operating agreements, amendments, consents and
18 resolutions);
19 2) Financial Statements, inclusive of balance sheets and profit & loss
20 statements;
21 3) General ledger and back up, inclusive of invoices;
22 4) Documents sufficient to show each of Defendants' assets and their
23 location;
24 5) Documents relating to value of each of each of Defendants and/or their
25 assets;
26 6) Documents sufficient to show Defendants' members and their status,
27 inclusive of any redeemed members;
28 7) Tax returns for each of Defendants;
8) Documents sufficient to show the accounts payable incurred, paid and
remaining due for each of Defendants;

¹²⁷ Exhibit 28, PLTF_480, and the Motion to Compel.

¹²⁸ The list of documents ordered to be produced in the Arbitration Award is set forth at Exhibits 6 and QQ, and was expressly incorporated into the Order.

¹²⁹ There are indemnification provisions in Defendants' operating agreements that Bloom and anyone "serving at his direction" to comply with the Order could ostensibly enforce. Exhibits 7-8, Article VII.

- 1 9) Documents sufficient to show payments made to each of Defendants'
2 managers, members and/or affiliates of any managers or members;
3 10) Each of Defendants' insurance policies
4 11) Documents sufficient to show the status of any lawsuits involving either of
5 Defendants; and
6 12) Documents sufficient to show the use of investors' funds (and any other
7 members' investment) for each of Defendants.

8 For any documents not produced within 10 days of entry of this order, there shall be certification
9 from Bloom establishing all steps taken to marshal and produce the documents, where the
10 documents are located, why they were not provided by the deadline and when they will be
11 provided.

12 3) Also, the Court orders reimbursement of Plaintiff's reasonable fees and costs
13 incurred in connection with the finding of contempt pursuant to the OSC, the Countermotion for
14 Sanctions, and the Motion for Sanctions, as follows:

15 Based on the determination that Defendants and Bloom disobeyed and resisted the Order
16 in contempt of Court (civil), and the Motion to Enforce was a tool of that contempt as
17 orchestrated by Bloom in disregard of the Arb. Award confirmed by the Order, the Court orders
18 Defendants and Bloom are jointly and severally responsible for the payment of all the reasonable
19 fees and costs incurred by Plaintiff since entry of the Order for the purpose of coercing
20 compliance with the Order in order to make them whole, inclusive of responding to the Motion to
21 Enforce and bringing the Motion to Compel.

22 Within 10 days of entry of this order, counsel for Plaintiff shall provide a declaration and
23 supporting documentation as necessary to meet the factors outlined in *Brunzell v. Golden Gate*
24 *National Bank*, 85 Nev. 345, 55 P.2d 31 (1969), and delineating the fees and costs expended in
25 relating to the Motion to Compel, Motion to Enforce and OSC, following which, there will be an
26 opportunity to respond to Plaintiff's submission within 10 days of service of Plaintiff's
27 supplement, and Plaintiff can file a reply within 7 days thereof. The Court will then consider the
28 submissions and enter its further order on the amount of fees and costs to be awarded, and
payment will be due within thirty (30) days thereafter.

4) Any failure to comply with the Order compelling compliance and requiring
payment of the expenses incurred shall be subject to appropriate consequences. A status check is

scheduled for May 24, 2021 at 9:00 a.m.

Dated this 7th day of April, 2021



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Mark R. Denton
District Court Judge

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1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 TGC/Farkas Funding, LLC,
Plaintiff(s)

CASE NO: A-20-822273-C

7 vs.

DEPT. NO. Department 13

8
9 First 100, LLC, Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

12 This automated certificate of service was generated by the Eighth Judicial District
13 Court. The foregoing Findings of Fact, Conclusions of Law and Judgment was served via the
14 court's electronic eFile system to all recipients registered for e-Service on the above entitled
case as listed below:

15 Service Date: 4/7/2021

16 Dylan Ciciliano dciciliano@gtg.legal

17 Erika Turner eturner@gtg.legal

18 MGA Docketing docket@mgalaw.com

19 Tonya Binns tbinns@gtg.legal

20 Bart Larsen blarsen@shea.law

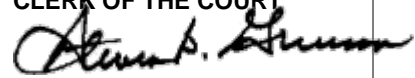
21 Max Erwin merwin@gtg.legal

22
23 If indicated below, a copy of the above mentioned filings were also served by mail
24 via United States Postal Service, postage prepaid, to the parties listed below at their last
25 known addresses on 4/8/2021
26
27
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Joseph Gutierrez

Maier Gutierrez & Associates
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DISTRICT COURT

CLARK COUNTY, NEVADA

TGC/FARKAS FUNDING, LLC,
Plaintiff,

CASE NO. A-20-822273-C
DEPT. 13

vs.

**NOTICE OF ENTRY OF FINDINGS OF
FACT, CONCLUSIONS OF LAW &
ORDER RE EVIDENTIARY HEARING**

FIRST 100, LLC, a Nevada Limited Liability
Company; FIRST ONE HUNDRED
HOLDINGS, LLC, a Nevada limited liability
company aka 1st ONE HUNDRED HOLDINGS
LLC, a Nevada Limited Liability Company,
Defendants.

**NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW & ORDER
RE EVIDENTIARY HEARING**

PLEASE TAKE NOTICE that a *Findings of Fact, Conclusions of Law & Order Re
Evidentiary Hearing*, a copy of which is attached hereto, was entered in the above-captioned case
on the 7th day of April, 2021.

DATED this 7th day of April, 2021.

GARMAN TURNER GORDON LLP

/s/ Erika Pike Turner
ERIKA PIKE TURNER
Nevada Bar No. 6454
DYLAN T. CICILIANO
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Attorneys for Plaintiff

CERTIFICATE OF SERVICE

The undersigned, hereby certifies that on the 7th day of April, 2021, he served a copy of the
**NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW & ORDER RE
EVIDENTIARY HEARING**, by electronic service in accordance with Administrative Order
14.2, to all interested parties, through the Court's Odyssey E-File & Serve system addressed to:

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I further certify that I served a copy of this document by emailing it and mailing a true and
correct copy thereof via U.S Regular Mail, postage prepaid, addressed to:

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/s/ Max Erwin

An Employee of
GARMAN TURNER GORDON LLP

Heather S. Smith
CLERK OF THE COURT

FFCL

DISTRICT COURT

CLARK COUNTY, NEVADA

TGC/FARKAS FUNDING, LLC,

Plaintiff/Judgment Creditor,

vs.

FIRST 100, LLC, a Nevada Limited Liability
Company; FIRST ONE HUNDRED
HOLDINGS, LLC, a Nevada limited liability
company aka 1st ONE HUNDRED HOLDINGS
LLC, a Nevada Limited Liability Company,

Defendants/ Judgment Debtors.

CASE NO. A-20-822273-C
DEPT. 13

**FINDINGS OF FACT, CONCLUSIONS OF
LAW, & ORDER RE EVIDENTIARY
HEARING**

Hearing Date: March 3 and 10, 2021

FINDINGS OF FACT, CONCLUSIONS OF LAW & ORDER

INTRODUCTION

The above-captioned matter has involved motion practice regarding several items: 1) the December 18, 2020 order to show cause why Defendants/Judgment Debtors, First 100, LLC (“First 100”) and First One Hundred Holdings aka 1st One Hundred Holdings LLC (“1st 100,” and together with First 100, “Defendants”) and Jay Bloom (“Bloom”) should not be found in contempt of court (the “OSC”) for their failures to comply with the Order Confirming Arbitration Award, Denying Countermotion to Modify, and Judgment entered November 17, 2020 (the “Order”), 2) the January 19, 2021 motion to enforce settlement and vacate post-judgment discovery proceedings filed by Defendants (the “Motion to Enforce”), which was denied without prejudice pending the resolution of outstanding questions of fact following the evidentiary hearing, 3) the January 26, 2021 countermotion for sanctions (“Countermotion for Sanctions”) filed by Plaintiff/Judgment Creditor TGC/Farkas Funding, LLC (“Plaintiff”) in conjunction with its opposition to the Motion to Enforce, which was denied without prejudice pending the evidentiary hearing, and 4) the February 19, 2021 motion for sanctions filed by Plaintiff in conjunction with Plaintiff’s motion to compel that was reserved for resolution following the evidentiary hearing (the “Motion for Sanctions”). The Court held the evidentiary

MARK R. DENTON
DISTRICT JUDGE

DEPARTMENT THIRTEEN
LAS VEGAS, NV 89155

1 hearing on March 3, 2021 and March 10, 2021 (the “hearing”) to resolve the Claims. Erika Pike
2 Turner, Esq. of the law firm of Garman Turner Gordon LLP (“GTG”) appeared on behalf of
3 Plaintiff, Joseph Gutierrez, Esq. (“Gutierrez”) of the law firm of Maier Gutierrez & Associates
4 (“MGA”) appeared on behalf of Defendants and Bloom, and evidence was presented by the
5 parties through exhibits and testimony. Based thereon, the Court finds and concludes, as follows:

6 **FINDINGS OF FACT**

7 1. In 2013, Plaintiff was formed for the purpose of facilitating an investment in
8 Defendants consisting of \$1 million from 50% member TGC 100 Investor, LLC, managed by
9 Adam Flatto (“Flatto”), and services (aka sweat equity) from 50% member Matthew Farkas
10 (“Farkas”).¹ In exchange for Plaintiff’s contributions, Plaintiff received a 3% membership
11 interest in Defendants.²

12 2. Defendants are affiliated Nevada limited liability companies governed by nearly
13 identical operating agreements.³ At the hearing, Bloom identified himself as a “director” of
14 Defendants who “participated in the management.”⁴ The Secretary of State documents filed by
15 Bloom on behalf of Defendants do not identify any “directors.”⁵ Defendants’ operating
16 agreements and the Secretary of State records show that since formation, both Defendants have
17 been single manager-managed with SJ Ventures Holding Company, LLC (“SJV”) appointed the
18 sole manager with Bloom as the sole manager of SJV.⁶

19 3. The business of Defendants was to acquire HOA liens and then acquire the
20 underlying properties at foreclosure.⁷ Defendants’ active business concluded in 2016, except for
21 attempts to monetize a judgment obtained in favor of Defendants against Raymond Ngan and his

22 ¹ Exhibit 20, PLTF_154, 170.

23 ² Exhibit 2, PLTF_006.

24 ³ Exhibits 7 and 8; Hearing Transcript of Testimony, March 3, 2021 (“3/3 Trans.”), 8:10-16.

25 ⁴ 3/3 Trans., 160:3-7.

26 ⁵ Exhibits 25-26.

27 ⁶ Exhibit 7, §§ 1.19 (designating SJV as Manager); 6.1 (Management by Manager) and PTF_055; Exhibit 8, §§ 1.19
(designating SJV as Manager); 6.1 (Management by Manager) and PTF_082; see also 3/3 Trans., 221:18-23.

28 ⁷ 3/3 Trans., 159:23-160:2.

1 affiliated entities in 2017 (the “Ngan Judgment”). As Plaintiff did not receive any accounting to
2 show what happened to Defendants’ business or its assets and had questions, on May 2, 2017,
3 Plaintiff made a written demand for the books and records of Defendants pursuant to the terms of
4 Defendants’ operating agreements and NRS 86.241.⁸ Defendants did not provide any documents
5 in response to Plaintiff’s demand, resulting in Plaintiff filing an arbitration demand under a
6 provision of Defendants’ operating agreements requiring that such matters be determined through
7 arbitration with the party bringing the matter required to pay all the upfront costs of the
8 arbitration, subject to reimbursement in the event said party prevailed.⁹

9 4. On September 15, 2020, a 3-arbitrator panel entered a “Decision and AWARD of
10 Arbitration Panel (1) Compelling Production of Company Records; and Ordering
11 Reimbursement of [Plaintiff’s] Attorneys’ Fees and Costs” (the “Arb. Award”).¹⁰ The Arb.
12 Award cited the May 2, 2017 demand as the “initial request for company records that is the
13 subject of the arbitration demand filed by Plaintiff,” and found that Defendants’ response to that
14 May 2, 2017 demand was the “first in a long and bad faith effort by [Defendants] to avoid their
15 statutory and contractual duties to a member to produce requested records.”¹¹

16 5. After moving to Las Vegas in 2013, Farkas (Bloom’s brother-in-law)¹² started
17 working with Bloom on behalf of Defendants and was provided a title of Vice President of
18 Finance and the primary role of raising capital for Defendants consistent with his background
19 experience on Wall Street (investment banker, operating a hedge fund, buying and selling
20 securities).¹³ Farkas left his employment with Defendants in the summer of 2016, and thereafter
21 had very little involvement with Defendants’ operations.¹⁴ During the course of Plaintiff’s efforts

22 ⁸ Exhibit 1.

23 ⁹ Exhibit 2, PLTG_006; Exhibits 7 and 8, § 13.9 (any dispute arising out of or relating to the Operating Agreements
24 “shall solely be settled by arbitration”).

25 ¹⁰ Exhibits 2 and II.

26 ¹¹ Exhibit 2, PLTF_006.

27 ¹² 3/3 Trans., 123:2-13.

28 ¹³ *Id.*, 84:15- 85:5, 15-21, 89:3-5, 123:14-23.

¹⁴ *Id.*, 124:1-125:21, 141:10-15, 152:6-24.

1 to obtain books and records Bloom has requested and Farkas has signed a series of documents
2 purporting to bind Plaintiff to its detriment and then argued for enforcement of those documents
3 based on the fact a signature of Farkas is affixed. This was done despite Plaintiff's affirmative
4 notice that Farkas did not have authority to bind Plaintiff without Flatto's consent delivered on
5 July 13, 2017, to Defendants and MGA, as counsel for Defendants, as well as the registered
6 agent for Defendants,¹⁵ which notice attached a prior notice to Defendants emailed on April 18,
7 2017, and explained to Defendants that Farkas is not the Plaintiff's manager and Farkas does not
8 have the authority to bind Plaintiff.¹⁶

9 6. The Arb. Award conclusively resolved Defendants' multiple arguments that they
10 were not required to produce the records, including Defendants' argument that Farkas had signed
11 a form of redemption agreement that released Defendants from any responsibility to make
12 company records available to Plaintiff.¹⁷ The redemption agreement was deemed irrelevant by
13 the arbitrators, as Farkas did not have the authority to bind Plaintiff without the consent of Flatto,
14 as well as there being a lack of performance by Defendants.¹⁸

15 7. The Arb. Award granted relief in favor of Plaintiff and against Defendants "in all
16 respects" on the claim for books and records of Defendants arising from Defendants' operating
17 agreements and NRS 86.241¹⁹ and ordered Defendants to "forthwith, but no later than ten (10)
18 calendar days from the date of this AWARD, make all the requested documents and information
19 available from both companies to [Plaintiff] for inspection and copying."²⁰ Fees and costs were
20 awarded Plaintiff.²¹ The Arb. Award further provided that the "Award is in full settlement of all
21 claims submitted to this arbitration. All claims not expressly granted herein are hereby
22

23 ¹⁵ Exhibit 26, PLTF_218, and Exhibit 27, PLTF_235.

24 ¹⁶ Exhibit 22.

25 ¹⁷ Exhibit 2, PLTF_007.

26 ¹⁸ *Id.*

27 ¹⁹ *See* Exhibit 1, PLTF_002.

28 ²⁰ Exhibit 2, PLTF_009.

