IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

FIRST 100, LLC; 1ST ONE HUNDRED HOLDINGS, LLC.

Appellants.

vs.

TGC/FARKAS FUNDING, LLC

No. 82794

DOCKETING STATEMENT
CIVIL APPEALS

GENERAL INFORMATION

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

WARNING

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

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

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

1. Judicial District Eighth Department 13

County Clark Judge Mark R. Denton

District Ct. Case No. A-20-822273-C

2. Attorney filing this docketing statement:

Attorney Joseph A. Gutierrez Telephone (702) 629-7900

Firm Maier Gutierrez & Associates

Address 8816 Spanish Ridge Avenue, Las Vegas, NV 89148

Client(s) First 100, LLC and 1st One Hundred Holdings, LLC

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

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

Attorney Erika P. Turner; Dylan Cicliano Telephone (725) 777-3000

Firm Garman Turner Gordon, LLP

Address 7251 Amigo Street, Suite 210, Las Vegas, Nevada 89119

Client(s) _____

Attorney _____ Telephone _____

Firm _____

Address

Client(s) _____

(List additional counsel on separate sheet if necessary)

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

- ☒ Judgment after bench trial
- ☐ Judgment after jury verdict
- ☐ Summary judgment
- ☐ Default judgment
- ☐ Grant/Denial of NRCP 60(b) relief
- ☐ Grant/Denial of injunction
- ☐ Grant/Denial of declaratory relief
- ☐ Review of agency determination
- ☐ Dismissal:
  - ☐ Lack of jurisdiction
  - ☐ Failure to state a claim
  - ☐ Failure to prosecute
  - ☐ Other (specify): _____
- ☐ Divorce Decree:
  - ☐ Original ☐ Modification
- ☐ Other disposition (specify): _____

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

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

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

Not applicable.

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

Not applicable.

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

This dispute involved a company books and records request, with plaintiff TGC/Farkas Funding, LLC demanding access to defendant First 100's business records, arguing that its status as a purported member of First 100 substantiated the right to examine First 100's company records. The matter was initiated in arbitration through the American Arbitration Association, where the Arbitration Panel determined that First 100 is required to "make all the requested documents and information available from both companies to [Plaintiff] for inspection and copying." The arbitration award was later confirmed by the district court, resulting in a judgment in favor of TGC/Farkas Funding, LLC in the amount of $23,975.00.

Thereafter, a dispute arose as to whether the parties had settled the matter, which resulted in various motions being filed, including a motion to enforce settlement, motion to compel, and motion for an order to show cause. The district court conducted an evidentiary hearing as to the three motions and issued its Findings of Fact, Conclusions of Law, and Order ("FFCL") on April 7, 2021, with notice of entry thereof also filed on April 7, 2021. In the FFCL, the district court ordered that the motion to enforce settlement was denied, ordered immediate compliance of the books and records request which was the subject of the arbitration award confirmed by the district court, and ordered reimbursement of plaintiff TGC/Farkas Funding, LLC's fees and costs, with First 100 and non-party Jay Bloom being "jointly and severally responsible" for payment of such fees and costs.

This appeal follows.

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

Whether the district court erred in finding that non-party to the action Jay Bloom "is the alter ego" of First 100, which was not a cause of action ever brought against Jay Bloom or First 100.

Whether the district court erred in ordering that First 100 and non-party to the action Jay Bloom are "jointly and severally responsible for the payment of all the reasonable fees and costs incurred by [TGC/Farkas Funding LLC]."

Whether the district court erred in finding that Matthew Farkas of TGC/Farkas Funding LLC "did not have actual or apparent authority to bind Plaintiff under the Settlement Agreement."

Whether the district court erred in denying the Motion to Enforce Settlement.

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

Not applicable.

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

☒ N/A

☐ Yes

☐ No

If not, explain:

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

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

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

☐ A substantial issue of first impression

☐ An issue of public policy

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

☐ A ballot question

If so, explain:

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

This matter is presumptively assigned to the Court of Appeals under NRAP 17(7), which covers "appeals from postjudgment orders in civil cases." Following the judgment order issued by the district court, further motions followed, which resulted in the evidentiary hearing, followed by the FFLC as to the postjudgment issues.

14. Trial. If this action proceeded to trial, how many days did the trial last? 2

Was it a bench or jury trial? Bench

15. Judicial Disqualification. Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?
Not applicable.

TIMELINESS OF NOTICE OF APPEAL

16. Date of entry of written judgment or order appealed from April 7, 2021

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

17. Date written notice of entry of judgment or order was served April 7, 2021

Was service by:

☐ Delivery

☒ Mail/electronic/fax

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

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

☐ NRCP 50(b) Date of filing _____

☐ NRCP 52(b) Date of filing _____

☐ NRCP 59 Date of filing _____

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

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

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

Was service by:

☐ Delivery

☐ Mail

19. Date notice of appeal filed April 15, 2021

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal: Not applicable.

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

NRAP 4(a)(1)

SUBSTANTIVE APPEALABILITY

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

(a)

- ☒ NRAP 3A(b)(1)
- ☐ NRAP 3A(b)(2)
- ☐ NRAP 3A(b)(3)
- ☐ Other (specify)
- ☐ NRS 38.205
- ☐ NRS 233B.150
- ☐ NRS 703.376

(b) Explain how each authority provides a basis for appeal from the judgment or order: NRAP 3A(b)(1) applies because this appeal is from a final judgment entered in an action or proceeding commenced in the court in which the judgment is rendered. The district court's FFLC, entered on April 7, 2021, substantively resolved the post-judgment motions.

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

(a) Parties:

TGC/Farkas Funding, LLC, plaintiff
First 100, LLC, defendant
1st One Hundred Holdings, LLC, defendant

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

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

TGC/Farkas Funding LLC's underlying claim before the Arbitration Panel was for an order compelling the production of First 100's company records, and an order for attorneys' fees and costs. The Arbitration Panel's award led to a judgment.
The FFCL on the following postjudgment motions is subject of this appeal: TGC/Farkas Funding LLC's motion to compel and motion for an order to show cause, and First 100's motion to enforce settlement.

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

☒ Yes

☐ No

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

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

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

☐ Yes

☐ No

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

☐ Yes

☐ No

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

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

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

VERIFICATION

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

First 100, LLC; 1st One Hundred Holdings LLC
Name of appellant

Joseph A. Gutierrez
Name of counsel of record

May 19, 2021
Date

/s/ Joseph A. Gutierrez
Signature of counsel of record

Clark County, Nevada
State and county where signed

CERTIFICATE OF SERVICE

I certify that on the 19th day of May , 2021 , I served a copy of this completed docketing statement upon all counsel of record:

☐ By personally serving it upon him/her; or

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

Erika P. Turner, Esq.
Dylan T. Ciciliano, Esq.
GARMAN TURNER GORDON, LLP
7251 Amigo Street, Suite 210
Las Vegas, Nevada 89119
Attorneys for TGC Farkas Funding LLC

Persi J. Mishel
10161 Park Run Drive, Suite 150
Las Vegas, Nevada 89145
Settlement Judge

Dated this 19th day of May , 2021

/s/ Natalie Vazquez
Signature

01-20-0000-0613

AMERICAN ARBITRATION ASSOCIATION | INTERNATIONAL CENTRE FOR DISPUTE RESOLUTION

COMMERCIAL ARBITRATION RULES
DEMAND FOR ARBITRATION

*For Consumer or Employment cases, please visit **www.adr.org** for appropriate forms.*

You are hereby notified that a copy of our arbitration agreement and this demand are being filed with the American Arbitration Association with a request that it commence administration of the arbitration. The AAA will provide notice of your opportunity to file an answering statement.