²¹ *Id.*

1 denied.”²²

2 8. Plaintiff commenced this case for the purpose of confirming the Arb. Award. In
3 response to Plaintiff’s motion to confirm Arb. Award, Defendants filed a countermotion to
4 modify the Arb. Award and provide for the imposition of expenses to be paid by Plaintiff as a
5 condition of Defendants furnishing the books and records. Attached to Defendants’
6 countermotion was Bloom’s declaration contending that Defendants had no funds or employees,
7 and the only way for Defendants to obtain and furnish the records in compliance with the Arb.
8 Award would be to have the Court order Plaintiff to first pay expenses.²³ Defendants had an
9 obligation to arbitrate its request for Plaintiff to pay expenses associated with the production of
10 the books and records under the arbitration provision of their operating agreements.²⁴ The Court
11 analyzed Defendants’ attempt to alter the merits of the Arb. Award to award Defendants’ relief
12 that was absent from the Arb. Award, and denied the countermotion to modify the Arb. Award as
13 part of the Order.²⁵

14 9. The Order was entered November 17, 2020, constituting a final, appealable
15 judgment. No appeal was filed by Defendants. On December 18, 2020, the OSC was filed upon
16 Plaintiff’s application citing no compliance or communicated intention to comply with the Order.
17 The OSC scheduled a hearing for January 21, 2021.²⁶ The OSC was served on MGA on
18 December 18, 2020; in addition, Bloom was personally served with the OSC on December 22,
19 2020.²⁷ On December 21, 2020, notices of judgment debtor examinations for each of
20 Defendants and post-judgment discovery were served on MGA.²⁸ Bloom was also personally

21
22 ²² *Id.*

23 ²³ Exhibit 3.

24 ²⁴ Exhibits 7 and 8, § 13.9.

25 ²⁵ Exhibit 4, PLTF_019, ll. 15-27.

26 ²⁶ Exhibit 5.

27 ²⁷ See OSC Certificate of Service (MGA served through Odyssey e-service); Declaration of Service of the OSC on
28 Bloom, filed December 30, 2020.

²⁸ See the December 21, 2020 Notice of Entry of Order for Judgment Debtor Examinations.

1 served with post-judgment discovery under NRCP 69(2) on December 29, 2020.²⁹

2 10. On January 19, 2021, Defendants filed the Motion to Enforce on an order
3 shortening time, arguing that a written settlement agreement dated January 6, 2021 (the
4 “Settlement Agreement”) executed by Farkas, purportedly on behalf of Plaintiff, and by Bloom,
5 on behalf of Defendants, mooted the OSC hearing and post-judgment discovery because it
6 provides for immediate dismissal of the Order, the underlying Arb. Award and other motions
7 pending in this case, with prejudice. In opposition to the Motion to Enforce, Plaintiff argued that
8 the Settlement Agreement is not valid and enforceable for multiple reasons, including that it was
9 executed by Farkas without Flatto’s knowledge or consent and therefore could not bind Plaintiff,
10 and that the circumstances surrounding the Settlement Agreement, including those underlying the
11 Motion to Compel, are further evidence of Defendants’ and Bloom’s contempt of this Court’s
12 Order, warranting sanctions against Defendants and Bloom.

13 11. Defendants’ and Bloom’s response to the OSC filed January 20, 2021
14 incorporated the Motion to Enforce and reiterated the previously denied argument that no
15 production of books and records should be required until Plaintiff first pays demanded expenses
16 associated with the production. Bloom also argued immunity from penalties for contempt as a
17 non-party to the Order.

18 12. The purported Settlement Agreement expressly provides that upon execution of the
19 Settlement Agreement, Plaintiff “will file a dismissal with prejudice of the current actions
20 related to this matter, including the arbitration award and all relation [sic] motions and actions
21 pending in the District Court.”³⁰ In exchange, Defendants agreed to pay Plaintiff \$1 million, plus
22 6% per annum since the date of investment, but contingent on its collection of proceeds from a
23 sale of the Ngan Judgment.³¹ Defendants’ Motion to Enforce seeks specific performance of
24 Plaintiff’s obligation under the Settlement Agreement to effectuate dismissal of this case, with
25 prejudice.

26 ²⁹ See the Declarations of Service of Subpoena on Bloom, filed January 5 and January 7, 2021.

27 ³⁰ Exhibit 13, PLTF_106.

28 ³¹ *Id.*

1 13. On the evening of January 14, 2021, Raffi Nahabedian, Esq. (“Nahabedian”)
2 made the first mention of a settlement to Plaintiff in connection with his demand for substitution
3 of counsel for Plaintiff in the case,³² and by the next day, January 15, 2021, even before the
4 Settlement Agreement was disclosed to Plaintiff, Plaintiff immediately sent notice of repudiation
5 to Defendants through its counsel of record, GTG.³³ On January 19, 2021, the Motion to Enforce
6 was filed, attaching the Settlement Agreement- the first time that the Settlement Agreement was
7 provided Plaintiff after its execution.³⁴ On January 26, 2021, Plaintiff filed an Opposition to the
8 Motion to Enforce, reiterating its repudiation upon the declarations of both Flatto and Farkas.³⁵

9 14. From the January 7, 2021 execution of the Settlement Agreement through the
10 time of Plaintiff’s repudiation (and continuing to the date of the hearing), Defendants did not
11 ever pay, or make any attempt to tender payment to Plaintiff in performance of its obligations
12 under the Settlement Agreement.³⁶ To the contrary, the only evidence of Defendants’
13 performance pursuant to the Settlement Agreement was Bloom’s efforts in conjunction with his
14 counsel to secure dismissal of the Order and underlying Arb. Award to Plaintiff’s detriment.³⁷

15 15. Farkas, as the purported agent, testified clearly that he did not believe he had
16 authority to enter into the Settlement Agreement (or that he was signing a Settlement Agreement
17 on behalf of Plaintiff), and that Bloom understood that.³⁸

18 16. Under the operating agreement for Plaintiff dated October 21, 2013, Farkas was
19 designated the “Administrative Member” with authority to bind Plaintiff, but only “after
20 consultation with, and upon the consent of, all Members [to wit: Flatto for TGC Investor].”³⁹
21 Farkas testified that once Farkas left his employment with Defendants, he effectively stepped out

22 ³² Exhibit 11, PLTF_097.

23 ³³ Exhibit 25.

24 ³⁴ See Exhibit 38, PLTF_405 (Nahabedian’s email).

25 ³⁵ Exhibits FF and J.

26 ³⁶ 3/3 Trans., 71:14-72:3, 138:19-21, 140:7-141:15, 215:15-18, 216:2-4, 18-21, 217:3-13.

27 ³⁷ See, e.g., Exhibit 28.

28 ³⁸ Exhibit FF, ¶ 17, 3/3 Trans., 118:19-119:2, 128:18-131:4, 154:13-15.

³⁹ Exhibit 20, §§ 3.4(a), 4.1(c).

1 of a management role with Plaintiff and left everything to Flatto and counsel, whether or not that
2 was reflected in a formal amendment to Plaintiff's operating agreement.⁴⁰ Further, whether
3 Defendants could rely on the signature of Farkas alone to bind Plaintiff was specifically
4 addressed in multiple communications to Defendants. First, there was the April 18, 2017
5 email,⁴¹ then the July 13, 2017 letter⁴² (attaching the April 18, 2017 email and further stating
6 "Farkas is not the manager." "Farkas does not have the authority to bind [Plaintiff]"), and then
7 there was the Arb. Award's conclusion that a document executed by Farkas was irrelevant
8 without the consent of Flatto as Farkas' signature alone did not bind Plaintiff.⁴³

9 17. Following the entry of the Arb. Award, on September 17, 2020, Farkas delivered
10 his written consent to an amended operating agreement governing Plaintiff, which amendment
11 provides that TGC 100 managed by Flatto had "full, exclusive, and complete discretion, power
12 and authority" . . . "to manage, control, administer and operate the business and affairs of the
13 [Plaintiff]."⁴⁴ Pursuant to the amendment, Farkas was expressly prevented from taking *any*
14 action on behalf of Plaintiff, and Flatto had exclusive authority to bind Plaintiff. The purpose of
15 the amendment was to alleviate pressure on Farkas as a result of his feeling uncomfortable being
16 adverse to his brother-in-law, Bloom.⁴⁵

17 18. The circumstances surrounding how the Settlement Agreement was prepared and
18 executed are also relevant. The Settlement Agreement was drafted by Bloom⁴⁶ and executed by
19 Bloom, as manager of Defendants.⁴⁷ It is dated January 6, 2021 but was executed by Farkas on
20 January 7, 2021 at the same time that Farkas executed other documents sent by Bloom to a UPS

21
22 ⁴⁰ 3/3 Trans., 108:5-17.

23 ⁴¹ Exhibit 21.

24 ⁴² Exhibit 22, PLTF_, 179, 190.

25 ⁴³ Exhibit 2, PLTF_007

26 ⁴⁴ Exhibit 23.

27 ⁴⁵ 3/3 Trans., 67:16-68:23; 131:7-13.

28 ⁴⁶ Id., 193:25-194:2.

⁴⁷ Exhibit 13, PLTF_108.

1 store for Farkas' signing and return.⁴⁸ Farkas did not know he was signing a Settlement
2 Agreement when he signed it,⁴⁹ and there is no evidence he intended to bind Plaintiff to anything
3 when he executed the documents. Notwithstanding the express terms of the Settlement
4 Agreement providing that the signatories were duly authorized,⁵⁰ Farkas did not read that
5 provision (or any provision)⁵¹ and testified he never otherwise represented to Bloom or anyone
6 else that he had authority to enter into the Settlement Agreement on behalf of Plaintiff.⁵² Farkas
7 testified he did not negotiate the terms of the Settlement Agreement with Bloom, which is
8 corroborated by the lack of evidence of any back and forth on terms prior to the agreement being
9 finalized by Bloom.⁵³ There is no evidence Bloom provided Farkas a copy of the Settlement
10 Agreement for Farkas, Flatto or counsel's review prior to sending it to the UPS store with other
11 documents to be signed.⁵⁴ Farkas testified he believed that the documents he signed at the UPS
12 store related to resolution of a threatened claim against him by Defendants in connection with his
13 prior employment and included the retention of personal counsel for him.⁵⁵ This testimony was
14 corroborated by Nahabedian's January 14, 2021 correspondence referencing a threat of adverse
15 action against Farkas from Defendants⁵⁶ and the fact that a form of Release between Farkas and
16 Defendants was executed at the same time as the Settlement Agreement.⁵⁷

17 19. Flatto was clear in his testimony at the hearing that he understood his consent was
18 required for all decisions made by Plaintiff and he did not hold Farkas out as having authority to
19 bind Plaintiff without his consent,⁵⁸ particularly after Plaintiff made its May 2, 2017 demand for

20 ⁴⁸ See, e.g., 3/3 Trans., 137:16-24.

21 ⁴⁹ Exhibit FF, ¶ 16. See 3/3 Trans., 100:15-101-4, 102:14-20, 104:2-5, 115:11-21, 119:9-15, 137:16-24, 156:13-18.

22 ⁵⁰ Exhibit 13, PLTF_107, § 14.

23 ⁵¹ 3/3 Trans., 103:22, 118:3-9, 119:4-7.

24 ⁵² *Id.*, 136:16-19.

25 ⁵³ 3/3 Trans., 137:1-8, 13-15.

26 ⁵⁴ *Id.*, 211:17-25; 213:15-23.

27 ⁵⁵ See 3/3 Trans., 100:15-101-4, 102:14-20, 104:2-5, 115:11-21, 119:9-15, 137: 16-24, 143:21-25, 156:13-18.

28 ⁵⁶ Exhibit 11, PLTF_097.

⁵⁷ Exhibit 28, PLTF_247-253; *see also* Exhibit 16 (text from Bloom threatening adverse action).

⁵⁸ 3/3 Trans., 35:23-36:20, 69:1-70:5.

1 books and records. This is corroborated by the 2017 communications to Defendants, his
2 declaration in the arbitration, the Arb. Award, and the September 2020 amendment to Plaintiff's
3 operating agreement.⁵⁹ Given the communications from Plaintiff in 2017, the Arb. Award, and
4 no communications to the contrary subsequent to the Arb. Award from Flatto to Defendants, the
5 Court concludes it was unreasonable for Defendants to believe any agreement entered into with
6 Plaintiff without Flatto's consent would be valid and enforceable.

7 20. The circumstances surrounding the execution and attempts to enforce the
8 Settlement Agreement, known to Defendants, further demonstrate that Farkas did not have
9 apparent authority to bind Plaintiff to the terms of the agreement, which circumstances were
10 actively concealed from Plaintiff and its counsel of record until the Motion to Compel was
11 granted and records were produced by Nahabedian. Bloom did not act in good faith in his
12 dealings with Plaintiff, nor did he give heed to any of the opposing restrictions brought to his
13 notice.

14 It was revealed from Nahabedian's records:

- 15 • On January 4, 2021, Bloom contacted Nahabedian, Bloom's personal counsel on
16 another matter,⁶⁰ via phone to discuss Nahabedian representing Plaintiff.⁶¹ Within
17 minutes of hanging up the phone, Nahabedian emailed Bloom an attorney retainer
18 agreement for Farkas to execute *on behalf of Plaintiff* for Nahabedian to
19 represent Plaintiff in this case.⁶² Farkas was never advised Nahabedian was being
20 hired to be Plaintiff's lawyer and he thought Nahabedian was going to be his
21 personal counsel.⁶³ Farkas did not understand that Nahabedian was Bloom's

22 ⁵⁹ Exhibits 2, 21-23, E, ¶ 5; 3/3 Trans. 59:23-60:20.

23 ⁶⁰ See *Nevada Speedway v. Bloom, et al.*, Case No. A-20-809882-B of the Eighth Jud. Dist. Court (showing
24 Nahabedian represented Bloom in the relevant January 2021 time period), 3/3 Trans., 13-15; 3/10 Trans., 45:11-19.
25 Nahabedian was also former counsel for Defendants. 3/10 Trans., 20-22. Further, MGA is Nahabedian's personal
counsel. 3/10 Trans., 45:23-46:1.

26 ⁶¹ Exhibit 30; 3/10 Trans., 48:6-21.

27 ⁶² Exhibit 28, PLTF_240-244.

28 ⁶³ 3/3 Trans., 149:25-150:7.

1 personal counsel.⁶⁴ Bloom was even planning to advance the retainer to
2 Nahabedian (although Nahabedian did not charge one notwithstanding his
3 attorney retainer agreement provides its payment is a condition of his
4 employment).⁶⁵

- 5 • On January 7, 2021, at 1:58 pm, Bloom emailed the following documents
6 (collectively, the “Bloom Documents”) to a UPS store near Farkas’ home: 1) the
7 Settlement Agreement, 2) the Nahabedian attorney retainer agreement, 3) a letter,
8 dated January 6, 2021, directed to Plaintiff’s counsel, GTG, with Farkas
9 purporting to terminate them,⁶⁶ and 4) a Release, Hold Harmless and
10 Indemnification Agreement (“Release”). Together with the attached Bloom
11 Documents, Bloom emailed directions to the UPS store that Farkas would be in,
12 they should print one copy of each of the four documents, and once Farkas signs
13 them, they should scan the signed documents, email than back to Bloom, and mail
14 the hard copies to Bloom.⁶⁷ The Bloom Documents were **not** emailed or otherwise
15 delivered to Farkas (let alone Flatto or GTG) at any time, before or
16 after the UPS store was emailed the Bloom Documents, despite that Bloom knew
17 Farkas’ email address.⁶⁸
- 18 • On January 7, 2021, at 2:40 pm (less than 45 minutes after they were first sent by
19 Bloom), the UPS Store emailed Bloom a copy of the scanned, signed Bloom
20 Documents.⁶⁹ On January 7, 2021, at 2:48 pm, Bloom forwarded the executed
21 Bloom Documents to MGA attorneys Gutierrez and Jason Maier, Esq. (“Maier”),
22 and Nahabedian via email with an exclamation “Here you go!” and follow-up

23 ⁶⁴ 3/3 Trans., 150:25-151:1; 3/10 Trans., 48:6-49:2.