Name of Respondent: First 100, LLC; First One Hundred Holdings, LLC (successor to First 100, LLC)

Address: 11920 Southern Highlands Parkway

City: Las Vegas	State: Nevada	Zip Code: 89141
Phone No.:	Fax No.:	

Email Address:

Name of Representative (if known): Joseph A. Gutierrez, Esq.

Name of Firm (if applicable): Maier Gutierrez Ayon

Representative's Address: 8816 Spanish Ridge Ave.

City: Las Vegas	State: Nevada	Zip Code: 89148
Phone No.: 702-629-7900	Fax No.: 702-629-7925	

Email Address: jag@mglaw.com

The named claimant, a party to an arbitration agreement which provides for arbitration under the Commercial Arbitration Rules of the American Arbitration Association, hereby demands arbitration.

Brief Description of the Dispute:

Demand for Inspection of Records by a member of an LLC

Dollar Amount of Claim: $ 0, except for fees and costs incurred to obtain relief requested, which are awardable

Other Relief Sought: ☑ Attorneys Fees ☐ Interest ☑ Arbitration Costs ☐ Punitive/Exemplary
☑ Other:

Amount enclosed: $

In accordance with Fee Schedule: ☐ Flexible Fee Schedule ☐ Standard Fee Schedule

Please describe the qualifications you seek for arbitrator(s) to be appointed to hear this dispute:

Business litigation experience or former judge

Hearing locale: Las Vegas

(check one) ☑ Requested by Claimant ☐ Locale provision included in the contract

Estimated time needed for hearings overall: 3 hours or days

Please visit our website at www.adr.org if you would like to file this case online.
AAA Case Filing Services can be reached at 877-495-4185.

AMERICAN ARBITRATION ASSOCIATION® | INTERNATIONAL CENTRE FOR DISPUTE RESOLUTION®

COMMERCIAL ARBITRATION RULES
DEMAND FOR ARBITRATION

Type of Business:

Claimant: TGC Farkas Funding LLC

Respondent: First 100, LLC

Are any parties to this arbitration, or their controlling shareholder or parent company, from different countries than each other?

Signature (may be signed by a representative):

Date: 1/7/2020

Name of Claimant: TGC Farkas Funding LLC

Address (to be used in connection with this case): 667 Madison Avenue

City: New York	State: New York	Zip Code: 10065
Phone No.: 212-499-9470	Fax No.:	

Email Address: aflatto@georgetownco.com

Name of Representative:

Name of Firm (if applicable): Erika Pike Turner/NVBar No. 6454

Representative's Address: 650 White Drive, Suite 100

City: Las Vegas	State: Nevada	Zip Code: 89119
Phone No.: 725-777-3000	Fax No.: 725-777-3112	

Email Address: eturner@gtg.legal

To begin proceedings, please send a copy of this Demand and the Arbitration Agreement, along with the filing fee as provided for in the Rules, to: American Arbitration Association, Case Filing Services, 1101 Laurel Oak Road, Suite 100 Voorhees, NJ 08043. At the same time, send the original Demand to the Respondent.

GARMAN
TURNER
GORDON

650 WHITE DRIVE
SUITE 100
LAS VEGAS, NV 89119
WWW.GTG.LEGAL
PHONE (725) 777-3000
FAX (725) 777-3112

September 13, 2019

Erika Pike Turner, Esq.
Email: ETurner@GTG.legal
Direct Line: (725)244-4573

VIA EMAIL AND U.S. MAIL
Joseph A. Gutierrez, Esq.
jag@mgalaw.com
MAIER GUTIERREZ AYON
8816 Spanish Ridge Ave
Las Vegas, NV 89148

Dear Mr. Gutierrez:

Please recall this firm represents the interests of Adam Flatto, Marshall Rose and by extension, their investment vehicle, TGC/Farkas Funding, LLC (together, the "Investors"), with respect to their $1 million investment and related 3% interest in First 100, LLC and 1st One Hundred Holdings, LLC (together, the "Company"). In the last communication we had on this matter, the Company represented that they were in the process of collecting a $1 billion+ judgment and taking other action for the purpose of winding up the Company and returning the Investors their capital. There has been no update to the Investors, despite the significant passage of time.

The Investors therefore hereby make a demand in their capacity as Investors under NRS 86.241(2) and (3) as well as the Company's Operating Agreements, for the purpose of monitoring such investment for production of the books and records:

1) The Company's company books, inclusive of any and all agreements relating to the Company's governance (Company operating agreements, amendments, consents and resolutions)
2) Financial Statements, inclusive of balance sheets and profit & Loss statements
3) General ledger and back up, inclusive of invoices
4) Documents sufficient to show the Company's assets and their location
5) Documents relating to value of the Company and/or the Company's assets
6) Documents sufficient to show the Company's members and their status, inclusive of any redeemed members
7) Tax returns for the Company
8) Documents sufficient to show the accounts payable incurred by the Company, paid by the Company, and remaining due from the Company

9) Documents sufficient to show payments made to the Company managers, members and/or affiliates of any managers or members
10) Company insurance policies
11) Documents sufficient to show the status of any Company lawsuits
12) Documents sufficient to show the use of the Investors' funds (and any other members' investment) with the Company.

Please confirm that the documents will be available for inspection and copying (at the Investors' cost) at your office on September 26, 2019 at 3:00 pm. If that date/time is unavailable, please provide a reasonable alternative.

Sincerely,

GARMAN TURNER GORDON

/s/ ERIKA PIKE TURNER

ERIKA PIKE TURNER, ESQ.

cc: Michael Busch

FIRST AMENDED OPERATING AGREEMENT
of
FIRST 100, LLC

This operating agreement of **FIRST 100, LLC**, a Nevada limited liability company, Adopted April 11, 2012, and further Amended December 12, 2012, having an effective date of December 12, 2012, is: (i) adopted by the Manager (as defined below); and (ii) executed and agreed to, for good and valuable consideration, by the Members (as defined below).

ARTICLE I: DEFINITIONS

As used in this Operating Agreement, unless the context clearly indicates otherwise, the following terms have the following meanings:

1.1 **"Act"** means Chapter 86 of the Nevada Revised Statutes and any successor statute, as amended from time to time.

1.2 **"Articles"** means the Articles of Organization filed with the Nevada Secretary of State by which the Company was organized as a Nevada limited liability company under and pursuant to the Act.

1.3 **"Bankrupt Member"** means any Member: (a) that (i) makes a general assignment for the benefit of creditors; (ii) files a voluntary bankruptcy petition; (iii) becomes the subject of an order for relief or is declared insolvent in any federal or state bankruptcy or insolvency proceedings; (iv) files a petition or answer seeking for the Member a reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any law, (v) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against the Member in a proceeding of the type described in sub-clauses (i) through (iv) of this Clause (a); or (vi) seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the Member's or of all or any substantial part of the Member's properties; or (b) against which, a proceeding seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any law has been commenced and 120 days have expired without dismissal thereof or with respect to which, without the Member's consent or acquiescence, a trustee, receiver, or liquidator of the Member or of all or any substantial part of the Member's properties has been appointed and 90 days have expired without the appointment's having been vacated or stayed, or 90 days have expired after the date of expiration of a stay, if the appointment has not previously been vacated.

1.4 **"Business Day"** means any day other than a Saturday, a Sunday, or a holiday on which national banking associations in the State of Nevada are closed.

1.5 **"Capital Contribution"** means any contribution by a Member to the capital of the Company.

1.6 **"Class A Member"** means a Member identified on SCHEDULE A hereto.

1.7 **"Class A Membership Interest"** means, with respect to any Class A Member, the percentage interest set forth opposite such Class A Member's name on SCHEDULE A, as may be amended from time to time.

1.8 **"Class B Member"** means a Member identified on SCHEDULE A hereto.

1.9 **"Class B Membership Interest"** means with respect to any Non Voting Class B Member, the percentage interest set forth opposite such Class B Member's name on SCHEDULE A, as may be amended from time to time.

1.10 **"Class C Member"** means a Member identified on SCHEDULE A hereto.

1.11 **"Class C Membership Interest"** means with respect to any Non Voting Class C Member, the percentage interest set forth opposite such Class C Member's name on SCHEDULE A, as may be amended from time to time.

1.12 **"Code"** means the Internal Revenue Code of 1986 and any successor statute, as amended from time to time.

1.13 **"Company"** means First 100, LLC, a Nevada limited liability company

1.14 **"Default Interest Rate"** means a rate per annum equal to the lesser of (a) one percent (1.0%) plus a varying rate per annum that is equal to the Wall Street Journal prime rate as quoted in the money rates section of the Wall Street Journal which is also the base rate on corporate loans at large United States money center commercial banks, from time to time as its prime commercial or similar reference interest rate, with adjustments in that varying rate to be made on the same date as any change in that rate, and (b) the maximum rate permitted by applicable law.

1.15 **"Delinquent Member"** means a Member who does not contribute by the time required all or any portion of a Capital Contribution that Member is required to make as provided in this Operating Agreement.

1.16 **"Dispose," "Disposing," or "Disposition"** means a sale, assignment, transfer, exchange, mortgage, pledge, grant of a security interest, or other disposition or encumbrance (including, without limitation, by operation of law), or the acts thereof.

1.17 **"General Interest Rate"** means a rate per annum equal to the lesser of (a) the Wall Street Journal prime rate as quoted in the money rates section of the Wall Street Journal which is also the base rate on corporate loans at large United States money center commercial banks, from time to time as its prime commercial or similar reference interest rate, with adjustments in that varying rate to be made on the same date as any change in that rate, and (b) the maximum rate permitted by applicable law.

1.18 **"Lending Member"** means those Members, whether one or more, who advance the portion of the Delinquent Member's Capital Contribution that is in default.

1.19 **"Manager"** means SJC Ventures Holding Company, LLC, a Delaware limited liability company. There is only one Manager of the Company.

1.20 **"Member"** means any Person executing this Operating Agreement as of the date of this Operating Agreement as a Member, or hereafter admitted to the Company as a Member as provided in this Operating Agreement, but does not include any Person who has ceased to be a Member in the Company.

1.21 **"Membership Interest"** means the interest of a Member in the Company, including, without limitation, rights to distributions (liquidating or otherwise), allocations, information, and to consent or approve.

1.22 **"NRS"** means Nevada Revised Statutes.

1.23 **"NRS Chapter 86"** means the Nevada statutes contained in Chapter 86 of the Nevada Revised Statutes concerning limited-liability companies, and any successor statute, as amended from time to time.

1.24 **"Operating Agreement"** means this Operating Agreement, as approved or amended by the Members, as herein provided.

1.25 **"Permitted Transferee"** means any member of such Member's immediate family, or a trust, including a charitable remainder trust, corporation, limited liability company, or partnership controlled by such Member or members of such Member's immediate family, or another Person controlling, controlled by, or under common control with such Member.

1.26 **"Person"** includes an individual, partnership, limited partnership, limited liability company,

foreign limited liability company, trust, estate, corporation, custodian, trustee, executor, administrator, nominee or entity in a representative capacity.

1.27 **"Priority Return"** means a sum equal to that particular Class B Member's principal amount of Class B Capital Contribution.

1.28 **"Proceeding"** means any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, arbitrative or investigative.

ARTICLE II: ORGANIZATION

2.1 **FORMATION.** The Company has been organized as a Nevada limited liability company by the filing of Articles under and pursuant to the Act and the issuance of a certificate of organization for the Company by the Secretary of State of Nevada.

2.2 **NAME.** The name of the Company is **FIRST 100, LLC** and all Company business must be conducted in that name, or such other registered names that comply with applicable law as the Manager may select from time to time.

2.3 **REGISTERED OFFICE; REGISTERED AGENT; PRINCIPAL OFFICE IN THE UNITED STATES; OTHER OFFICES.** The registered office of the Company required by the Act to be maintained in the State of Nevada shall be the office of the initial registered agent named in the Articles or such other office (which need not be a place of business of the Company) as the Manager may designate from time to time in the manner provided by law. The registered agent of the Company in the State of Nevada shall be the initial registered agent named in the Articles or such other Person or Persons as the Manager may designate from time to time in the manner provided by law. The principal office of the Company in the United States shall be at such place as the Manager may designate from time to time, which need not be in the State of Nevada, and the Company shall maintain records there as required by NRS §86.241 and shall keep the street address of such principal office at the registered office of the Company in the State of Nevada. The Company may have such other offices as the Manager may designate from time to time.

2.4 **PURPOSES.** The purpose of the Company is everything allowable by law.

2.5 **FOREIGN QUALIFICATION.** Prior to the Company's conducting business in any jurisdiction other than Nevada, the Manager shall cause the Company to comply, to the extent procedures are available and those matters are reasonably within the control of the Manager or Members, with all requirements necessary to qualify the Company as a foreign limited liability company in that jurisdiction. At the request of the Manager or Members, each Member shall execute, acknowledge, swear to, and deliver all certificates and other instruments conforming with this Operating Agreement that are necessary or appropriate to qualify, continue, and terminate the Company as a foreign limited liability company in all such jurisdictions in which the Company may conduct business.

2.6 **TERM.** The Company commenced on the date the Nevada Secretary of State issued a certificate of organization for the Company and shall continue in existence for the period fixed in the Articles for the duration of the Company, or such earlier time as this Operating Agreement may specify.

2.7 **MERGERS AND EXCHANGES.** The Company may be a party to: (a) a merger; or (b) an exchange or acquisition permitted by the Act, subject to the requirements of this Operating Agreement.

2.8 **NO STATE-LAW PARTNERSHIP.** The Members intend that the Company not be a partnership (including, without limitation, a limited partnership) or joint venture, for any purposes other than federal and state tax purposes, and this Operating Agreement may not be construed to suggest otherwise.

ARTICLE III: MEMBERS

3.1 THREE CLASSES OF MEMBERSHIP INTEREST. The Company shall have three classes of Membership Interests: Class A Voting Membership Interests, Class B Non Voting Membership Interests and Class C Non Voting Membership Interests. Each of the Class A Membership Interests, Class B Membership Interests and Class C Membership Interests shall have certain rights, obligations and privileges, as provided in this Agreement.

3.2 MEMBERSHIP INTERESTS. The Member names and Class A Membership Interests of the Class A Members are set forth on SCHEDULE A. The Member names and Class B Membership Interests of the Class B Members are set forth on SCHEDULE A. The Member names and Class C Membership Interests of the Class C Members are set forth on SCHEDULE A.

3.3 CLASSES AND VOTING. The Company may issue voting Membership Interests and non-voting Membership Interests. The Membership certificates shall clearly designate so as to distinguish between voting and non-voting classes. Upon adoption of this Operating Agreement:

i. Class A Members shall have voting rights. All references in this Operating Agreement to discretionary actions subject to a vote of Members shall solely refer to Class A Members.

ii. Class B Members are **non-voting** Membership Interests.

iii. Class C Members are **non-voting** Membership Interests.