24 ⁶⁵ 3/10 Trans., 35:5-16

25 ⁶⁶ The letter was not written by Farkas, and he did not review or approve of its contents. 3/3 Trans., 148:25-149:24.

26 ⁶⁷ Exhibit 28, PLTF_245.

27 ⁶⁸ See Exhibit 17, PLTF_123.

28 ⁶⁹ Exhibit 28, PLTF_245-261.

1 instructions to “get the Substitution of Attorney and Stip to Dismiss filed *for*
2 *[Plaintiff]* and put this to bed in the next day or two...”⁷⁰ Bloom was directing
3 action on behalf of both Defendants and Plaintiff to effectuate dismissal of the
4 case, despite that he and Defendants were adverse to Plaintiff.

- 5 • On January 8, 2021, Nahabedian informed Bloom and Gutierrez that he needed a
6 substitution of counsel to be executed by Farkas and GTG so that he could
7 effectuate the dismissal, and Bloom explained that getting Farkas to “sign stuff is
8 a pain in the ass.”⁷¹ The next day, Bloom explained to Nahabedian and Gutierrez
9 (together with other MGA attorneys Maier and Danielle Barraza) that his
10 intention was to “put in front of [Farkas]” further documents “for a second set of
11 signatures.” Bloom followed, “I’ll have [Farkas] sign everything tomorrow.”⁷²
- 12 • Nahabedian started to question Farkas’ authority to bind Plaintiff, but only to
13 Bloom and MGA.⁷³ Notwithstanding that Nahabedian had still not had any email,
14 text or one-on-one communication with Farkas in order to confirm his authority,⁷⁴
15 on January 14, 2021, Nahabedian sent correspondence to GTG as counsel for
16 Plaintiff,⁷⁵ representing that he was hired to replace GTG. This correspondence
17 was the first time it was disclosed to Plaintiff that there was an executed settlement
18 agreement,⁷⁶ although the agreement was not attached to Nahabedian’s
19 correspondence. Farkas did not participate in the drafting of Nahabedian’s
20 January 14, 2021 correspondence, and he did not approve it before it was sent.⁷⁷
21 The correspondence was drafted by Maier (Defendants and Bloom’s counsel in

22 ⁷⁰ *Id.* at PLTF_245 (emphasis added).

23 ⁷¹ *Id.* at PLTF_266.

24 ⁷² *Id.* at PLTF_278.

25 ⁷³ *Id.* at PLTF_281, 284, 288.

26 ⁷⁴ Exhibits 28-30; 3/10 Trans., 85:1-9.

27 ⁷⁵ Exhibit 11.

28 ⁷⁶ *Id.* at PLTF-097.

⁷⁷ 3/3 Trans., 144:22-148:24.

1 this case), revised by Nahabedian (Bloom's counsel in another matter purporting
2 to be acting on behalf of Plaintiff), and then approved by Bloom and Gutierrez
3 (also Defendants and Bloom's counsel) before it was sent.⁷⁸

4 21. Farkas and Flatto were conspicuously absent from any communications with
5 Nahabedian for the purpose of effectuating dismissal of the case pursuant to the Settlement
6 Agreement's terms or confirming authority to bind Plaintiff. Confronted at the hearing with the
7 fact that Nahabedian did not communicate with Plaintiff's representative, but communicated
8 with Plaintiff's adversaries, MGA and Bloom, relating to his purported representation of
9 Plaintiff, Nahabedian testified that he took direction from Bloom because Bloom was Farkas'
10 brother-in-law and his "conduit."⁷⁹ This exemplifies the lack of apparent authority from
11 Plaintiff. At all relevant times, Bloom and his companies, Defendants, were adverse to Plaintiff
12 with pending contempt proceedings against them, and under no circumstances should he have
13 been directing Plaintiff's counsel without any member of Plaintiff's participation.

14 22. Although there is dispute between Farkas and Bloom regarding when Bloom was
15 specifically informed that Farkas was removed from having *any* management interest in
16 Plaintiff in September 2020,⁸⁰ Bloom and Nahabedian both knew that Farkas had officially
17 resigned his management position in September 2020 by at least the time the Motion to Enforce
18 was filed.⁸¹ Despite learning of the restriction on Farkas' authority, Bloom and his counsel⁸²
19 were unfazed and moved forward on their enforcement efforts.

20 23. Bloom's refusal to recognize inconvenient limitations on Farkas' authority was
21 shown to be pervasive and reckless. Given the arbitrators' expressly stated determination that

22 ⁷⁸ PLTF_311, 316-317, 318, 323, 328-332.

23 ⁷⁹ 3/10 Trans., 51:17-20.

24 ⁸⁰ Exhibit FF, ¶¶ 8, 17, 3/3 Trans., 136:12-21, 198:2-21, 212:21-22; Exhibit 15, ¶¶ 19-21. At the Hearing, Bloom
25 testified that the January 9-11 time subject of his sworn declaration submitted to the Court in support of the Reply in
26 support of the Motion to Enforce was qualified by "on or about" because the dates were not certain; however, the
27 timing of January 9-11 are actually consistent with the timing that Nahabedian started inquiring about Farkas'
28 authority. Exhibit 28, PLTF_281.

⁸¹ Exhibit 15, ¶¶ 19-21; Exhibit 28, PLTF_366.

⁸² Maier is the only declarant in the Motion to Enforce.

1 Flatto's consent was required to bind Plaintiff (before the September 2020 amendment was
2 entered), the Court finds that no reasonably intelligent person with knowledge of that Arb.
3 Award would once again attempt to enforce an agreement without Flatto's consent. In the
4 hearing, Bloom testified he did not heed the Arb. Award because the evidence relied upon by the
5 arbitrators in the arbitration hearing, to wit: a declaration provided by Farkas, was false.⁸³
6 Farkas testified unequivocally in rebuttal at the hearing that the contents of the declaration
7 submitted to the arbitrators was reviewed by him, approved, and the contents were truthful.⁸⁴
8 Farkas' testimony, as well as the arbitrator's decision, is corroborated by the other documents in
9 evidence, and the Court finds there is no support for Bloom's allegation of perjury.⁸⁵

10 24. Not only did Bloom disregard the Arb. Award, but also the basis for the Arb.
11 Award, including the April 18, 2017 email to Defendants providing notice that Farkas cannot
12 bind Plaintiff without Flatto's consent in addition to the declarations of Flatto and Farkas.⁸⁶
13 Further, on July 13, 2017, Plaintiff also sent written correspondence to MGA⁸⁷ representing
14 Farkas is "not the manager" of Plaintiff and that "Farkas does not have the authority to bind
15 [Plaintiff]."⁸⁸ Bloom did not heed any of the notices of Farkas' restricted authority to bind
16 Plaintiff.

17 25. In the Motion to Enforce, Maier testified⁸⁹ that Farkas had authority based on
18 Plaintiff's engagement letter with GTG, which Farkas executed as a member of Plaintiff "and

19 ⁸³ 3/3 Trans., 201:1-6; *see also* 200:10-20 (disregarding notices of restricted authority of Farkas), 203:2-11 (limiting
20 the holding to the authority to execute the redemption agreement without limitation of a settlement agreement).

21 ⁸⁴ 3/10 Trans., 87:25-88:14.

22 ⁸⁵ *See, e.g.*, Exhibit 21-22 (the 2017 communications to Defendants) and Exhibit A, FIRST0031-32 (the redemption
23 agreement including Farkas' signature as "VP Finance"- the title he had with Defendants, and no reference to
24 Plaintiff).

25 ⁸⁶ Exhibit 2, PLTF_007.

26 ⁸⁷ At the Hearing, Defendants argued that no notice was effective without being sent certified mail pursuant to the
27 Subscription Agreement. However, MGA has been counsel for Defendants even since before the subject disputes
28 arose in May 2017, and MGA was the registered agent for Defendants in July 2017 when the letter was sent.
Exhibit 26, PLTF_218.; Exhibit 27, PLTF_235.

⁸⁸ Exhibit 22.

⁸⁹ Motion to Enforce, 3:1-6.

1 also interlineated a restriction of no litigation against First 100.” Flatto executed the engagement
2 letter along with Farkas as a “member,”⁹⁰ and the interlineation on the engagement letter was
3 made by Flatto’s lawyer and not Farkas, and the interlineation did not restrict litigation, only
4 served to place a cap on fees except to the extent the scope expanded to include litigation.⁹¹

5 26. In addition, Maier testified in support of the Motion to Enforce⁹² that Plaintiff’s
6 operating agreement provided the apparent authority for Farkas to bind Plaintiff to the terms of
7 the Settlement Agreement. Section 3.4 of the operating agreement, which was in effect prior to
8 September 2020, provides that the Administrative Member (Farkas) could not act without first
9 obtaining the consent of the other members (Flatto).⁹³ At Section 4.4, it provides that persons
10 dealing with Plaintiff are entitled to rely conclusively upon the power and authority of the
11 Administrative Member (Farkas until September 2020).⁹⁴ However, by the time of the Motion
12 to Enforce, Defendants and Bloom had received notice of the amendment executed in
13 September 2020 that changed the Administrative Member to Flatto and Flatto was the only
14 person with authority to bind Plaintiff subsequent to that date.⁹⁵ In addition, the entry of the
15 Arb. Award and 2017 communications providing notice of a restriction on Farkas’ authority
16 post-dated the operating agreement, negating Defendants’ ability to conclusively rely upon
17 Farkas’ signature as binding authority under Section 4.4.

18 27. Finally, there was a lack of good faith in Bloom’s dealings with his brother-in-law
19 in order to obtain the signed Bloom Documents with haste and in intentional disregard of the
20 restrictions set forth in the Arb. Award, the April 13, 2017 email and July 13, 2017 letter. At a
21 minimum, Bloom was placed on notice that Plaintiff would dispute any document signed by
22 Farkas without Flatto’s knowledge and consent. Further, given that the Bloom Documents were

23 ⁹⁰ Exhibit 28, PLTF_299-300.

24 ⁹¹ 3/3 Trans., 33:1-19; Exhibit 28, PLTF_298.

25 ⁹² Motion to Enforce, 3:6-11.

26 ⁹³ Exhibit 20, PLTF_159.

27 ⁹⁴ *Id.* at Exhibit 20, PLTF_162.

28 ⁹⁵ *See* fn. 81 above.

1 sent by Bloom to the UPS store for execution and they were returned by the UPS Store in less
2 than an hour signed by Farkas, it was not reasonable for Bloom to believe that that was
3 sufficient time for Farkas to review them, understand what he was signing, somehow
4 communicate the matters to Flatto, receive the benefit of counsel regarding the terms, and
5 receive Flatto's consent.

6 28. Under all the circumstances, the Court finds it was unreasonable for Bloom to
7 ignore the notices of the restrictions that Farkas did not have authority to bind Plaintiff without
8 Flatto's consent, and the Court thus concludes that there was a lack of apparent authority for
9 Farkas to bind Plaintiff to the Settlement Agreement.

10 29. The Settlement Agreement expressly provides that, in exchange for dismissal, if
11 Defendants sell the Ngan Judgment, Defendants will pay Plaintiff \$1,000,000.00, plus 6%
12 interest.⁹⁶ There is no evidence of any actual sale, or even ability to sell⁹⁷ the Ngan Judgment
13 for a sufficient sum to pay Plaintiff \$1,000,000.00 plus interest. Further, Defendants' promise
14 for payment in the future upon a sale of the Ngan Judgment is particularly speculative upon the
15 concession that the Ngan Judgment has not resulted in any collections since its entry in 2017,
16 despite diligent collection efforts from MGA and other collection counsel.⁹⁸

17 30. Further, per Defendants' operating agreements, Plaintiff is already entitled to *pro*
18 *rata* distributions with the other members of the net proceeds from any sale.⁹⁹ Given the "if"
19 qualifier of payment, and no sale amount that could be used to calculate whether Plaintiff would
20 ostensibly receive more or less with the Settlement Agreement than with a distribution as a
21 member, the Settlement Agreement does not support a finding of consideration beyond what
22 Plaintiff could ostensibly already be entitled to recover from Defendants following a sale of the
23 Ngan Judgment if it were to ever occur.

24 ⁹⁶ Exhibit 13, PLTF_106.

25 ⁹⁷ Under Defendants' operating agreements, the sale of the only remaining asset of Defendants would require
26 approval of Defendants' members. Exhibits 7 and 8, §6.1(B)(1).

27 ⁹⁸ 3/3 Trans., 217:18-24. 218:9-15.

28 ⁹⁹ Exhibits 7 and 8, Article V.

1 31. Additionally, the Release was not disclosed until after the hearing on the Motion
2 to Compel. After its discovery, Defendants and Bloom were conspicuously silent on the
3 Release's application, which under the plain terms would eliminate any consideration provided
4 Plaintiff under the Settlement Agreement, by virtue of the express, broad release of the parties
5 to the Release (Farkas and Defendants) as well as their representatives and affiliates from any
6 and all claims, promises, damages or liabilities of every kind and nature whatsoever from the
7 beginning of time until the January 6, 2021 effective date of the Release, covering any future
8 liability under the Settlement Agreement also dated January 6, 2021.

9 32. “A meeting of the minds exists when the parties have agreed upon the contract's
10 essential terms.” *Certified Fire Prot. Inc. v. Precision Constr.*, 128 Nev. 371, 378, 283 P.3d 250,
11 255 (2012).

12 Neither Plaintiff, Flatto, nor Plaintiff's known counsel, GTG, saw or reviewed the
13 Settlement Agreement before it was executed by Farkas.¹⁰⁰ Farkas had not even reviewed it.
14 The only time that Farkas had to review the Settlement Agreement's terms was during those
15 minutes he was at the UPS store and the Settlement Agreement was provided with the other
16 documents for his signature. Even after the Settlement Agreement was executed, Bloom, MGA
17 and Nahabedian did not forward the Settlement Agreement to Farkas, Flatto or GTG. The first
18 time Plaintiff received a copy of the Settlement Agreement was when it was attached to the
19 Motion to Enforce.

20 33. Conceding that Bloom never negotiated the Settlement Agreement with Plaintiff,
21 Bloom's testimony relating to a meeting of the minds on the terms was that Bloom had
22 discussions with Flatto in 2017 and was in receipt of a communication from Flatto to Farkas
23 dated January 23, 2017 (before the May 2, 2017 initial demand for Defendants' books and
24 records), which Farkas forwarded to Bloom on April 27, 2017 asking for a return of his
25 investment.¹⁰¹ The Court finds this email and any related 2017 discussions with Flatto cannot be

26 ¹⁰⁰ 3/3 Trans., 72:15- 73:5.

27 ¹⁰¹ 3/3 Trans., 203:16-25; Exhibit C, FIRST0188.

1 reasonably construed as Flatto's agreement to the terms of the Settlement Agreement, as there
2 had been the passage of over three years' time, and in that time, Plaintiff was forced to file the
3 arbitration and obtain the Order for the production of Defendants' books and records, and the
4 Settlement Agreement provided for immediate dismissal of the fruits of that litigation, with
5 prejudice, a term not subject of Flatto's April 2017 email. Further, the Settlement Agreement
6 does not provide for the payment of funds in exchange for the dismissal of the Order, Arb.
7 Award and other pending matters. Rather, it provides for the payment of funds if they are ever
8 received from a sale of the Ngan Judgment, a sale that is speculative as there is no evidence of
9 any actual sale agreement or proof of funds. The Court finds there was insufficient evidence to
10 establish a meeting of the minds on the Settlement Agreement's essential terms.

11 34. The Motion to Enforce was filed for the express purpose of avoiding the
12 consequence of Defendants and Bloom's contempt of the Order. Given the timing, the Court
13 gives special care to determine if the equities support an order for specific performance. In
14 addition to those inequities discussed above (lack of consideration, claim and issue preclusion,
15 concealment of material facts and bad faith), the Court also finds that there are indicia of duress
16 and fraud here that would prevent specific performance.

17 35. In addition to being the manager of Defendants, Farkas' prior employer, Bloom is
18 within Farkas' family. Even though the parties stood in an adversarial relationship *vis a vis* this
19 case, Bloom and Farkas continued to have their familial connection. Under the circumstances, at
20 a minimum, Bloom had a duty to act with the utmost good faith when dealing with Farkas.
21 Even though the parties stood in an adversarial relationship here, the circumstances surrounding
22 Farkas' execution of the Settlement Agreement demonstrate that the documents sent to the UPS
23 Store for Farkas' execution would not have occurred but-for Bloom's familial relationship with
24 Farkas. As Farkas testified, "[Bloom] is my brother-in-law. He's family. I didn't think he
25 would-he would try to do this..."¹⁰² "I trust him as-a brother in law, and as somebody who was
26 representing to me that he was just trying to help in this part of what was going on....I believe

27 ¹⁰² 3/3 Trans., 116:1-21, 119:9-16.
28

1 that he took advantage of a nuance in the law....I think the way Jay treated me was wrong and
2 manipulative. And I think he knew exactly what he was doing.”¹⁰³

3 36. Farkas was self-effacing throughout his testimony at the Hearing, explaining that it
4 was his fault for trusting Bloom and not reading the documents before signing them.¹⁰⁴ If this
5 was a typical arms’ length transaction with no special duties owed between the persons signing
6 the subject agreement, Farkas’ admitted failure to even review the documents before signing them
7 could be a real issue (assuming he had authority in the first place). However, here, the
8 Court finds that there was a special confidence as a result of a familial relationship that resulted in
9 Farkas’ blind trust in Bloom and Bloom’s representations to him about the Bloom Documents’
10 contents.¹⁰⁵

11 37. Farkas was threatened by Bloom with civil action by Defendants and/or their
12 members if he did not sign the Settlement Agreement and other documents provided to him by
13 Bloom, his family member.¹⁰⁶ Farkas felt that he had no choice but to sign any document that
14 Bloom put in front of him. Farkas involuntarily accepted the Bloom Documents and executed
15 them without diligence because he believed otherwise he would suffer adverse action he could
16 not afford to address—a belief that is completely subjective. Where Defendants were only able
17 to procure Farkas’ signature through the abuse of special confidences, the threat of adverse
18 action and concealment of the true nature and substance of the Bloom Documents being signed,
19 enforcement of the Settlement Agreement against the innocent Plaintiff would be inequitable.

20 38. By its OSC, Plaintiff seeks an order compelling Defendants and their principal,
21 Bloom, to comply with the Order, and to require them to pay the fees and costs incurred in the
22 enforcement of the Order as necessary to redress the non-compliance. This requested relief is
23 authorized pursuant to NRS Chapter 22 (Contempts). *See* NRS 22.010(3) (disobedience or
24 resistance to any lawful writ, order, rule or process issued by the court constitutes contempt) and

25 ¹⁰³ *Id.*, 154:16-155:23, 156:13-18.

26 ¹⁰⁴ *See, e.g.*, 3/3 Trans., 101:7-9, 141:20-25.

27 ¹⁰⁵ *Id.* at 102:17-20.

28 ¹⁰⁶ 3/3 Trans., 100:19-101:6, 116:15-21, 117:7-8, 119:17-18, 132:3-22, 134:18-21.

1 NRS 22.100-110 (penalties for contempt). The Court is addressing and treating the contempt
2 proceedings as civil contempt proceedings.

3 39. The Order required Defendants to produce “all the requested documents and
4 information available from both companies to Plaintiff for inspection and copying, as set forth in
5 the [Arb. Award] and Exhibit 13 to Claimant’s Appendix to Claimant’s Arbitration Brief.”¹⁰⁷
6 “Exhibit 13 to Claimant’s Appendix to Claimant’s Arbitration Brief”¹⁰⁸ provides the following
7 list of documents to be produced by each of the Defendants:

- 8 1) The Company’s company books, inclusive of any and all
9 agreements relating to the Company’s governance (Company operating
10 agreements, amendments, consents and resolutions)
- 11 2) Financial Statements, inclusive of balance sheets and profit & loss
12 statements
- 13 3) General ledger and back up, inclusive of invoices
- 14 4) Documents sufficient to show the Company’s assets and their
15 location
- 16 5) Documents relating to value of the Company and/or the
17 Company’s assets
- 18 6) Documents sufficient to show the Company’s members and their
19 status, inclusive of any redeemed members
- 20 7) Tax returns for the Company
- 21 8) Documents sufficient to show the accounts payable incurred by the
22 Company, paid by the Company, and remaining due from the Company
- 23 9) Documents sufficient to show payments made to the Company
24 managers, members and/or affiliates of any managers or members
- 25 10) Company insurance policies
- 26 11) Documents sufficient to show the status of any Company lawsuits
- 27 12) Documents sufficient to show the use of the Investors’ funds (and
28 any other members’ investment) with the Company

40. It is undisputed that Defendants have not produced to Plaintiff one record or
document within this list since entry of the Order.¹⁰⁹

41. The evidence shows that MGA has custody of certain books and records for
Defendants, and no excuse was provided for the failure of counsel to deliver what is in their
custody to Plaintiff in compliance with the Order.¹¹⁰ Bloom denied having any documents, and

¹⁰⁷ Exhibit 4, p. 3.

¹⁰⁸ Exhibit 6.

¹⁰⁹ 3/3 Trans., 219:4-9.

¹¹⁰ See Exhibit 32; 3/10 Trans., 17:2-18:20.

1 said they are all in the custody of Farkas and/or Defendants' former controller, Henricksen (the
2 "Controller").¹¹¹

3 42. Farkas denies taking any books and records of Defendants with him when he left
4 his employment with Defendants (indeed, if he had taken books and records with him, that
5 would have eliminated the need for Plaintiff to request the production of Defendants' books and
6 records in May 2017).¹¹² There is no record of any request from Defendants to produce
7 documents subsequent to May 2, 2017 or any evidence that Farkas was properly designated a
8 custodian of Defendants' records. To the contrary, Bloom is the only person listed in the
9 Operating Agreement or the records of the Secretary of State as having the managerial
10 responsibilities as well as the duties of the registered agent.¹¹³

11 43. Moreover, the failure to produce even one record demonstrates that the cost of
12 production is not a credible excuse for Defendants' disobedience of the Order. Relatedly, lack of
13 funds is no defense to Defendants' performance where there is no evidence of Defendants'
14 compliance with their own governing documents for the purpose of raising funds to meet the
15 Order obligations. As set forth at Section 4.2 of the Defendants' respective Operating
16 Agreements:¹¹⁴

17 If necessary and appropriate to enable the Company to meet its costs,
18 expenses, obligations, and liabilities, and if no lending source is available,
19 then the Manager shall notify each Class A Member ("Capital Call") of
20 the need for any additional capital contributions, and such capital demand
21 shall be made on each Class A Member in proportion to its Class A
22 Membership Interest....

23 Defendants are not incapable of abiding by the Order; Bloom merely determined to do nothing to
24 comply with the Order.¹¹⁵ Bloom's affiliated SJC is the 45.625% Class A Member of First 100.¹¹⁶

25 ¹¹¹ 3/10 Trans., 14:9-18.

26 ¹¹² 3/3 Trans., 125:9-21, 126:11-25; 3/10 Trans., 87:10-24.

27 ¹¹³ Exhibits 26 and 27.

28 ¹¹⁴ Exhibits 7 and Exhibit 8, p. 8.

¹¹⁵ 3/3 Trans., 74:15-20; 3/10 Trans., 7:13-19.

1 The 23.709% Class A Member of 1st 100, and Bloom's other affiliates, SJC 1, LLC and SJC 2,
2 LLC, have further Class A Member interests of 6.708% and 12.208% in 1st 100, respectively.¹¹⁷
3 Therefore, Bloom's affiliates have the lion's share of any capital call obligation for either entity
4 to meet their performance obligation.

5 44. There is no question here that Bloom had notice of the Order, and he even filed a
6 response to the OSC in conjunction with Defendants. Bloom is the only person appointed under
7 Defendants' operating agreements and with the Nevada Secretary of State to act as the Manager
8 of the companies.¹¹⁸ Throughout Bloom's testimony, he attempted to distance himself from this
9 manager role and its responsibilities to Defendants. However, Defendants are manager-managed,
10 and Bloom is expressly the only person with authority or power under the Defendants' operating
11 agreements to do any act that would be binding on Defendants, or incur any expenditures on
12 behalf Defendants.¹¹⁹ Bloom is not only the only Manager listed in the operating agreements and
13 with the Nevada Secretary of State; he is also the "Registered Agent" with the Nevada Secretary
14 of State.

15 45. In his Response to the OSC, Bloom argues he is absolutely immune from
16 contempt proceedings under NRS 86.371, which provides that no member or manager of a
17 Nevada LLC is individually liable for the debts or liabilities of the company. The subject
18 contempt is not to address the non-payment of the monetary award that is included in the Order;
19 it is solely for disobedience and/or resistance of a Court order requiring certain action solely
20 within Bloom's responsibilities under the Defendants' Operating Agreements and as designated
21 with the Nevada Secretary of State for each of the Defendants.

22 If any of the foregoing Findings of Fact would be more appropriately deemed to be
23 Conclusions of Law, they shall be so deemed.

24 ¹¹⁶ Exhibit 7, p. 28.

25 ¹¹⁷ Exhibit 8, p. 29.

26 ¹¹⁸ Exhibits 7-8, 26-27.

27 ¹¹⁹ Exhibits 7 and 8, Sects. 3.17, 6.1(A).

FROM the foregoing Findings of Fact, the Court makes the following:

CONCLUSIONS OF LAW

1. “A settlement agreement, which is a contract, is governed by principles of contract law.” *Mack v. Estate of Mack*, 125 Nev. 80, 95, 206 P.3d 98, 108 (2009) (internal citations omitted). “As such, a settlement agreement will not be an enforceable contract unless there is ‘an offer and acceptance, meeting of the minds, and consideration.’” *Id.*

Because requests to enforce settlement agreements seek “specific performance,” the actions are equitable in nature. *Park W. Companies, Inc. v. Amazon Constr. Corp.*, 473 P.3d 459 (Nev. 2020) (unpublished disposition) (citing *Calabi v. Gov’t Emps. Ins. Co.*, 728 A.2d 2016, 208 (Md. 1999), 81A C.J.S. *Specific Performance* § 2 (2015) (“The remedy of specific performance is equitable in nature” and therefore “governed by equitable principles”)). In addition to the elements of an enforceable contract being required, specific performance as a remedy under the subject contract is available only when: (1) the terms of the contract are definite and certain; (2) the remedy at law is inadequate; (3) the movant has tendered performance; and (4) the court is willing to order specific performance. *Mayfield v. Koroghli*, 124 Nev. 343, 351, 184 P.3d 362, 367 (2008) (citing *Serpa v. Darling*, 107 Nev. 299, 305, 810 P.2d 778, 782 (1991)).

2. Repudiation of a contract prior to performance by either party excuses any performance under the contract by either party. *See Kahle v. Kostiner*, 85 Nev. 355, 358, 455 P.2d 42, 44 (1969) (repudiation requires “a definite unequivocal and absolute intent not to perform” under the contract). Under the circumstances, the Court concludes that Plaintiff’s repudiation prior to any performance excused any further performance obligation under the Settlement Agreement by either party.

3. To bind Plaintiff in an enforceable settlement agreement, Farkas must have had Plaintiff’s actual or apparent authority. *Simmons Self-Storage v. Rib Roof, Inc.*, 130 Nev. 540, 549, 331 P.3d 850, 856 (2014) (citing *Dixon v. Thatcher*, 103 Nev., 414, 417, 742 P.2d 1029, 1031 (1987)).

4. “An agent acts with actual authority when, at the time of taking action that has

1 legal consequences for the principal, the agent reasonably believes, in accordance with the
2 principal's manifestations to the agent, that the principal wishes the agent so to act.” *Simmons*
3 *Self-Storage*, at 549, 331 P.3d at 856 (citing Restatement (Third) of Agency § 2.01 (2006)).

4 When examining whether actual authority exists, the courts are to focus on an agent's reasonable
5 belief. *Id.* (citing § 2.02 & cmt. e (“Whether an agent's belief is reasonable is determined from
6 the viewpoint of a reasonable person in the agent's situation under all of the circumstances of
7 which the agent has notice.”)).

8 5. Without any appreciation for all that he was signing at the UPS store, Farkas did
9 not consult with Flatto or counsel for Plaintiff regarding the Settlement Agreement.¹²⁰ Farkas’
10 belief he lacked consent to bind Plaintiff to the terms of the Settlement Agreement was
11 reasonable under the circumstances. In particular, at all times, actions taken on behalf of
12 Plaintiff required Flatto’s consent and the failure to obtain the consent of Flatto is conclusive
13 evidence that Farkas’ belief that he lacked authority to bind Plaintiff when he executed the
14 Settlement Agreement was reasonable. Accordingly, the Court concludes Farkas did not have
15 actual authority to bind Plaintiff under the Settlement Agreement.

16 6. An agent has apparent authority where the “principal holds his agent out as
17 possessing or permits him to exercise or to represent himself as possessing” and “there must also
18 be evidence of the principal's knowledge and acquiescence.” *Simmons Self-Storage v. Rib Roof,*
19 *Inc.*, 130 Nev. 540, 550, 331 P.3d 850, 857 (2014)(quoting *Ellis v. Nelson*, 68 Nev. 410, 418–19,
20 233 P.2d 1072, 1076 (1951)). Thus, “[a]pparent authority (when in excess of actual authority)
21 proceeds on the theory of equitable estoppel; it is in effect an estoppel against the [principal] to
22 deny agency when by his conduct he has clothed the agent with apparent authority to act.” *Ellis*
23 *v. Nelson*, 68 Nev. 410, 418–19, 233 P.2d 1072, 1076 (1951). Moreover, to be clothed with
24 apparent authority, there “must also be evidence of the principal's knowledge and acquiescence in
25 them.” *Id.* There is no authority “simply because the party claiming has acted upon his
26 conclusions.” *Id.* There can only be apparent authority, “where a person of ordinary prudence,
27 conversant with business usages and the nature of the particular business, acting in good faith.

28 ¹²⁰ 3/3 Trans., 72:19-23.

1 and giving heed not only to opposing inferences but also to all restrictions which are brought
2 to his notice, would reasonably rely.” *Id.* (emphasis added) (noting that where inferences against
3 the existence of apparent authority are as equally reasonable as those supporting it, a party may
4 not rely on apparent authority).

5 7. “[A] party claiming apparent authority of an agent as a basis for contract
6 formation must prove (1) that he subjectively believed that the agent had authority to act for the
7 principal and (2) that his subjective belief in the agent’s authority was objectively reasonable.”
8 *Great Am. Ins. Co. v. Gen. Builders, Inc.*, 113 Nev. 346, 352, 934 P.2d 257, 261 (1997).
9 Reasonable reliance on the agent’s authority “is a necessary element.” *Id.*; *Forrest Tr. v. Fid.*
10 *Title Agency of Nevada, Inc.*, 281 P.3d 1173 (Nev. 2009). In determining reasonableness, “the
11 party who claims reliance must not have closed his eyes to warnings or inconsistent
12 circumstances.” *Great Am. Ins. Co.*, 113 Nev. at 352, 934 P.2d at 261, (citing *Tsouras v.*
13 *Southwest Plumbing and Heating*, 94 Nev. 748, 751, 587 P.2d 1321, 1322 (1978)) (emphasis
14 added). As the Nevada Supreme Court has explained, “the reasonable reliance requirement
15 [includes] the performance of due diligence” to learn the veracity of representations of
16 authority.” *In re Cay Clubs*, 130 Nev. 920, 932–33, 340 P.3d 563, 571–72 (2014) (emphasis
17 added).