3.4 VOTING; PROXIES. Each outstanding Class A Membership Interest shall be entitled to one vote per one full percent of Class A Membership Interest owned by the Member on each matter submitted to a vote at a meeting of Members. A Member may vote either in person or by proxy executed in writing by the Member or by his duly authorized attorney in fact. No proxy shall be valid after eleven (11) months from the date of its execution unless otherwise provided in the proxy. Each proxy shall be revocable unless the proxy form conspicuously states that the proxy is irrevocable and the proxy is coupled with an interest.

3.5 QUORUM. Unless otherwise provided in the Articles, the holders of a simple majority of the Membership Interest entitled to vote, represented in person or by proxy, shall constitute a quorum at a meeting of Class A Members.

3.6 MAJORITY VOTE. With respect to any matter when a quorum is present at any meeting, the vote of the holders of a simple majority of the Membership Interest, present in person or represented by proxy, having voting power with respect to that matter, shall decide such matter brought before such meeting, unless the matter is one upon which, by express provision of the Articles or this Operating Agreement, or by an express provision of the Act which is applicable to such vote unless overridden by the Articles, a different vote is required, in which case such express provision shall govern and control the decision of such matter.

3.7 PLACE AND MANNER OF MEETING. All meetings of the Members shall be held at such time and place, within or without the State of Nevada, as shall be stated in the notice of the meeting or in a duly executed waiver of notice thereof. Members may participate in such meetings by means of conference telephone or similar communications equipment by means of which all Persons participating in the meeting can hear each other, and participation in a meeting as provided herein shall constitute presence in person at such meeting, except where a Person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

3.8 CONDUCT OF MEETINGS. All meetings of the Members shall be presided over by the chairman of the meeting, who shall be a Person designated by the Manager. The chairman of any meeting of Members shall determine the order of business and the procedure at the meeting, including such regulation of the manner of voting and the conduct of discussion as seem to him in order.

3.9 ANNUAL MEETING. An annual meeting of the Members shall be held each year. Failure to hold the annual meeting at the designated time shall not work as a dissolution of the Company.

3.10 SPECIAL MEETINGS. Special meetings of the Members may be called at any time by: (i) the

Manager of the Company; (ii) the President of the Company if such office exists; or (iii) the holders of at least five percent (5%) of the Class A Membership interests. Unless waived, notice of such special meeting must be made in writing at least ten days prior to the meeting date, and such notice shall state the purpose of such special meeting and the matters proposed to be acted on thereat. A quorum must be present for such meeting to be recognized and effective.

3.11 NOTICE. Written or printed notice stating the place, day and hour of the meeting and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than ten nor more than sixty days before the date of the meeting either personally or by mail, to each Member, provided that such notice may be waived as provided in this Operating Agreement. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail addressed to the Member at his address as it appears on the records of the Company, with postage thereon prepaid.

3.12 CLOSING RECORD BOOKS AND FIXING RECORD DATE. For the purpose of determining Members entitled to notice of or to vote at any meeting of Members or any adjournment thereof, or entitled to distribution or in order to make a determination of Members for any other proper purpose, the Manager may provide that the record books shall be closed for a stated period not exceeding sixty (60) days. If the record books shall be closed for the purpose of determining Members entitled to notice of or to vote at a meeting of Members, such books shall be closed for at least ten (10) days immediately preceding such meeting. In lieu of closing the record books, the Manager may fix in advance a date as the record date for any such determination of Members, such date in any case to be not more than sixty (60) days and in the case of a meeting of Members, not less than ten (10) days prior to the date of which the particular action requiring such determination of Members is to be taken. If the record books are not closed and no record date is fixed for the determination of Members entitled to notice of or to vote at a meeting of Members, or Members entitled to receive distribution, the date on which notice of the meeting is mailed or the date on which the resolution of the Manager, declaring such distribution is adopted, as the case may be, shall be the record date for such determination of Members. When a determination of Members entitled to vote at any meeting of Members has been made as provided in this Section, such determination shall apply to any adjournment thereof, except where the determination has been made through the closing of record books and the stated period of closing has expired.

3.13 ACTION WITHOUT MEETING. Any meeting, or any action required by the Act to be taken at a meeting of the Members, or any action which may be taken at a meeting of the Members (including any action requiring less than unanimous vote of the members), may be taken without a formal meeting, and without prior notice, but only if consent in writing, setting forth the action so taken, shall have been signed by the holders of all the Membership Interest for each class entitled to vote and such consent shall have the same force and effect as vote by formal meeting of the Members. Written consents made pursuant to this Section shall be signed and dated.

3.14 CONFIDENTIAL INFORMATION. The Members acknowledge that from time to time, they may receive information from the Manager or other Persons regarding the Company or Persons with which it does business. Each Member shall hold in strict confidence any information it receives regarding the Company that is identified as being confidential (and if that information is provided in writing, that is so marked) and may not disclose it to any person other than to another Member or a Manager, except for disclosures: (i) compelled by law (but the Member must notify the Manager promptly of any request for that information, before disclosing it, if practicable); (ii) to advisers or representatives of the Member or Persons to which that Member's Membership Interest may be Disposed as permitted by this Operating Agreement, but only if the recipients have agreed to be bound by the provisions of this Section; or (iii) of information that Member also has received from a source independent of the Company that the Member reasonably believes obtained that information without breach of any obligation of confidentiality. The Members acknowledge that breach of the provisions of this Section may cause irreparable injury to the Company for which monetary damages are inadequate, difficult to compute, or both. Accordingly, the Members agree that the provisions of this Section may be enforced by specific performance. The Members acknowledge that the Manager from time to time may determine, due to contractual obligations, business concerns, or other considerations, that certain information regarding the business, affairs, properties, and financial condition of the Company should be kept confidential and not provided to some or all other Members, and that it is not just or reasonable for those Members to examine or copy that information.

3.15 LIABILITIES TO THIRD PARTIES. Except as otherwise expressly agreed in writing, no

Member or the Manager shall be liable for the debts, obligations or liabilities of the Company.

3.16 WITHDRAWAL / SURRENDER. A Member may unilaterally withdraw from the Company as a Member, but only by ways of a written surrender of membership interest tendered to the Company and all Members then in existence.

3.17 LACK OF AUTHORITY TO BIND OR OBLIGATE. The Company is Manager-managed. No Member (other than a Manager or a duly appointed officer) has the authority or power to act for or on behalf of the Company, to do any act that would be obligating or binding on the Company, or to incur any expenditures on behalf of the Company.

3.18 REPRESENTATIONS AND WARRANTIES. Each Member hereby represents and warrants to the Company and each other Member that (a) if that Member is a corporation, it is duly organized, validly existing and in good standing under the law of the state of its incorporation and is duly qualified and in good standing as a foreign corporation in the jurisdiction of its principal place of business (if not incorporated therein); (b) if that Member is a limited liability company, it is duly organized, validly existing, and (if applicable) in good standing under the law of the state of its organization and is duly qualified and (if applicable) in good standing as a foreign limited liability company in the jurisdiction of its principal place of business (if not organized therein); (c) if that Member is a partnership, trust, or other entity, it is duly formed, validly existing, and (if applicable) in good standing under the law of the state of its formation, and if required by law is duly qualified to do business and (if applicable) in good standing in the jurisdiction of its principal place of business (if not formed therein), and the representations and warranties in Clause (a), (b), or (c), as applicable, are true and correct with respect to each partner (other than limited partners), trustee, or other Member thereof, (d) that Member has full corporate, limited liability company, partnership, trust, or other applicable power and authority to execute and agree to this Operating Agreement and to perform its obligations hereunder and all necessary actions by the board of directors, shareholders, Manager, Member(s), partners, trustees, beneficiaries, or other Persons necessary for the due authorization, execution, delivery, and performance of this Operating Agreement by that Member have been duly taken; (e) that Member has duly executed and delivered this Operating Agreement; and (f) that Member's authorization, execution, delivery, and performance of this Operating Agreement do not conflict with any other agreement or arrangement to which that Member is a party or by which it is bound.