18 8. The Settlement Agreement is not the first time that Bloom has directed Farkas to
19 sign a document and then taken the position that Farkas’ signature bound Plaintiff to its detriment.
20 The question of Farkas’ authority to bind Plaintiff without Flatto’s consent was raised in
21 the arbitration, and it was resolved **against Defendants** as part of the Arb. Award. Thus, even
22 before Plaintiff amended its operating agreement in September 2020 to remove Farkas, it was
23 clearly established by the arbitrators that Farkas had no authority to bind Plaintiff without the
24 consent of Flatto.

25 9. *Res judicata* precludes Defendants’ reiterated argument that Farkas’ signature on
26 a document is sufficient to bind Plaintiff to its detriment. *Univ. of Nev. v. Tarkanian*, 110 Nev.
27 581, 598, 879 P.2d 1180, 1191 (1994) (defining *res judicata* as encompassing both issue and
28 claim preclusion doctrines). The issue of Farkas’ authority to bind Plaintiff without Flatto’s

1 consent- the same issue at bar--was previously raised and decided in the Arb. Award, confirmed
2 by the Order. As the Order is a final judgment that was appealable, the finality of the
3 determination is concrete and immutable here. *See Kirsch v. Traver*, 134 Nev. 163, 166, 414
4 P.3d 818, 821 (2018) (defining “final judgment” for the purpose of analyzing *res judicata* as
5 being procedurally definite without any reservation for future determination following the parties
6 having an opportunity to be heard, a reasoned opinion supporting the determination, and that the
7 determination having been subject to appeal) (citing *Univ. of Nev. v. Tarkanian*, 110 Nev. at 598,
8 879 P.2d at 1191, *holding modified on other grounds by Exec. Mgmt., Ltd. v. Ticor Title Ins.*
9 *Co.*, 114 Nev. 823, 963 P.2d 465 (1998)).

10 10. As a matter of law, as established by the Order confirming the Arb. Award,
11 Farkas did not have apparent authority to bind Plaintiff absent Flatto’s consent, and here, the
12 failure to obtain Flatto’s consent to the Settlement Agreement is undisputed. On this basis
13 alone, Farkas did not have actual or apparent authority to bind Plaintiff under the Settlement
14 Agreement.

15 11. The Court therefore concludes there was no good faith basis for Bloom’s
16 intentional disregard of the Arb. Award and Order thereon and reliance by Bloom on Farkas’
17 signature on the Settlement Agreement was not reasonable.

18 12. “Consideration is the exchange of a promise or performance, bargained for by the
19 parties.” *Jones v. SunTrust Mortg., Inc.*, 128 Nev. 188, 191, 274 P.3d 762, 764 (2012).
20 In addition to consideration being an essential element of any contract, gross inadequacy of
21 consideration may be relevant to issues of capacity, fraud, mistake, misrepresentation, duress, or
22 undue influence in addition to being relevant to whether there is an essential element of a
23 contract. *Oh v. Wilson*, 112 Nev. 38, 41–42, 910 P.2d 276, 278–79 (1996) (*citing* Restatement
24 (Second) of Contracts § 79 cmt. c (1979)). Inadequacy of consideration is often said to be a
25 “badge of fraud,” justifying a denial of specific performance. *Id.*

26 13. The Court concludes that there is such inadequacy of consideration to Plaintiff in
27 exchange for dismissal of its hard-fought rights under the Order that it justifies denial of the
28 requested specific performance.

1 14. A special relationship arises in any situation where “kinship or professional,
2 business, or social relationships between the parties” results in one party gaining the confidence of
3 another and purporting to advise or act consistently with the other party’s interest. *Perry v.*
4 *Jordan*, 111 Nev. 943, 947, 900 P.2d 335, 337–338 (1995) (citations omitted). An equitable duty
5 is owed as a result of such a confidential relationship, which is akin to a fiduciary duty. *See*
6 *Executive Mgmt., ltd. v. Ticor Title Ins. Co.*, 114 Nev. 823, 841, 963 P.2d 465, 477 (1998) (citing
7 *Long v. Towne*, 98 Nev. 11, 13, 639 P.2d 528, 529–30 (1982)). Constructive fraud is the breach
8 of that equitable duty, which the law declares fraudulent because of its tendency to deceive others
9 to violate confidence. *Id.*

10 15. In equity and good conscience, Bloom was bound to act in good faith and with
11 due regard to the interests of Farkas who was reposing his confidence in Bloom. *Perry*, 111 Nev.
12 at 946–47, 900 P.3d 337 (citing *Long*, 98 Nev. at 13, 639 P.2d at 529–30). Particularly in light
13 of the Arb. Award, Bloom had a duty to at least disclose to Farkas (as well as Flatto) his plan to
14 settle this case under the Settlement Agreement and have the Order, underlying Arb. Award and
15 pending OSC dismissed, with prejudice. Bloom should have emailed or otherwise provided a
16 copy of the documents to Farkas so Farkas could consult with Flatto and counsel. Not only did
17 Bloom conceal the true facts from Farkas, but he took active steps so that the true facts would
18 never have to be revealed until after the case was dismissed, inclusive of hiring Farkas separate
19 counsel to orchestrate dismissal in the shadows rather than send GTG the Settlement Agreement.

20 16. Duress is a valid basis to set aside a contract or avoid specific performance. *Kaur*
21 *v. Singh*, 136 Nev. Adv. Op. 77, 477 P.3d 358, 362 (2020); *Levy v. Levy*, 96 Nev. 902, 903–04,
22 620 P.2d 860, 861 (1980) (recognizing duress as a basis to set aside a settlement). “The coercion
23 or duress exception applies when “(1) . . . one side involuntarily accepted the terms of another;
24 (2) . . . circumstances permitted no other alternative; and (3) . . . circumstances were the result of
25 coercive acts of the opposite party.” *Nevada Ass’n Servs., Inc. v. Eighth Jud. Dist. Ct.*, 130 Nev.
26 949, 956, 338 P.3d 1250, 1255 (2014).

27 17. An improper threat can exist when a party is threatened with civil action,
28 especially when there are circumstances of emotional consequences. Restatement (Second) of

1 Contracts § 175, cmt. b (1981). “[A] party's manifestation of assent is induced by duress if the
2 duress substantially contributes to his decision to manifest his assent. *Id.*, cmt. c. “The test is
3 subjective and the question is, did the threat actually induce assent on the part of the person
4 claiming to be the victim of duress.” *Id.* In making the determination, courts consider, “the age,
5 background and relationship of the parties” and the rule is designed to protect “persons of a weak
6 or cowardly nature.” *Id.*; *see also Schmidt v. Merriweather*, 82 Nev. 372, 376, 418 P.2d 991, 993
7 (1966).

8 18. A threat is improper if “what is threatened is the use of civil process and the threat
9 is made in bad faith.” Restatement (Second) of Contracts § 176 (1)(c). Accordingly, when
10 evaluating duress, bad faith of one party is relevant as to another party’s capacity to contract.
11 *Barbara Ann Hollier Tr. v. Shack*, 131 Nev. 582, 587, 356 P.3d 1085, 1088 (2015); Restatement
12 (Second) of Contracts § 205 cmt. c (1981) (“Bad faith in negotiation, although not within the
13 scope of [the implied covenant of good faith and fair dealing], may be subject to
14 sanctions. Particular forms of bad faith in bargaining are the subjects of rules as to capacity to
15 contract, mutual assent and consideration and of rules as to invalidating causes such as fraud
16 and duress.”).

17 19. Defendants’ contempt of the Order through resistance and/or disobedience of the
18 Order is clearly established.

19 20. Bloom, as the sole natural person legally associated with Defendants, did not
20 testify to any efforts to marshal Defendants’ books and records for production to Plaintiff, except
21 to obtain a letter dated February 12, 2021 (nearly two months after the OSC was entered),
22 providing that the Controller was seeking payment to compile and produce Defendants’
23 records.¹²¹ Defendants’ requested condition of Plaintiff’s payment of expenses incurred by
24 Defendants to comply with its Order obligation is barred by *res judicata*. Again, the Order
25 confirming the Arb. Award, a final judgment, precludes a second action on the underlying claim
26 or any part of it. *Univ. of Nev.*, at 599, 879 P.2d at 1191. Issue preclusion applies to any issue

27 ¹²¹ Exhibit V.
28

1 actually raised and decided in the judgment. *Id.* Claim preclusion “embraces all grounds of
2 recovery that were asserted in a suit, as well as those that could have been asserted, and thus, [it]
3 has a broader reach” than the issue preclusion doctrine. *Id.* at 600, 879 P.2d at 1192.

4 21. The very purpose of the issue preclusion doctrine is “to prevent multiple litigation
5 causing vexation and expense to the parties and wasted judicial resources by precluding parties
6 from relitigating issues.” *Kirsch v. Traver*, 134 Nev. 163, 166, 414 P.3d 818, 821 (2018); *see*
7 *also Alcantara ex rel. Alcantara v. Wal-Mart Stores, Inc.*, 130 Nev. 252, 258, 321 P.3d 912, 916
8 (2014) (issue preclusion is appropriately applied to conserve judicial resources, maintain
9 consistency, and avoid harassment or oppression of the adverse party (citing *Berkson v. LePome*,
10 245 P.3d 560, 566 (Nev. 2010))).

11 22. Plaintiff’s demand for Defendants’ books and records under the terms of
12 Defendants’ operating agreements and NRS 86.241 resulting in the Order was arbitrated, and the
13 arbitrators ruled in favor of Plaintiff and against Defendants on the entirety of the claim, and
14 even awarded Plaintiff fees and costs.¹²² Defendants’ claimed expenses associated with the
15 demand for production was required to be arbitrated,¹²³ and there was clearly no award of
16 expenses in favor of Defendants following the arbitration. Ignoring their obligation to arbitrate
17 any request for expenses associated with the production of documents in the arbitration,
18 Defendants waited until Plaintiff’s Motion to Confirm Arb. Award to seek to modify the Arb.
19 Award to include a condition for production of the ordered books and records on Plaintiff’s prior
20 payment for Defendants’ expenses associated with production.¹²⁴ The Court made reasoned
21 conclusions regarding the procedural infirmity of bringing the request for relief to the Court
22 when the relief was not awarded by the arbitrators, and DENIED it as part of the Order.¹²⁵ The
23 Order is a final judgment not subject to any appeal, and as it specifically addressed and resolved
24 Defendants’ argument for a condition of Plaintiff’s payment of expenses of production, the Order

25 ¹²² Exhibit 4.

26 ¹²³ Exhibits 7 and 8, Sect. 13.9 (Dispute Resolution provision).

27 ¹²⁴ Exhibit 3 (the Declaration of Bloom in support of the Countermotion to Modify Arbitration Award).

28 ¹²⁵ Exhibit 4, p. 2:11-25; 3:15-16.

1 itself defeats any argument from Defendants that production of the documents pursuant to the
2 Order is in any way conditioned on payment of any purported expenses demanded by
3 Defendants.

4 23. Under the circumstances, the Court concludes that Plaintiff's non-payment of
5 expenses demanded on February 12, 2021 is not a valid excuse for Defendants' disobedience
6 and/or resistance of the subject Order. The books and records must be produced forthwith and
7 without the imposition of any conditions.

8 24. Bloom argues that since he is not a party to the Order in his individual capacity, he
9 should not be a party to these contempt proceedings. The relevant authority provides otherwise.
10 The Nevada contempt statutes (NRS Chapter 22) as well as relevant Nevada Rules of
11 Civil Procedure ("NRCPP") are directed *to conduct* of persons resisting or disobeying enforceable
12 Court orders and does not limit its reach to the defendants alone. Limited liability companies
13 such as Defendants engage in conduct through responsible persons- here, there is only Bloom
14 and his counsel working at his direction. *See, e.g.*, NRCPP 69 (describing procedures for
15 execution on judgment to include obtaining discovery from any person); NRCPP 71 ("When an
16 order grants relief . . . [that] may be enforced against a nonparty, the procedure for enforcing the
17 order is the same as for a party."); NRCPP 37(b) (providing for orders compelling compliance and
18 sanctions for failure of a "party or its officers, directors or managing agents" to comply with
19 court discovery orders).

20 25. The "responsible party" rule is longstanding, providing that the contempt powers
21 of the Courts reach through the corporate veil to command not only the entity, but those who are
22 officially responsible for the conduct of its affairs. If a person is apprised of the Order directed
23 to the entity, prevents compliance or fails to take appropriate action within their power for the
24 performance of the corporate duty, they are guilty of disobedience and may be punished for
25 contempt. *Wilson v. United States*, 221 U.S. 361, 377 (1911) ("When a copy of the writ which
26 has been ordered is served upon the clerk of the board, it will be served on the corporation, and
27 be equivalent to a command that the persons who may be members of the board shall do what is
28 required. If the members fail to obey, those guilty of disobedience may, if necessary, be

1 punished for the contempt While the board is proceeded against in its corporate capacity,
2 the individual members are punished in their natural capacities for failure to do what the law
3 requires of them as representatives of the corporation.”); *Electrical Workers Pension Trust Fund*
4 *of Local Union #58, IBEW v. Gary’s Elec. Service Co.*, 340 F.3d 373, 380 (6th Cir. 2003)
5 (holding that sole officer of the defendant, who was not himself a party, could be held in
6 contempt for the defendant’s failure to obey the court’s judgment and order). In order to hold an
7 officer, director or other managing agent in contempt, the movant must show that he had notice
8 of the order and its contents. *Id.*

9 26. A non-party who fails to produce documents in compliance with a Court order
10 will be jointly and severally liable for disobedience when he is found to have abetted the
11 disobedience or is legally identified with the responsible party. *See Luv n Care Ltd. v. Laurain*,
12 2019 WL 4279028, at * 4 (D. Nev. Sept. 10, 2019) (finding the managing member jointly and
13 severally liable for contempt and payment of fees and costs), (citing *United States v. Wilson*;
14 *Electrical Workers Pension Trust Fund of Local Union #58*; *United States v. Laurins*, 857 F.2d
15 529, 535 (9th Cir. 1988) (“A nonparty may be liable for contempt if he or she either abets or is
16 legally identified with the named defendant. . . . **An order to a corporation binds those who are**
17 **legally responsible for the conduct of its affairs.**”) (emphasis added)); *Peterson v. Highland*
18 *Music, Inc.*, 140 F.3d 1313, 1323–24 (9th Cir. 1988); *NLRB v. Sequoia Dist. Council of*
19 *Carpenters*, 568 F.2d 628, 633 (9th Cir. 1977); *1st Tech, LLC v. Rational Enter., Ltd.*, 2008 WL
20 4571057, at *8 (D. Nev. July 29, 2008). Put another way, an order to an entity binds those who
21 are legally responsible for the conduct of its affairs. *Luv n Care Ltd.*, at *4 (citing *Laurins*).

22 27. As such, once Bloom had notice of the Order, he could not delegate the
23 responsibility for performance on a third party, but he himself had to take reasonable steps to
24 provide the records in compliance with the Order in his capacity as the sole person legally
25 associated with Defendants and responsible for the books and records of Defendants, as manager
26 of Defendants’ manager.

27 28. As set forth above, the “responsible party” rule applies to contempt proceedings;
28 otherwise there would never be a consequence for an entity’s non-compliance, particularly here

1 when there are no formalities being followed and, at least at this juncture, Bloom is the *alter ego*
2 of Defendants. Bloom ignores the holding of the Nevada Supreme Court in *Gardner on Behalf*
3 *of L.G. v. Eighth Judicial Dist. Court in & for Cty. of Clark*, 133 Nev. 730, 735, 405 P.3d 651,
4 655–56 (2017), which explained that those bases for corporate veil piercing, such as *alter ego*,
5 illegality or other unlawfulness, will equally apply to a Nevada LLC. “As recognized by courts
6 across the country, LLCs provide the same sort of possibilities for abuse as corporations, and
7 creditors of LLCs need the same ability to pierce the LLCs’ veil when such abuse exists.” *Id.*,
8 133 Nev. at 736, 405 P.3d 656.

9 Related to *alter ego*, NRS 86.376 then specifically provides, as follows:

- 10 1. Except as otherwise specifically provided by statute or agreement, no
11 person other than the limited-liability company is individually liable for a debt or
12 liability of the limited-liability company unless the person acts as the alter ego of
13 the limited-liability company.
14 2. A person acts as the alter ego of a limited-liability company only if:
15 (a) The limited-liability company is influenced and governed by the person;
16 (b) There is such unity of interest and ownership that the limited-liability
17 company and the person are inseparable from each other; and
18 (c) Adherence to the notion of the limited-liability company being an entity
19 separate from the person would sanction fraud or promote manifest injustice.
20 3. The question of whether a person acts as the alter ego of a limited-liability
21 company must be determined by the court as a matter of law.

22 29. Both Defendants are in “default” status with the Nevada Secretary of State. The
23 testimony of Bloom demonstrated that Defendants have no continued operations, there are no
24 employees, there are no bank accounts, there are no records being maintained as required under
25 the operating agreements or NRS 86.241, and there is no active governance of any kind.¹²⁶
26 While Bloom self-servingly represents that there are “directors” and “officers” of Defendants, he
27 concedes, as he must, that there were no writings to reflect that any director or officer has any
28 authority to bind Defendants instead of Bloom. In addition, equity must be applied such that
Bloom will not be immune from consequences for his intentional conduct for the purpose of

¹²⁶ See, e.g., 3/3 Trans., 220:9-11, 226:2-4, 3/10 Trans., 12:10-19, 14:9-17, 15:16-25; Exhibits 7-8, § 2.3 (providing the company shall maintain records, including at the principal office or registered office, both c/o Bloom); Exhibits 26-27.

1 disobeying and/or resisting the Order. Therefore, in addition to the “responsible party” rule that
2 applies to contempt, there should be no immunity for liability when, as here, Bloom is
3 Defendants’ *alter ego*.

4 30. Furthermore, the Nevada Supreme Court has explained the broad, independent
5 authority of the Court to enforce its decrees independent of the rules or statutes, including
6 sanctions for non-compliance by non-parties with its orders and legal processes. *See Halverson*
7 *v. Hardcastle*, 123 Nev. 245, 261–62, 163 P.3d 428, 440–441 (2007) (“the court has inherent
8 power to protect the dignity and decency of its proceedings and to enforce its decrees, and thus it
9 may issue contempt orders and sanction . . . for litigation abuses. Further, courts have inherent
10 power to prevent injustice and to preserve the integrity of the judicial process . . .”).

11 31. Under the Court’s inherent authority to enforce its decrees against those appearing
12 and demonstrating disregard for its Order, the “responsible party” rule recognized in the common
13 law, Nevada’s contempt statutes, Nevada’s Rules of Civil Procedure, as well as NRS 86.376,
14 Bloom is a proper party to the subject contempt proceedings.

15 32. The Settlement Agreement was a sham, never designed to result in any fair benefit
16 to Plaintiff, and, if effectuated with the dismissal of the Order, underlying Arb. Award
17 and pending contempt motions, with prejudice, the ramifications to Plaintiff would have been
18 unacceptable under law or equity. The Eighth Judicial District Court has enacted its own rule,
19 EDCR 7.60(b) to provide the Court further express authority to impose sanctions upon a party,
20 including attorneys’ fees, when a party, without just cause, presents a motion to the Court that is
21 “obviously frivolous, unnecessary or unwarranted,” or “so multiplies the proceedings in a case as
22 to increase costs unreasonably and vexatiously.”

23 33. The Court determines that sanctions are properly awarded against Defendants
24 inclusive of the reasonable fees and costs expended by Plaintiff relating to the Motion to Enforce
25 and Response to OSC.

26 34. The expenses associated with addressing the re-litigated defenses asserted by
27 Defendants and Bloom were then unnecessarily increased by Bloom’s wrongful direction to not
28

1 permit the disclosure of any communications between or among Nahabedian and Bloom and/or
2 MGA, regardless of whether they related to Plaintiff and this action.¹²⁷

3 35. Sanctions are awardable under NRCP 37 for failure to provide discovery.

4 Any of the foregoing Conclusions of Law that would more appropriately be deemed to be
5 Findings of Fact shall be so deemed.

6 ORDER

7 NOW, THEREFORE, based upon the Foregoing Findings of Fact and Conclusions of
8 Law, the Court makes the following rulings:

9 1) The Court declines to reverse its prior denial of the Motion to Enforce.

10 2) Based on its determination that Defendants and Bloom disobeyed and resisted the Order
11 in contempt of Court (civil), the Court orders immediate compliance. In order to purge their
12 contempt, Defendants, and any manager, representative or other agent of Defendants receiving
13 notice of this order shall take all reasonable steps to comply with the Order, and within 10 days
14 of notice of entry of this order, shall produce the following books and records for Defendants to
15 Plaintiff¹²⁸ at their expense:¹²⁹

- 16 1) Each of Defendants' company books, inclusive of any and all agreements
17 relating to governance (operating agreements, amendments, consents and
18 resolutions);
- 19 2) Financial Statements, inclusive of balance sheets and profit & loss
20 statements;
- 21 3) General ledger and back up, inclusive of invoices;
- 22 4) Documents sufficient to show each of Defendants' assets and their
23 location;
- 24 5) Documents relating to value of each of each of Defendants and/or their
25 assets;
- 26 6) Documents sufficient to show Defendants' members and their status,
27 inclusive of any redeemed members;
- 28 7) Tax returns for each of Defendants;
- 8) Documents sufficient to show the accounts payable incurred, paid and
remaining due for each of Defendants;

¹²⁷ Exhibit 28, PLTF_480, and the Motion to Compel.

¹²⁸ The list of documents ordered to be produced in the Arbitration Award is set forth at Exhibits 6 and QQ, and was expressly incorporated into the Order.

¹²⁹ There are indemnification provisions in Defendants' operating agreements that Bloom and anyone "serving at his direction" to comply with the Order could ostensibly enforce. Exhibits 7-8, Article VII.

- 1 9) Documents sufficient to show payments made to each of Defendants' managers, members and/or affiliates of any managers or members;
2 10) Each of Defendants' insurance policies
3 11) Documents sufficient to show the status of any lawsuits involving either of Defendants; and
4 12) Documents sufficient to show the use of investors' funds (and any other members' investment) for each of Defendants.

5 For any documents not produced within 10 days of entry of this order, there shall be certification
6 from Bloom establishing all steps taken to marshal and produce the documents, where the
7 documents are located, why they were not provided by the deadline and when they will be
8 provided.

9 3) Also, the Court orders reimbursement of Plaintiff's reasonable fees and costs
10 incurred in connection with the finding of contempt pursuant to the OSC, the Countermotion for
11 Sanctions, and the Motion for Sanctions, as follows:

12 Based on the determination that Defendants and Bloom disobeyed and resisted the Order
13 in contempt of Court (civil), and the Motion to Enforce was a tool of that contempt as
14 orchestrated by Bloom in disregard of the Arb. Award confirmed by the Order, the Court orders
15 Defendants and Bloom are jointly and severally responsible for the payment of all the reasonable
16 fees and costs incurred by Plaintiff since entry of the Order for the purpose of coercing
17 compliance with the Order in order to make them whole, inclusive of responding to the Motion to
18 Enforce and bringing the Motion to Compel.

19 Within 10 days of entry of this order, counsel for Plaintiff shall provide a declaration and
20 supporting documentation as necessary to meet the factors outlined in *Brunzell v. Golden Gate*
21 *National Bank*, 85 Nev. 345, 55 P.2d 31 (1969), and delineating the fees and costs expended in
22 relating to the Motion to Compel, Motion to Enforce and OSC, following which, there will be an
23 opportunity to respond to Plaintiff's submission within 10 days of service of Plaintiff's
24 supplement, and Plaintiff can file a reply within 7 days thereof. The Court will then consider the
25 submissions and enter its further order on the amount of fees and costs to be awarded, and
26 payment will be due within thirty (30) days thereafter.

27 4) Any failure to comply with the Order compelling compliance and requiring
28 payment of the expenses incurred shall be subject to appropriate consequences. A status check is

1 scheduled for May 24, 2021 at 9:00 a.m.

Dated this 7th day of April, 2021

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D39 950 89AB 02DB
Mark R. Denton
District Court Judge

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

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5
6 TGC/Farkas Funding, LLC,
Plaintiff(s)

CASE NO: A-20-822273-C

7 vs.

DEPT. NO. Department 13

8
9 First 100, LLC, Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

12 This automated certificate of service was generated by the Eighth Judicial District
13 Court. The foregoing Findings of Fact, Conclusions of Law and Judgment was served via the
14 court's electronic eFile system to all recipients registered for e-Service on the above entitled
case as listed below:

15 Service Date: 4/7/2021

16 Dylan Ciciliano dciciliano@gtg.legal

17 Erika Turner eturner@gtg.legal

18 MGA Docketing docket@mgalaw.com

19 Tonya Binns tbinns@gtg.legal

20 Bart Larsen blarsen@shea.law

21 Max Erwin merwin@gtg.legal

22
23 If indicated below, a copy of the above mentioned filings were also served by mail
24 via United States Postal Service, postage prepaid, to the parties listed below at their last
25 known addresses on 4/8/2021
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Joseph Gutierrez

Maier Gutierrez & Associates
Attn: Joseph A. Gutierrez
8816 Spanish Ridge Avenue
Las Vegas, NV, 89148

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Civil Matters

COURT MINUTES

October 29, 2020

A-20-822273-C TGC/Farkas Funding, LLC, Plaintiff(s)
vs.
First 100, LLC, Defendant(s)

October 29, 2020 11:00 AM Minute Order

HEARD BY: Denton, Mark R.

COURTROOM: Chambers

COURT CLERK: Madalyn Kearney

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- Until further notice, Department 13 will be conducting court hearings REMOTELY using the BlueJeans Video Conferencing system. Department 13 has adopted this policy as a precautionary measure in light of public health concerns for Coronavirus COVID-19, and the Court orders that any party intending to appear before Department 13 for law and motion matters do so by BlueJeans only. As a result, your matter scheduled November 2, 2020 in this case will be conducted via BlueJeans. You have the choice to appear either by phone or computer/video.

Dial the following number: 1-408-419-1715

Meeting ID: 944 156 346

URL: [bluejeans.com/ 944156346](https://bluejeans.com/944156346)

To connect by phone, dial the number provided and enter the meeting ID followed by #.

To connect by computer if you do NOT have the app, copy the URL link into a web browser. Google Chrome is preferred but not required. Once you are on the BlueJeans website click on Join with Browser which is located on the bottom of the page. Follow the instructions and prompts given by BlueJeans.

You may also download the BlueJeans app and join the meeting by entering the meeting ID.

PLEASE NOTE the following protocol each participant will be required to follow:

You will be automatically muted upon entry to the meeting. Please remain muted while waiting for your matter to be called. If you are connecting by phone, you can mute/unmute yourself by pressing *4.

Do NOT place the call on hold since some phones may play wait/hold music.

Please do NOT use speaker phone as it causes a loud echo/ringing noise.

Please state your name each time you speak so that the court recorder can capture a clear record.

Please be mindful of rustling papers, background noise, and coughing or loud breathing.

Please be mindful of where your camera is pointing.

We encourage you to visit the Bluejeans.com website to get familiar with the BlueJeans phone/videoconferencing system before your hearing.

If your hearing gets continued to a different date after you have already received this minute order please note a new minute order will issue with a different meeting ID since the ID number changes with each meeting/hearing.

Please be patient if you call in and we are in the middle of oral argument from a previous case. Your case should be called shortly. Again, please keep your phone or computer mic on MUTE until your case is called.

CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Madalyn Kearney, to all registered parties for Odyssey File & Serve. /mk 10/29/20

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Civil Matters

COURT MINUTES

November 02, 2020

A-20-822273-C TGC/Farkas Funding, LLC, Plaintiff(s)
vs.
First 100, LLC, Defendant(s)

November 02, 2020 9:00 AM

All Pending Motions

HEARD BY: Denton, Mark R.

COURTROOM: RJC Courtroom 03D

COURT CLERK: Madalyn Kearney

RECORDER: Jennifer Gerold

REPORTER:

PARTIES

PRESENT: Barraza, Danielle J.

Attorney

JOURNAL ENTRIES

- PLAINTIFF MOTION TO CONFIRM ARBITRATION AWARD...DEFENDANTS' LIMITED
OPPOSITION TO MOTION TO CONFIRM ARBITRATION AWARD AND COUNTERMOTION TO
MODIFY AWARD PER NRS 38.242

Dylan Ciciliano, Esq. present for Plaintiff. Counsel present via BlueJeans.

Following arguments by Mr. Ciciliano and Ms. Barraza, COURT ORDERED, Plaintiff Motion to
Confirm Arbitration Award GRANTED and Countermotion to Modify Award per NRS 38.242
DENIED. Mr. Ciciliano to prepare the order.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Civil Matters

COURT MINUTES

December 16, 2020

A-20-822273-C TGC/Farkas Funding, LLC, Plaintiff(s)
vs.
First 100, LLC, Defendant(s)

December 16, 2020 1:45 PM Minute Order

HEARD BY: Denton, Mark R.

COURTROOM: Chambers

COURT CLERK: Madalyn Kearney

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- The Court has determined to deem the matter(s) scheduled for hearing in this case on its Motions calendar for December 21, 2020 to be submitted on the briefs and under advisement, and it vacates hearing of the same from such calendar and will render its decision/ruling in due course.

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 12/16/20

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Civil Matters

COURT MINUTES

December 24, 2020

A-20-822273-C	TGC/Farkas Funding, LLC, Plaintiff(s)
	vs.
	First 100, LLC, Defendant(s)

December 24, 2020 7:00 AM Minute Order

HEARD BY: Denton, Mark R. **COURTROOM:** Chambers

COURT CLERK: Madalyn Kearney

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- HAVING reviewed and considered the parties' filings pertaining to Plaintiff's "Motion for Attorneys' Fees and Costs," deemed submitted and under advisement as of December 21, 2020 pursuant to the Minute Order of December 16, 2020, and being fully advised in the premises, and determining that the Motion has merit, the Court GRANTS the Motion in its entirety. Counsel for Plaintiff is directed to submit a proposed order consistent herewith and with supportive briefing after providing the same to opposing 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 12/24/20

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Civil Matters

COURT MINUTES

January 19, 2021

A-20-822273-C TGC/Farkas Funding, LLC, Plaintiff(s)
vs.
First 100, LLC, Defendant(s)

January 19, 2021 2:30 PM Minute Order

HEARD BY: Denton, Mark R.

COURTROOM: Chambers

COURT CLERK: Madalyn Kearney

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- Until further notice, Department 13 will be conducting court hearings REMOTELY using the BlueJeans Video Conferencing system. Department 13 has adopted this policy as a precautionary measure in light of public health concerns for Coronavirus COVID-19, and the Court orders that any party intending to appear before Department 13 for law and motion matters do so by BlueJeans only. As a result, your matter scheduled January 21, 2021 in this case will be conducted via BlueJeans. You have the choice to appear either by phone or computer/video.