3.19 ADMISSION OF ADDITIONAL MEMBERS. Following adoption of this Operating Agreement, the Company may admit one or more additional Members from time to time, but only upon the majority vote of all Class A Members then in existence. The terms of admission or issuance must specify the Capital Contributions applicable thereto, and may also provide for the creation of additional classes of Members and having different rights, powers, and duties, but is so then this Operating Agreement shall be amended to reflect such added classes. Upon the admission to the Company of any additional members, the Membership Interests of the other Members shall be reduced accordingly on a pro rata basis. SCHEDULE A shall be amended from time to time as of the effective date of the admission of an additional member to the Company. As a condition to being admitted to the Company, each additional member shall execute an agreement to be bound by the terms and conditions of this Agreement.

3.20 RESTRICTIONS ON TRANSFERENCE OF MEMBERSHIP INTEREST. Notwithstanding anything herein to the contrary, the Membership Interest and transferability of Membership Interest in the Company are substantially restricted. Neither record title nor beneficial ownership of a Membership Interest may be transferred or encumbered without the consent of all Members. This Company is formed by a closely-held group, who will have surrendered certain management rights (in exchange for limited liability) based upon their relationship and trust. Capital is also material to the business and investment objectives of the Company and its federal tax status. An unauthorized transfer of a Membership Interest could create a substantial hardship to the Company, jeopardize its capital base, and adversely affect its tax structure. These restrictions upon ownership and transfer are not intended as a penalty, but as a method to protect and preserve existing relationships based upon trust and the Company's capital and its financial ability to continue. Notwithstanding the foregoing restrictions upon transfer and ownership, the following transfers are permitted:

A. Death of a Member Who Is A Natural Person. The personal representative of a deceased Member's estate, or his or her contract beneficiary, may exercise all of the decedent's rights and powers as a Member,

and the decedent's Membership Interest in the Company will continue and pass to those entitled thereto upon the Member's death. It is specifically provided that a Member may prepare a written and acknowledged document in which he or she designates one or more beneficiaries of that Person's Membership Interest, and his or her written designation will be binding upon the Company if delivered to the Company before or within at least sixty 60 days after the death of the Member.

B. **Estate Planning Transfers.** A Member will also have the right to make estate planning transfers of all or any part of his or her Membership Interest in the Company. The term "estate planning transfer" will mean any transfer made during the life of a Member without value, or for less than full consideration, by way of a marital partition agreement and/or a transfer of all or any part of a Membership Interest to a trust whose beneficiary or beneficiaries are the Member and/or the spouse of a Member, and/or the descendants of a Member, and/or one or more beneficiaries qualified to receive a charitable gift under § 170(c) of the Code. The Articles and this Operating Agreement will bind the transferee of any estate planning transfer to the exact terms and conditions of the Articles and this Operating Agreement.

C. **Transfers for Convenience.** A Member who is a company may freely transfer its Membership to another company whose ownership is identical to the ownership of the assignor Member, provided, however, that such Member may not cause or permit an interest, direct or indirect, in itself to be disposed of such that, after the disposition, (a) the Company would be considered to have terminated within the meaning of §708 of the Code or (b) that Member shall cease to be controlled by substantially the same Persons who control it as of the date of its admission to the Company. On any breach of the provisions of clause (b) of the immediately preceding sentence, the Company shall have the option to buy, and on exercise of that option the breaching Member shall sell, the breaching Member's Membership Interest all in accordance with Article XI as if the breaching Member were a Bankrupt Member.

D. **Approved Sale or Transfers.** A Member may transfer its Membership to another Person upon the unanimous vote of all Class A Members.

3.21 **DISPUTED TRANSFERS.** The Company will not be required to recognize the interest of any transferee who has obtained a purported interest as the result of a transfer of ownership which is not an authorized transfer. If the Membership Interest is in doubt, or if there is reasonable doubt as to who is entitled to a distribution of the income realized from a Membership Interest, the Company may accumulate the income until this issue is finally determined and resolved. Accumulated income will be credited to the capital account of the Member whose interest is in question.

3.22 **RIGHT OF FIRST REFUSAL.** If any Person or agency should acquire the interest of a Member as the result of an order of a court of competent jurisdiction which the Company is required to recognize, or if a Member makes an unauthorized transfer of a Membership Interest which the Company is required to recognize, the interest of the transferee may then be acquired by the Company upon the following terms and conditions:

(a) The Company will have the unilateral option to re-acquire the Membership Interest by giving written notice to the transferee of its intent to purchase within 90 days from the date it is finally determined that the Company is required to recognize the transfer.

(b) The Company will have 180 days from the first day of the month following the month in which it delivers notice exercising its option to purchase the Membership Interest. The valuation date for the Membership Interest will be the first day of the month following the month in which notice is delivered.

(c) Unless the Company and the transferee agree otherwise, the fair market value of a Member's Membership Interest is to be determined by the written appraisal of a Person or firm qualified to value this type of business. The appraiser selected by the Company must be a member of and qualified by the American Society of Appraisers, Business Valuations Division, [P. O. Box 17265, Washington, DC 20041] to perform appraisals.

(d) Closing of the sale will occur at the registered office of the Company at 10 o'clock A.M. on the

first Tuesday of the month following the month in which the valuation report is accepted by the transferee (called the "closing date"). The transferee must accept or reject the valuation report within 30 days from the date it is delivered. If not rejected in writing within the required period, the report will be accepted as written. If rejected, closing of the sale will be postponed until the first Tuesday of the month following the month in which the valuation of the Membership Interest is resolved. The transferee will be considered a non-voting owner of the Membership Interest, and entitled to all items of income, deduction, gain or loss from the Membership Interest, plus any additions or subtractions therefrom until closing.

(e) In order to reduce the burden upon the resources of the Company, the Company will have the option, to be exercised in writing delivered at closing, to pay its purchase money obligation in 10 equal annual installments (or the remaining terms of the Company if less than 10 years) with interest thereon at market rates, adjusted annually as of the first day of each calendar year at the option of the Manager. The term "market rates" will mean the rate of interest prescribed as the "prime rate" as quoted in the money rates section of the Wall Street Journal, which is also the base rate on corporate loans at large United States money center commercial banks, as of the first day of the calendar year. If §§483 and 1274A of the Code apply to this transaction, the rate of interest of the purchase money obligation will be fixed at the rate of interest then required by law. The first installment of principal, with interest due thereon, will be due and payable on the first day of the calendar year following closing, and subsequent annual installments, with interest due thereon, will be due and payable, in order, on the first day of each calendar year which follows until the entire amount of the obligation, principal and interest, is fully paid. The Company will have the right to prepay all or any part of the purchase money obligation at any time without premium or penalty.

(f) The Manager may assign the Company's option to purchase to one or more of the Members (this with the affirmative consent of no less than 50% of the remaining Members, excluding the interest of the Member or transferee whose interest is to be acquired), and when done, any rights or obligations imposed upon the Company will instead become, by substitution, the rights and obligations of the Members who are assignees.

(g) Neither the transferee of an unauthorized transfer or the Member causing the transfer will have the right to vote during the prescribed option period, or if the option to purchase is timely exercised, until the sale is actually closed.

3.23 **TAX TREATMENT OF TRANSFERRED MEMBERSHIP INTERESTS.** With respect to any transferred Membership Interest that may occur, all items of income, gain, loss, deduction, and credit allocable to any transferred Membership Interest shall for tax purposes be allocated between the transferor and the transferee based on the portion of the calendar year during which each was recognized as owning that Membership Interest without regard to the results of Company operations during any particular portion of that calendar year and without regard to whether cash distributions were made to the transferor or the transferee during that calendar year; provided, however, that this allocation must be made in accordance with a method permissible under §706 of the Code and the regulations thereunder.

ARTICLE IV: CAPITAL CONTRIBUTIONS

4.1 **INITIAL CONTRIBUTIONS.** Contemporaneously with the execution by such Member of this Operating Agreement, each Member shall make the Capital Contributions described for that Member in SCHEDULES A and B. No interest shall be earned or paid on Capital Contributions or a member's capital account.

4.2 **SUBSEQUENT CONTRIBUTIONS.** If necessary and appropriate to enable the Company to meet its costs, expenses, obligations, and liabilities, and if no lending source is available, then the Manager shall notify each Class A Member ("Capital Call") of the need for any additional capital contributions, and such capital demand shall be made on each Class A Member in proportion to its Class A Membership Interest. Any such Capital Call notice must include a statement in reasonable detail of the proposed uses of the required additional capital

contributions and a date (which date may be no earlier than the fifth Business Day following each Member's receipt of its notice) before which the additional capital contributions must be made.

4.3 **FAILURE TO CONTRIBUTE.** If a Member does not contribute all of its share of a Capital Call by the time required, then either:

1) One or more Class A Members may provide the additional capital, with such added capital to be reflected in that Class A Member's Capital Contribution, however, such additional capital to be entitled to priority return superior to those set forth in Article V.

or

2) Any other Members, individually or in concert (the "Lending Member," whether one or more), to advance the portion of the Delinquent Member's Capital Call that is in default, with the following results:

(a) the sum advanced constitutes a loan from the Lending Member to the Delinquent Member and a Capital Contribution of that sum to the Company by the Delinquent Member pursuant to the applicable provisions of this Operating Agreement;

(b) the principal balance of the loan and all accrued unpaid interest thereon is due and payable in whole on the tenth day after written demand therefore by the Lending Member to the Delinquent Member;

(c) the amount loaned bears interest at the Default Interest Rate from the day that the advance is deemed made until the date that the loan, together with all interest accrued on it, is repaid to the Lending Member;

(d) all distributions from the Company that otherwise would be made to the Delinquent Member (whether before or after dissolution of the Company) instead shall be paid to the Lending Member until the loan and all interest accrued on it have been paid in full to the Lending Member (with payments being applied first to accrued and unpaid interest and then to principal);

(e) the payment of the loan and interest accrued on it is secured by a security interest in the Delinquent Member's Membership Interest, and the Lending Member may file a financing statement evidencing and perfecting such security interest; and

(f) the Lending Member has the right, in addition to the other rights and remedies granted to it pursuant to this Operating Agreement or available to it at law or in equity, to take any action (including, without limitation, court proceedings) that the Lending Member may deem appropriate to obtain payment by the Delinquent Member of the loan and all accrued and unpaid interest on it, at the cost and expense of the Delinquent Member.

4.4 **RETURN OF CONTRIBUTIONS.** Class A Members are not entitled to the return of any part of their Capital Contributions. In accordance with Article V, Class B Members and Class C Members are entitled to priority return of all of their Capital Contributions. An un-repaid Capital Contribution is not a liability of the Company or of any Member.

4.5 **ADVANCES BY MEMBERS.** If the Company does not have sufficient cash to pay its obligations, any Member(s) that may agree to do so with the Manager's consent may advance all or part of the needed funds to or on behalf of the Company. An advance described in this Section constitutes a loan from the Member to the Company, bears interest at the General Interest Rate from the date of the advance until the date of payment, and is not a Capital Contribution.

4.6 **CAPITAL ACCOUNTS.** A capital account shall be established and maintained for each Member,

by Class. The Members' capital accounts also shall be maintained and adjusted as permitted by the provisions of Treas. Reg. § 1.704-1 (b)(2)(iv)(f) and as required by the other provisions of Treas. Reg. § 1.704-1 (b)(2)(iv) and 1.704-1(b)(4), including adjustments to reflect the allocations to the Members of depreciation, depletion, amortization, and gain or loss as computed for book purposes rather than the allocation of the corresponding items as computed for tax purposes, as required by Treas. Reg. §1.704-l(b)(2)(iv)(g). On the transfer of all or part of a Membership Interest, the capital account of the transferor that is attributable to the transferred Membership Interest or part thereof shall carry over to the transferee Member in accordance with the provisions of Treas. Reg. §1.704-l(b)(2)(iv)(l).

ARTICLE V: ALLOCATIONS AND DISTRIBUTIONS

5.1 DISTRIBUTIONS. From time to time (but at least once each calendar quarter) the Manager shall determine in its reasonable judgment to what extent (if any) the Company's cash on hand exceeds its current and anticipated needs, including, without limitation, for operating expenses, debt service, acquisitions, and a reasonable contingency reserve. If such an excess exists, the Manager shall cause the Company to distribute to the Members an amount in cash (or property other than cash) equal to that excess. Distributions by the Manager shall be mandatory upon the affirmative vote of 95% or more of the Class A Members, subject to Section 5.5.

5.2 ALLOCATION OF PROFIT DISTRIBUTIONS OF THE COMPANY. Profit distributions of the Company in each fiscal quarter shall be allocated to the Members as follows:

i. first to the Class B Members, in proportion to their respective Class B Capital Contributions, in accordance with Section 5.3 ("Priority Return");

ii. next to the Class C Members, in proportion to their respective Class C Capital Contributions, in accordance with Section 5.3 ("Priority Return");

iii. next to the Class A Members in accordance with their respective Class A Membership Interests; provided, however, that Class A Members will only be allocated profit distributions after Class B Members and Class C Members have been paid their entire Priority Return.

5.3 TREATMENT OF CLASS B DISTRIBUTIONS. Class B profit distributions made pursuant to Section 5.2(i) shall be treated as a return of capital, and accordingly each Class B Member's Capital Contribution will be proportionately reduced by the dollar amount equal to the allocation of profit distributions made to that particular Class B Member, until their Capital Contribution is returned in full. Once each Class B Member's Capital Contribution is reduced to $0, the Class B class will cease to exist.

5.4 TREATMENT OF CLASS C DISTRIBUTIONS. Class C profit distributions made pursuant to Section 5.2(ii) shall be treated as a return of capital, and accordingly each Class C Member's Capital Contribution will be proportionately reduced by the dollar amount equal to the allocation of profit distributions made to that particular Class C Member, until their Capital Contribution is returned in full. Once each Class C Member's Capital Contribution is reduced to $0, the Class C class will cease to exist.

5.5 RIGHT TO RECEIVE DISTRIBUTIONS. Except as otherwise provided in NRS §86.391 and §86.521, at the time a Member becomes entitled to receive a distribution, the Member has the status of and is entitled to all remedies available to a creditor of the Company with respect to the distribution.

5.6 LIMITATION ON DISTRIBUTION. Notwithstanding any other provision in this Article, the Manager may not make a distribution to the Company's Members to the extent that, immediately after giving effect to the distribution, all liabilities of this Company, other than liabilities to Members with respect to their interests and liabilities for which the recourse of creditors is limited to specified property of this Company, exceed the fair value of this Company assets, except that the fair value of property that is subject to a liability for which recourse of creditors is limited shall be included in this Company's assets only to the extent that the fair value of that property exceeds that liability. However, a Member who receives such a distribution has no liability under the Act to return the distribution unless the Member knew that the distribution violated any provision of the Act.

ARTICLE VI: MANAGER

6.1 MANAGEMENT BY MANAGER.

A. Except for situations in which the approval of the Members is required by this Operating Agreement or by non-waivable provisions of applicable law, the powers of the Company shall be exercised by or under the authority of, and the business and affairs of the Company shall be managed under the direction of the Manager. No member shall take part in the management of the Company's business, transact any business in the Company's name or have the power to sign documents or otherwise bind the Company. The Manager may make all decisions and take all actions for the Company not otherwise provided for in this Operating Agreement, including, without limitation, the following:

(1) hiring, managing, and terminating officers, employees, and independent contractors

(2) entering into, making, and performing contracts, agreements, and other undertakings binding the Company that may be necessary, appropriate, or advisable in furtherance of the purposes of the Company;

(3) opening and maintaining bank and investment accounts and arrangements, drawing checks and other orders for the payment of money, and designating individuals with authority to sign or give instructions with respect to those accounts and arrangements;

(4) maintaining the assets of the Company in good order;

(5) collecting sums due the Company;

(6) to the extent that funds of the Company are available therefore, paying debts and obligations of the Company;

(7) acquiring, utilizing for Company purposes, and Disposing of any asset of the Company;

(8) borrowing money or otherwise committing the credit of the Company for Company activities and voluntary prepayments or extensions of debt;

(9) selecting, removing, and changing the authority and responsibility of lawyers, accountants, and other advisers and consultants;

(10) obtaining insurance for the Company;

(11) determining distributions of Company cash and other property as provided in Article V: and

(12) the institution, prosecution and defense of any proceeding in the Company's name.

B. Notwithstanding the provisions of Section 6.1 A., the Manager may not cause the Company to do any of the following without complying with the applicable requirements set forth below:

(1) sell, lease, exchange or otherwise dispose of (other than by way of a pledge, mortgage, deed of trust or trust indenture) all or substantially all the Company's property and assets (with or without good will), other than in the usual and regular course of the Company's business, without complying with the applicable procedures set forth in the Act, including, without limitation, the requirements set forth in this Operating Agreement regarding approval by the Members (unless such provision is rendered inapplicable by another provision of applicable law);

(2) be a party to (i) a merger, or (ii) an exchange or acquisition, without complying with the

applicable procedures set forth in the Act, including, without limitation, the requirements set forth in this Operating Agreement regarding approval by the Members (unless such provision is rendered inapplicable by another provision of applicable law);

(3) amend or restate the Articles, without complying with the applicable procedures set forth in the Act, including, without limitation, the requirements set forth in this Operating Agreement regarding approval by the Members, unless such provision is rendered inapplicable by another provision of applicable law.

6.2 ACTIONS BY MANAGER; DELEGATION OF AUTHORITY AND DUTIES.

A. In managing the business and affairs of the Company and exercising its powers, the Manager shall act: (i) collectively through meetings and written consents consistent as may be provided or limited in other provisions of this Operating Agreement; (ii) through officers to whom management authority and duties have been delegated, pursuant to subsection (C) below; and (iii) through committees comprised of Members and management, if any so may be appointed.

B. The Manager may, from time to time, designate one or more advisory boards to provide guidance and insight to the Company's strategic direction and operations, provided, however, that any such advisory board shall have no managerial authority or any other authority to act on behalf of or bind the Company.

C. The Manager may, from time to time, designate one or more natural persons to be officers of the Company. No officer need be a resident of the State of Nevada or a Member. Any officers so designated shall have such authority and perform such duties as the Manager may, from time to time, delegate to them. The Manager may assign titles to particular officers. Unless the Manager decide otherwise, if the title is one commonly used for officers of a business corporation formed under the NRS Chapter 78, the assignment of such title shall constitute the delegation to such officer of the authority and duties that are normally associated with that office but may also include other such specific delegation of authority and duties made to such officer by the Manager. Each officer shall hold office until his successor shall be duly designated and shall qualify or until his death or until he shall resign or shall have been terminated by Manager or the President of the Company, if any. Any number of offices may be held by the same person. The salaries or other compensation, if any, of the officers and agents of the Company shall be fixed from time to time by the Manager or the President of the Company (if such position has been appointed). Any officer may resign as such at any time. Such resignation shall be made in writing and shall take effect at the time specified therein, or if no time be specified, at the time of its receipt by the Manager. The acceptance of a resignation shall not be necessary to make it effective, unless expressly so provided in the resignation. Any officer may be removed as such, either with or without cause, by the Manager whenever in their judgment the best interests of the Company will be served thereby; provided, however, that such removal shall be without prejudice to the contract rights, if any, of the Person so removed. Designation of an officer shall not of itself create contract rights. Any vacancy occurring in any office of the Company may be filled by the Manager.

D. Any Person dealing with the Company, other than a Member, may rely on the authority of the Manager or officer in taking any action in the name of the Company without inquiry into the provisions of this Operating Agreement or compliance herewith, regardless of whether that action actually is taken in accordance with the provisions of this Operating Agreement.

6.3 AGENCY. The Manager and any appointed officers are agents of this Company for the purpose of any act carrying out the business of the Company, including the execution in the name of the Company of any instrument for apparently carrying on in the usual way the business of this Company.

6.4 COMPENSATION. The Manager shall be paid reasonable compensation and reimbursed for all expenses incurred on behalf of the Company.

6.5 REMOVAL AND RESIGNATION. The Manager may not be removed or terminated by the Members except by unanimous vote. The Manager may resign at any time. Such resignation shall be made in writing and shall take effect at the time specified therein.

6.6 VACANCIES. Any vacancy occurring in the position of Manager may be filled by the affirmative

vote of a majority of Class A Members by election at a special meeting of Members called for that purpose.

6.7 **APPROVAL OR RATIFICATION OF ACTS OR CONTRACTS BY MEMBERS.** The Manager in its discretion may submit any act or contract for approval or ratification at any annual meeting of the Members, or at any special meeting of the Members called for the purpose of considering any such act or contract, and any act or contract that shall be approved or be ratified by 98% of the Class A Members shall be as valid and as binding upon the Company and upon all the Members as if it shall have been approved or ratified by every Member of the Company.

6.8 **INTERESTED MANAGER, OFFICERS AND MEMBERS.**

A. No contract or transaction shall be voidable between this Company and any other Person in which the Company's Manager, any Member, or any officer is (i) that Person or (ii) holds a financial interest in that Person, if:

(1) The material facts as to the relationship or interest and as to the contract or transaction are disclosed or are known to all of the Members, and the Manager or committee in good faith authorizes the contract or transaction; or

(2) The material facts as to the relationship or interest and as to the contract or transaction are disclosed or are known to all Members entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of the Members; or

(3) The contract or transaction is fair as to this Company as of the time it is authorized, approved, or
ratified by the Manager or the Members.

B. A Member who is a Manager may be counted in determining the presence of a quorum at a meeting of the Members which authorizes the contract or transaction.

ARTICLE VII: INDEMNIFICATION

7.1 **DEFINITIONS.** For purposes of this Article VII:

A. "Limited Liability Company" includes any domestic or foreign predecessor entity of the Company in a merger, consolidation, or other transaction in which the liabilities of the predecessor are transferred to the Company by operation of law and in any other transaction in which the Company assumes the liabilities of the predecessor but does not specifically exclude liabilities that are the subject matter of this Article.

B. "Manager" means any Person who is or was a Manager of the Company and any Person who, while a Manager of the Company, is or was serving at the request of the Company as a Manager, officer, partner, venturer, proprietor, trustee, employee, agent, or similar functionary of another foreign or domestic limited liability company, corporation, partnership, joint venture, sole proprietorship, trust, employee benefit plan, or other enterprise.

C. "Expenses" include court costs and attorneys' fees.

D. "Official capacity" means: (1) when used with respect to a Manager, the office of Manager in the Company; and (2) when used with respect to a Person other than a Manager, the elective or appointive office in the Company held by the officer or the employment or agency relationship undertaken by the employee or agent on behalf of the Company; provided, however, that "official capacity" does not include service for any other foreign or domestic limited liability company, corporation, or any partnership, joint venture, sole proprietorship, trust, employee benefit plan, or other enterprise.

E. "Proceeding" means any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, arbitrative, or investigative, any appeal in such an action, suit, or proceeding, and any

inquiry or investigation that could lead to such an action, or proceeding.

7.2 **STANDARD FOR INDEMNIFICATION.** The Company shall indemnify a Person who was, is, or is threatened to be made a named defendant or respondent in a proceeding because the Person is or was a Manager or Officer of the Company, or for any action, related to Company or non-Company matters, if it is determined either by the Manager for any reason, or in accordance with this Article, that the Person:

A. conducted himself in good faith;

B. reasonably believed (i) in the case of conduct in his official capacity as a Manager of the Company, that his conduct was in the Company's best interests, and (ii) in all other cases, that his conduct was at least not opposed to the Company's best interests;

C. in the case of any criminal proceeding, had no reasonable cause to believe his conduct was unlawful; or

D. for any other reason as may be determined solely in the discretion of the Manager.

7.3 **PROHIBITED INDEMNIFICATION.** Except to the extent permitted by this Article, a Manager or Member may not be indemnified under any Section of this Article in respect of a proceeding:

A. in which the Person is found liable on the basis that personal benefit from company assets was improperly received by him; or

B. in which the Person is found liable to the Company.

Either the Manager or majority of the membership may elect to provide for such indemnification of the Manager or any party under any circumstance.

7.4 **EFFECT OF TERMINATION OF PROCEEDING.** The termination of a proceeding by judgment, order, settlement, or conviction, or on a plea of nolo contendere or its equivalent is not of itself determinative that the Person did not meet the requirements set forth in any Section of this Article. A Person shall be deemed to have been found liable in respect of any claim, issue or matter only after the Person shall have been so adjudged by a court of competent jurisdiction after exhaustion of all appeals therefrom. Until such time as to a final disposition, the Company shall provide the indemnification and defenses contemplated herein.

7.5 **EXTENT OF INDEMNIFICATION.** A Person shall be indemnified under this Article against judgments, penalties (including excise and similar taxes), fines, settlements, and reasonable expenses actually incurred by the Person in connection with the proceeding; but if the Person is found liable to the Company or is found liable on the basis that Personal benefit was improperly received by the Person, the indemnification shall (a) be limited to reasonable expenses actually incurred, and (b) not be made in respect of any proceeding in which the Person shall have been found liable for willful or intentional misconduct in the performance of such Person's duty to the Company.

7.6 **DETERMINATION OF INDEMNIFICATION.** A determination of indemnification under any Section of this Article may be made by (i) the Manager, (ii) legal counsel to the company, or (iii) by the Members in a vote.

7.7 **AUTHORIZATION OF INDEMNIFICATION.** Authorization of indemnification and determination as to reasonableness of expenses must be made in the same manner as the determination that indemnification is permissible, except that: (i) if the determination that indemnification is permissible is made by special legal counsel, authorization of indemnification and determination as to reasonableness of expenses must be made in the manner specified by the foregoing Section for the selection of special legal counsel; and (ii) the provision of this Article making indemnification mandatory in certain cases specified herein shall be deemed to constitute authorization in the manner specified by this Section of indemnification in such cases.

7.8 **SUCCESSFUL DEFENSE OF PROCEEDINGS.** Except as provided otherwise by law or by this Operating Agreement, the Company shall indemnify a Manager against reasonable expenses incurred by him in connection with a proceeding in which he is a named defendant or respondent if he has been wholly successful, on the merits or otherwise, in the defense of the proceeding.

7.9 **COURT ORDER IN SUIT FOR INDEMNIFICATION.** Indemnification required by the foregoing Section shall be subject to Order upon request by an indemnified party in a court of competent jurisdiction upon claim by the Manager as to entitlement to indemnification under that Section, the court shall order indemnification and shall award to the Manager the expenses incurred in securing the indemnification.

7.10 **COURT DETERMINATION OF INDEMNIFICATION.** Upon application of a Manager, a court of competent jurisdiction shall determine, after giving any notice the court considers necessary, that the Manager is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, whether or not he has met the requirements set forth in any Section of this Article or has been found liable in the circumstances described in any Section of this Article. The court shall order the indemnification that the court determines is proper and equitable; but, if the Person is found liable to the Company or is found liable on the basis that personal benefit was improperly received by the Person, the indemnification shall be limited to reasonable expenses actually incurred by the Person in connection with the proceeding.

7.11 **ADVANCEMENT OF EXPENSES.** Reasonable expenses incurred by a Manager who was, is, or is threatened to be made a named defendant or respondent in a proceeding shall be paid or reimbursed by the Company in advance of the final disposition of the proceeding, without the authorization or determination specified in this Article, after the Company receives a written affirmation by the Manager of his good faith belief that he has met the standard of conduct necessary for indemnification under this Article and a written undertaking, which must be an unlimited general obligation of the Manager (and can be accepted without reference to financial ability to make repayment) but need not be secured, made by or on behalf of the Manager to repay the amount paid or reimbursed if it is ultimately determined that he has not met that standard or if it is ultimately determined that indemnification of the Manager against expenses incurred by him in connection with that proceeding is prohibited by this Article. A provision contained in the Articles, this Operating Agreement, a resolution of Members or Manager, or an agreement that makes mandatory the payment or reimbursement permitted under this Section shall be deemed to constitute authorization of that payment or reimbursement.

7.12 **EXPENSES OF WITNESS.** Notwithstanding any other provision of this Article, the Company may pay or reimburse expenses incurred by a Manager in connection with his appearance as a witness or other participation in a proceeding at a time when he is not a named defendant or respondent in the proceeding, given that such appearance or participation occurs by reason of his being or having been a Manager of the Company.

7.13 **INDEMNIFICATION OF OFFICERS.** The Company may, at the discretion of the Manager, indemnify and advance or reimburse expenses to a Person who is or was an officer of the Company to the same extent that it shall indemnify and advance or reimburse expenses to Manager under this Article.

7.14 **INDEMNIFICATION OF OTHER PERSONS.** The Company may, at the discretion of the Manager, indemnify and advance expenses to any Person who is not or was not an officer, employee, or agent of the Company but who is or was serving at the request of the Company as a Manager, director, officer, partner, venturer, proprietor, trustee, employee, agent, or similar functionary of another foreign or domestic limited liability company, corporation, partnership, joint venture, sole proprietorship, trust, employee benefit plan or other enterprise to the same extent that it shall indemnify and advance expenses to Manager under this Article.

7.15 **ADVANCEMENT OF EXPENSES TO OFFICERS AND OTHERS.** The Company shall indemnify and advance expenses to an officer, and may indemnify and advance expenses to an employee or agent of the Company, or other Person who is identified in the foregoing Section and who is not a Manager, to such further extent as such Person may be entitled by law, agreement, vote of Members or otherwise.

7.16 **CONTINUATION OF INDEMNIFICATION.** The indemnification and advance payments provided by this Article shall continue as to a Person who has ceased to hold his position as a Manager, officer, employee or agent, or other Person described