Dial the following number: 1-408-419-1715

Meeting ID: 502 385 931

URL: bluejeans.com/502385931

To connect by phone, dial the number provided and enter the meeting ID followed by #.

To connect by computer if you do NOT have the app, copy the URL link into a web browser. Google Chrome is preferred but not required. Once you are on the BlueJeans website click on Join with Browser which is located on the bottom of the page. Follow the instructions and prompts given by BlueJeans.

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Do NOT place the call on hold since some phones may play wait/hold music.

Please do NOT use speaker phone as it causes a loud echo/ringing noise.

Please state your name each time you speak so that the court recorder can capture a clear record.

Please be mindful of rustling papers, background noise, and coughing or loud breathing.

Please be mindful of where your camera is pointing.

We encourage you to visit the Bluejeans.com website to get familiar with the BlueJeans phone/videoconferencing system before your hearing.

If your hearing gets continued to a different date after you have already received this minute order please note a new minute order will issue with a different meeting ID since the ID number changes with each meeting/hearing.

Please be patient if you call in and we are in the middle of oral argument from a previous case. Your case should be called shortly. Again, please keep your phone or computer mic on MUTE until your case is called.

CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Madalyn Kearney, to all registered parties for Odyssey File & Serve. /mk 1/19/21

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Civil Matters

COURT MINUTES

January 21, 2021

A-20-822273-C TGC/Farkas Funding, LLC, Plaintiff(s)
vs.
First 100, LLC, Defendant(s)

January 21, 2021 9:00 AM Show Cause Hearing

HEARD BY: Denton, Mark R.

COURTROOM: RJC Courtroom 03D

COURT CLERK: Madalyn Kearney

RECORDER: Jennifer Gerold

REPORTER:

PARTIES

PRESENT: Gutierrez, Joseph A. Attorney
Maier, Jason R., ESQ Attorney
Turner, Erika Pike Attorney

JOURNAL ENTRIES

- Dylan Ciciliano, Esq. present for Plaintiff. Counsel present via BlueJeans.

Ms. Turner advised there was a Motion to Enforce Settlement Agreement that was filed, they filed their response last night, and she will be requesting an evidentiary hearing for the contempt. Colloquy regarding the pending Motion to Enforce Settlement set for January 28th on order shortening time. COURT ORDERED, matter CONTINUED to be heard with the Motion to Enforce Settlement. Court advised they will determine at that time if an evidentiary hearing is necessary.

CONTINUED TO: 1/28/21 9:00 AM

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Civil Matters

COURT MINUTES

January 26, 2021

A-20-822273-C TGC/Farkas Funding, LLC, Plaintiff(s)
vs.
First 100, LLC, Defendant(s)

January 26, 2021 11:45 AM Minute Order

HEARD BY: Denton, Mark R.

COURTROOM: Chambers

COURT CLERK: Madalyn Kearney

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- Until further notice, Department 13 will be conducting court hearings REMOTELY using the BlueJeans Video Conferencing system. Department 13 has adopted this policy as a precautionary measure in light of public health concerns for Coronavirus COVID-19, and the Court orders that any party intending to appear before Department 13 for law and motion matters do so by BlueJeans only. As a result, your matter scheduled January 28, 2021 in this case will be conducted via BlueJeans. You have the choice to appear either by phone or computer/video.

Dial the following number: 1-408-419-1715

Meeting ID: 502 385 931

URL: bluejeans.com/502385931

To connect by phone, dial the number provided and enter the meeting ID followed by #.

To connect by computer if you do NOT have the app, copy the URL link into a web browser. Google Chrome is preferred but not required. Once you are on the BlueJeans website click on Join with Browser which is located on the bottom of the page. Follow the instructions and prompts given by BlueJeans.

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Please state your name each time you speak so that the court recorder can capture a clear record.

Please be mindful of rustling papers, background noise, and coughing or loud breathing.

Please be mindful of where your camera is pointing.

We encourage you to visit the Bluejeans.com website to get familiar with the BlueJeans phone/videoconferencing system before your hearing.

If your hearing gets continued to a different date after you have already received this minute order please note a new minute order will issue with a different meeting ID since the ID number changes with each meeting/hearing.

Please be patient if you call in and we are in the middle of oral argument from a previous case. Your case should be called shortly. Again, please keep your phone or computer mic on MUTE until your case is called.

CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Madalyn Kearney, to all registered parties for Odyssey File & Serve. /mk 1/26/21

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Civil Matters

COURT MINUTES

January 28, 2021

A-20-822273-C TGC/Farkas Funding, LLC, Plaintiff(s)
vs.
First 100, LLC, Defendant(s)

January 28, 2021 9:00 AM All Pending Motions

HEARD BY: Denton, Mark R.

COURTROOM: RJC Courtroom 03D

COURT CLERK: Madalyn Kearney

RECORDER: Jennifer Gerold

REPORTER:

PARTIES

PRESENT: Gutierrez, Joseph A. Attorney
Turner, Erika Pike Attorney

JOURNAL ENTRIES

- SHOW CAUSE HEARING...DEFENDANT'S MOTION TO ENFORCE SETTLEMENT AGREEMENT AND VACATE POST-JUDGMENT DISCOVERY PROCEEDINGS ON EX-PARTE ORDER SHORTENING TIME...OPPOSITION TO DEFENDANTS' MOTION TO ENFORCE SETTLEMENT AND VACATE POST-JUDGMENT DISCOVERY PROCEEDINGS; AND COUNTERMOTION 1) TO STRIKE THE AFFIDAVIT OF JASON MAIER, AND 2) FOR SANCTIONS

Counsel present via BlueJeans.

Following arguments by Mr. Gutierrez and Ms. Turner, COURT ORDERED, Defendant's Motion to Enforce Settlement Agreement and Vacate Post-Judgment Discovery Proceedings on Ex-Parte Order Shortening Time DENIED WITHOUT PREJUDICE to further proceedings and Countermotion DENIED WITHOUT PREJUDICE to seeking sanctions based on what has occurred thus far. Colloquy regarding an Evidentiary Hearing being necessary on the civil contempt being sought. Court advised it will consider an Evidentiary Hearing on the Motion to Enforce Settlement Agreement and Order to Show Cause. Upon Court's inquiry, Ms. Turner and Mr. Gutierrez estimated the Evidentiary Hearing to take one day. Mr. Gutierrez requested the hearing be set out in two weeks. Court advised its Judicial Executive Assistant will contact counsel to get the Evidentiary Hearing scheduled. Ms.

Turner inquired if depositions can be taken before the hearing. Mr. Gutierrez had no objection and requested 7 days' notice for the depositions. Court advised no more than four depositions are to be taken and with 7 days' notice.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Civil Matters

COURT MINUTES

February 25, 2021

A-20-822273-C TGC/Farkas Funding, LLC, Plaintiff(s)
vs.
First 100, LLC, Defendant(s)

February 25, 2021 11:15 AM Minute Order

HEARD BY: Denton, Mark R.

COURTROOM: Chambers

COURT CLERK: Madalyn Kearney

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- Until further notice, Department 13 will be conducting court hearings REMOTELY using the BlueJeans Video Conferencing system. Department 13 has adopted this policy as a precautionary measure in light of public health concerns for Coronavirus COVID-19, and the Court orders that any party intending to appear before Department 13 for law and motion matters do so by BlueJeans only. As a result, your matter scheduled March 1, 2021 in this case will be conducted via BlueJeans. You have the choice to appear either by phone or computer/video.

Dial the following number: 1-408-419-1715

Meeting ID: 110 338 668

URL: [bluejeans.com/ 110338668](https://bluejeans.com/110338668)

To connect by phone, dial the number provided and enter the meeting ID followed by #.

To connect by computer if you do NOT have the app, copy the URL link into a web browser. Google Chrome is preferred but not required. Once you are on the BlueJeans website click on Join with Browser which is located on the bottom of the page. Follow the instructions and prompts given by BlueJeans.

You may also download the BlueJeans app and join the meeting by entering the meeting ID.

PLEASE NOTE the following protocol each participant will be required to follow:

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Please do NOT use speaker phone as it causes a loud echo/ringing noise.

Please state your name each time you speak so that the court recorder can capture a clear record.

Please be mindful of rustling papers, background noise, and coughing or loud breathing.

Please be mindful of where your camera is pointing.

We encourage you to visit the [Bluejeans.com](https://bluejeans.com) website to get familiar with the BlueJeans phone/videoconferencing system before your hearing.

If your hearing gets continued to a different date after you have already received this minute order please note a new minute order will issue with a different meeting ID since the ID number changes with each meeting/hearing.

Please be patient if you call in and we are in the middle of oral argument from a previous case. Your case should be called shortly. Again, please keep your phone or computer mic on MUTE until your case is called.

CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Madalyn Kearney, to all registered parties for Odyssey File & Serve. /mk 2/25/21

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Civil Matters

COURT MINUTES

March 01, 2021

A-20-822273-C TGC/Farkas Funding, LLC, Plaintiff(s)
vs.
First 100, LLC, Defendant(s)

March 01, 2021 9:00 AM All Pending Motions

HEARD BY: Denton, Mark R. **COURTROOM:** RJC Courtroom 03D

COURT CLERK: Madalyn Kearney

RECORDER: Jennifer Gerold

REPORTER:

PARTIES

PRESENT: Gutierrez, Joseph A. Attorney
Larsen, Bart K. Attorney
Turner, Erika Pike Attorney

JOURNAL ENTRIES

- MOTION TO COMPEL AND FOR SANCTIONS; AND APPLICATION FOR EX-PARTE ORDER SHORTENING TIME...OPPOSITION TO MOTION TO COMPEL AND FOR SANCTIONS AGAINST NON-PARTY JAY BLOOM AND HIS COUNSEL AND COUNTERMOTION FOR PROTECTIVE ORDER AND SANCTIONS PURSUANT TO NRS 18.010(2)(B)

Counsel present via BlueJeans.

Following arguments by Ms. Turner, Mr. Gutierrez, and Mr. Larsen, COURT ORDERED, Countermotion for Protective Order and Sanctions Pursuant to NRS 18.010(2)(b) DENIED and Motion to Compel and for Sanctions GRANTED; compel communications regarding settlement agreement, retention, and this case. Ms. Turner to prepare the order. Court advised it will reserve its ruling on sanctions and directed the items be provided quickly as the hearing is on Wednesday.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Civil Matters

COURT MINUTES

March 01, 2021

A-20-822273-C	TGC/Farkas Funding, LLC, Plaintiff(s)
	vs.
	First 100, LLC, Defendant(s)

March 01, 2021	2:30 PM	Minute Order
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HEARD BY: Denton, Mark R.	COURTROOM: Chambers
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COURT CLERK: Madalyn Kearney

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- In accordance with AO-17, Department 13 will be conducting the Evidentiary Hearing in this case REMOTELY using the BlueJeans Video Conferencing system. Counsel/ Parties in proper person and witnesses are to appear only by video conferencing and not by telephone. A notary is NOT required to be present with the witness if the witness is testifying via video conferencing. If for some reason a witness can only appear telephonically, please notify the department immediately as a notary will be required.

The following URL and meeting ID will be used for the entire length of the trial. Please distribute this information to your witnesses as this is the information they will need in order to testify.

Dial the following number: 1-408-419-1715
Meeting ID: 110 338 668
URL: [bluejeans.com/ 110338668](https://bluejeans.com/110338668)

To connect by computer if you do NOT have the app, copy the URL link into a web browser. Google Chrome is preferred but not required. Once you are on the BlueJeans website click on Join with Browser which is located on the bottom of the page. Follow the instructions and prompts given by BlueJeans.

You may also download the BlueJeans app and join the meeting by entering the meeting ID.

You are encouraged to visit bluejeans.com to familiarize yourself with the BlueJeans system before trial.

PLEASE NOTE the following protocol for trial:

Please mute yourself when you are not speaking. During examination of a witness, both the witness and person examining can be unmuted in order to prevent delays.

Counsel/ Parties in proper person are required to provide witnesses copies of all exhibits they intend to introduce through the witness. If counsel/ parties in proper person intend to cross-examine a witness with a document or documents, they must provide copies to the witness before cross-examination begins.

It is incumbent on counsel/ parties in proper person to provide the above BlueJeans meeting information to their witnesses before the start of trial. We recommend counsel/ parties in proper person test with their witnesses at least 24 hours in advance of their testimony to address any technical issues there may be.

CLERK S NOTE: This Minute Order was electronically served by Courtroom Clerk, Madalyn Kearney, to all registered parties for Odyssey File & Serve. /mk 3/1/21

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Civil Matters

COURT MINUTES

March 03, 2021

A-20-822273-C TGC/Farkas Funding, LLC, Plaintiff(s)
vs.
First 100, LLC, Defendant(s)

March 03, 2021 9:00 AM Evidentiary Hearing

HEARD BY: Denton, Mark R. **COURTROOM:** RJC Courtroom 03D

COURT CLERK: Madalyn Kearney

RECORDER: Jennifer Gerold

REPORTER:

PARTIES

PRESENT: Gutierrez, Joseph A. Attorney
Turner, Erika Pike Attorney

JOURNAL ENTRIES

- Dylan Ciciliano, Esq. also present for Plaintiff. Adam Flatto, Representative for TGC/ Farkas Funding LLC, present. Jay Bloom, Representative for First One Hundred Holdings, present. All parties present via BlueJeans.

Opening statements by Mr. Gutierrez and Ms. Turner. Testimony and exhibits presented (see worksheets). COURT ORDERED, matter CONTINUED.

CONTINUED TO: 3/10/21 9:00 AM

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Civil Matters

COURT MINUTES

March 09, 2021

A-20-822273-C	TGC/Farkas Funding, LLC, Plaintiff(s) vs. First 100, LLC, Defendant(s)
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March 09, 2021	8:15 AM	Minute Order
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HEARD BY: Denton, Mark R.

COURTROOM: Chambers

COURT CLERK: Madalyn Kearney

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- In accordance with AO-17, Department 13 will be conducting the Evidentiary Hearing in this case REMOTELY using the BlueJeans Video Conferencing system. Counsel/ Parties in proper person and witnesses are to appear only by video conferencing and not by telephone. A notary is NOT required to be present with the witness if the witness is testifying via video conferencing. If for some reason a witness can only appear telephonically, please notify the department immediately as a notary will be required.

The following URL and meeting ID will be used for the entire length of the trial. Please distribute this information to your witnesses as this is the information they will need in order to testify.

Dial the following number: 1-408-419-1715

Meeting ID: 110 338 668

URL: [bluejeans.com/ 110338668](https://bluejeans.com/110338668)

To connect by computer if you do NOT have the app, copy the URL link into a web browser. Google Chrome is preferred but not required. Once you are on the BlueJeans website click on Join with Browser which is located on the bottom of the page. Follow the instructions and prompts given by BlueJeans.

You may also download the BlueJeans app and join the meeting by entering the meeting ID.

You are encouraged to visit bluejeans.com to familiarize yourself with the BlueJeans system before trial.

PLEASE NOTE the following protocol for the hearing:

Please mute yourself when you are not speaking. During examination of a witness, both the witness and person examining can be unmuted in order to prevent delays.

Counsel/ Parties in proper person are required to provide witnesses copies of all exhibits they intend to introduce through the witness. If counsel/ parties in proper person intend to cross-examine a witness with a document or documents, they must provide copies to the witness before cross-examination begins.

It is incumbent on counsel/ parties in proper person to provide the above BlueJeans meeting information to their witnesses before the start of trial. We recommend counsel/ parties in proper person test with their witnesses at least 24 hours in advance of their testimony to address any technical issues there may be.

CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Madalyn Kearney, to all registered parties for Odyssey File & Serve. /mk 3/9/21

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Civil Matters

COURT MINUTES

March 10, 2021

A-20-822273-C TGC/Farkas Funding, LLC, Plaintiff(s)
vs.
First 100, LLC, Defendant(s)

March 10, 2021 9:00 AM Evidentiary Hearing

HEARD BY: Denton, Mark R. **COURTROOM:** RJC Courtroom 03D

COURT CLERK: Madalyn Kearney

RECORDER: Jennifer Gerold

REPORTER:

PARTIES

PRESENT: Gutierrez, Joseph A. Attorney
Turner, Erika Pike Attorney

JOURNAL ENTRIES

- Jay Bloom, Representative for First 100, LLC and First One Hundred Holdings, LLC, present. All parties present via BlueJeans.

Testimony and exhibits presented (see worksheets). Closing arguments by Mr. Gutierrez and Ms. Turner. Court directed counsel to serve and file respective proposed findings of fact and conclusions of law by close of business March 19, 2021. COURT ORDERED, matter UNDER ADVISEMENT.

PLAINTIFF'S EVIDENTIARY HEARING EXHIBIT LIST

CASE NO.: A-20-822273-C	TRIAL DATE: March 3, 2021
DEPT: XIII	TIME: 9:00 A.M.
	Judge: Mark R. Denton
	Court Clerk: Madalyn Kearney
	Recorder/Reporter: Jennifer Gerold
PLAINTIFFS: TGC/FARKAS FUNDING, LLC,	Attorneys for Plaintiff: Erika Pike Turner; Dylan T. Ciciliano
vs.	
DEFENDANTS: FIRST 100, LLC, a Nevada limited liability company; 1st ONE HUNDRED HOLDINGS, LLC, a Nevada limited liability company	Attorney for Defendants: Joseph A. Gutierrez; Danielle J. Barraza

EVIDENTIARY HEARING

*exhibits not admitted
-shredded*

PLAINTIFF'S HEARING EXHIBITS

Exhibit Number	Description	Date Offered	Object Yes/No	Date Admitted	
1.	May 2, 2017 Demand for Production from TGC Farkas Funding, LLC (PLTF_001 – 004)	3/3/21	no	3/3/21	WA
2.	Arbitration Award (PLTF_005 – 010)	3/10/21	no	3/10/21	WA
3.	October 15, 2020 Declaration of Jay Bloom to Countermotion to Modify Arbitration Award (PLTF_011 – 017)	3/10/21	no	3/10/21	WA
4.	Order Confirming Arbitration Award, Denying Countermotion to Modify Arbitration Award and Judgment (PLTF_018 – 024)	3/3/21	no	3/3/21	WA
5.	December 18, 2020 Order Granting Order to Show Cause Why Judgment Debtors and Jay Bloom Should Not Be Deemed in Contempt of Court (PLTF_025 – 027)	3/10/21	no	3/10/21	WA
6.	Index of Exhibits to Claimants Arbitration Brief September 13, 2019 Letter to Gutierrez re Demand (PLTF_028 – 031)	3/10/21	no	3/10/21	WA
7.	First 100, LLC Amended Operating Agreement (PLTF_032 – 059)	3/3/21	no	3/3/21	WA
8.	1 st One Hundred Holdings, LLC Operating Agreement (PLTF_060 – 090)	3/3/21	no	3/3/21	WA
9.	January 7, 2021 Objection to Subpoena from Jay Bloom (PLTF_091 – 094)				
10.	January 19, 2021 Objection to Post-Judgment Discovery (PLTF_095)				
11.	January 14, 2021 Correspondence from Raffi Nahabedian, Esq. re Substitution of Counsel (PLTF_096 – 101)	3/3/21	no	3/3/21	WA

PLAINTIFF'S EVIDENTIARY HEARING EXHIBIT LIST

Exhibit Number	Description	Date Offered	Object Yes/No	Date Admitted	
12.	Raffi Nahabedian, Esq. Retention Agreement (PLTF_102 - 105)	3/10/21	no	3/10/21	WA
13.	Settlement Agreement (PLTF_106 - 108)				WA
14.	January 6, 2021 Release, Hold Harmless and Indemnification Agreement (PLTF_109 - 115)	3/10/21	no	3/10/21	WA
15.	Declaration of Jay Bloom in support of Reply on Motion to Enforce Settlement Agreement (PLTF_116 - 120)				
16.	Jay Bloom text to Matthew Farkas (PLTF_121 - 122)	3/3/21	yes	3/3/21	WA
17.	January 24, 2021 11:23 am email from Jay Bloom to Matthew Farkas re Matthew Farkas Affidavit (PLTF_123 - 128)	3/10/21	no	3/10/21	WA
18.	January 24, 2021, 5:23 pm email from Jay Bloom to Matthew Farkas (PLTF_129 - 130)				
19.	Declaration of Matthew Farkas in support of Opposition to Motion to Enforce Settlement Agreement (PLTF_131 - 149)				
20.	TGC Farkas Funding, LLC Operating Agreement (PLTF_150 - 172)	3/10/21	no	3/10/21	WA
21.	April 18, 2017 Email to First 100 (PLTF_173 - 178)	3/3/21	no	3/3/21	WA
22.	July 13, 2017 letter to Joseph Gutierrez, Esq. (PLTF_179 - 195)	3/3/21	no	3/3/21	WA
23.	TGC Farkas Funding, LLC Amendment to Operating Agreement (PLTF_196 - 202)	3/3/21	no	3/3/21	WA
24.	February 22, 2021 Privilege Log prepared by Mr. Nahabedian along with sending email (PLTF_203 - 208)				
25.	January 15, 2021 email from Dylan Ciciliano to Raffi Nahabedian (PLTF_209 - 211)				
26.	First 100, LLC Secretary of State Entity Detail (PLTF_212 - 228)	3/10/21	no	3/10/21	WA
27.	1st One Hundred Holdings, LLC Secretary of State Entity Detail (PLTF_229 - 239)	3/10/21	no	3/10/21	WA
28.	Combined Nahabedian Emails (PLTF_240 - 567)	3/3/21	no	3/3/21	WA
29.	Nahabedian Texts with Bloom (PLTF_568)	3/10/21	yes		WA
30.	Nahabedian Call Log (PLTF_569)	3/10/21	no	3/10/21	WA
31	September 27, 2017 Security Agreement	3/10/21	yes	3/10/21	WA
32	September 27, 2017 Payment Direction Letter	3/10/21	yes	3/10/21	WA

EXHIBIT(S) LIST

Case No.: **A-20-822273-C**

Hearing Date: **March 3, 2021**

Dept. No.: **13**

Judge: **Honorable Mark Denton**

Court Clerk: **Madalyn Kearney**

Plaintiff: **TGC/Farkas Funding, LLC**

Recorder: **Jennifer Gerold**

Counsel for Plaintiff: **Joseph A. Gutierrez, Esq.
Danielle J. Barraza, Esq.**

vs.

Defendant: **First 100, LLC, et al.**

Counsel for Defendant: **Erika Pike Turner, Esq.
Dylan T. Ciciliano, Esq.**

EVIDENTIARY HEARING

EXHIBITS

Exhibit Number	Bates No.(s)	Exhibit Description	Date Offered	Objection	Date Admitted	
A	FIRST0001-0035	Declaration of Jay Bloom dated 1/27/21	3/10/21	no	3/10/21	WA
B	FIRST0036-0107	Limited Liability Company Agreement of TGC/Farkas Funding, LLC dated 10/21/13	3/3/21	no	3/3/21	WA
C	FIRST0108-0191	Declaration of Jay Bloom in support of respondents' arbitration brief dated 7/21/20				
D	FIRST0192-0290	Supplemental declaration of Jay Bloom in support of respondents' arbitration brief dated 8/14/20				
E	FIRST0291-0292	Supplemental declaration of Adam Flatto dated 8/13/20	3/3/21	no	3/3/21	WA
F	FIRST0293-0294	Supplemental declaration of Matthew Farkas dated 8/14/20	3/3/21	no	3/3/21	WA
G	FIRST0295	Declaration of Jay Bloom dated 10/15/20				
H	FIRST0296-0323	First Amended Operating Agreement of First 100, LLC dated 12/12/12	3/3/21	no	3/3/21	WA
I	FIRST0324-0326	Settlement Agreement dated 1/6/21	3/3/21	no	3/3/21	WA
J	FIRST0327-0342	Declaration of Adam Flatto dated 1/20/21	3/3/21	no	3/3/21	WA
K	FIRST0343-0392	Declaration of Dylan Ciciliano dated 1/26/21				
L	FIRST0393-0406	Letter from Gerald Gordon, Esq. dated 4/21/17	3/3/21	no	3/3/21	WA
M	FIRST0407-0412	Letter from Raffi Nahabedian, Esq. dated 1/14/21	3/3/21	no	3/3/21	WA
N	FIRST0413-0422	Letter from Erika Turner, Esq. dated 1/15/21	3/3/21	no	3/3/21	WA

EXHIBIT(S) LIST

O	FIRST0423-0431	Letter from Raffi Nahabedian, Esq. dated 1/20/21	3/3/21	no	3/3/21	WA
P	FIRST0432-0436	Affidavit of Jay Bloom dated 1/27/21	3/10/21	no	3/10/21	WA
Q	FIRST0437-0438	Declaration of Robert Crow dated 2/16/21				
R	FIRST0439-0440	Declaration of John Chris Morgando dated 2/11/21				
S	FIRST0441-0442	Declaration of Manuel Alberto Ramirez Pleitez				
T	FIRST0443-0444	Declaration of Carlos Cardenas dated 2/12/21				
U	FIRST0445-0446	Letter from Erika Turner, Esq. dated 2/12/21	3/3/21	no	3/3/21	WA
V	FIRST0447-0448	Letter from Joseph Gutierrez, Esq. dated 2/12/21				WA
W	FIRST0449-0454	Texts between Jay Bloom and Matthew Farkas				WA
X	FIRST0455-0456	Email from Leigh Katzman, Esq. dated 7/22/14				WA
Y	FIRST0457-0458	Emails between Adam Flatto and Matthew Farkas dated 7/4/15				WA
Z	FIRST0459-0480	Emails between Michael Henriksen, Matthew Farkas, and Jay Bloom dated 12/22/15 and 9/6/16				WA
AA	FIRST0481-0484	Emails between Matthew Farkas, Michael Henriksen, and Jay Bloom dated 1/6/16 and 1/8/16				WA
BB	FIRST0485	Email between Matthew Farkas and Jay Bloom dated 11/30/16				WA
CC	FIRST0486-0488	Email between Jay Bloom, Matthew Farkas, and Albert Ramirez dated 12/5/16				WA
DD	FIRST0489-0504	Verified complaint in <i>Colgan Financial Group, Inc. v. First 100, LLC, et al.</i>				WA
EE	FIRST0505	Letter from Matthew Farkas dated 1/6/21				WA
FF	FIRST0506-0509	Declaration of Matthew Farkas dated 1/23/21				WA
GG	FIRST0510-0513	Letter from Erika Turner, Esq. dated 5/2/17				WA
HH	FIRST0514-0530	Letter from Erika Turner, Esq. dated 7/13/17				WA
II	FIRST0531-0536	Arbitration award dated 9/15/20				WA
JJ	FIRST0537-0543	Order granting plaintiff's motion to confirm arbitration award and denying defendants' counter-motion to modify award; and judgment filed 11/17/20				WA
KK	FIRST0544-0547	Objection to non-party Jay Bloom's objection to subpoena dated 1/7/21				WA
LL	FIRST0548	Letter from Joseph Gutierrez, Esq. dated 1/19/21				WA
MM	FIRST0549-0554	Defendants and non-party Jay Bloom's response to order to show cause	3/3/21	no	3/3/21	WA

EXHIBIT(S) LIST

NN	FIRST0555-0585	Operating Agreement of 1 st One Hundred Holdings, LLC dated 12/4/13	3/3/21	no	3/3/21	WA
OO	FIRST0586-0587	Letter from Erika Turner dated 2/12/21				WA
PP	FIRST0588-0589	Texts from Jay Bloom				WA
QQ	FIRST0590-0591	Letter from Erika Turner dated 9/13/19	3/3/21	no	3/3/21	WA



EIGHTH JUDICIAL DISTRICT COURT CLERK'S OFFICE
NOTICE OF DEFICIENCY
ON APPEAL TO NEVADA SUPREME COURT

JASON R. MAIER, ESQ.
8816 SPANISH RIDGE AVE.
LAS VEGAS, NV 89148

DATE: April 19, 2021
CASE: A-20-822273-C

RE CASE: TGC/FARKAS FUNDING, LLC vs. FIRST 100, LLC; FIRST ONE HUNDRED HOLDINGS, LLC

NOTICE OF APPEAL FILED: April 15, 2021

YOUR APPEAL HAS BEEN SENT TO THE SUPREME COURT.

PLEASE NOTE: DOCUMENTS **NOT TRANSMITTED HAVE BEEN MARKED:**

- ☒ \$250 – Supreme Court Filing Fee (Make Check Payable to the Supreme Court)**
 - If the \$250 Supreme Court Filing Fee was not submitted along with the original Notice of Appeal, it must be mailed directly to the Supreme Court. The Supreme Court Filing Fee will not be forwarded by this office if submitted after the Notice of Appeal has been filed.
- ☐ \$24 – District Court Filing Fee (Make Check Payable to the District Court)**
- ☒ \$500 – Cost Bond on Appeal (Make Check Payable to the District Court)**
 - NRAP 7: Bond For Costs On Appeal in Civil Cases
 - *Previously paid Bonds are not transferable between appeals without an order of the District Court.*
- ☒ Case Appeal Statement
 - NRAP 3 (a)(1), Form 2
- ☐ Order
- ☐ Notice of Entry of Order

NEVADA RULES OF APPELLATE PROCEDURE 3 (a) (3) states:

"The district court clerk must file appellant's notice of appeal despite perceived deficiencies in the notice, including the failure to pay the district court or Supreme Court filing fee. The district court clerk shall apprise appellant of the deficiencies in writing, and shall transmit the notice of appeal to the Supreme Court in accordance with subdivision (g) of this Rule with a notation to the clerk of the Supreme Court setting forth the deficiencies. Despite any deficiencies in the notice of appeal, the clerk of the Supreme Court shall docket the appeal in accordance with Rule 12."

Please refer to Rule 3 for an explanation of any possible deficiencies.

*****Per District Court Administrative Order 2012-01, in regards to civil litigants, "...all Orders to Appear in Forma Pauperis expire one year from the date of issuance." You must reapply for in Forma Pauperis status.***

Certification of Copy

State of Nevada }
County of Clark } SS:

I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, does hereby certify that the foregoing is a true, full and correct copy of the hereinafter stated original document(s):

NOTICE OF APPEAL; DISTRICT COURT DOCKET ENTRIES; CIVIL COVER SHEET; FINDINGS OF FACT, CONCLUSIONS OF LAW, & ORDER RE EVIDENTIARY HEARING; NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW & ORDER RE EVIDENTIARY HEARING; DISTRICT COURT MINUTES; EXHIBITS LIST; NOTICE OF DEFICIENCY

TGC/FARKAS FUNDING, LLC,

Plaintiff(s),

vs.

FIRST 100, LLC; FIRST ONE HUNDRED HOLDINGS, LLC,

Defendant(s),

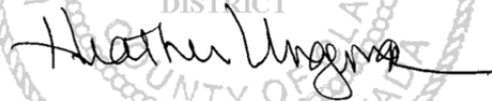
Case No: A-20-822273-C

Dept No: XIII

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto
Set my hand and Affixed the seal of the
Court at my office, Las Vegas, Nevada
This 19 day of April 2021.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk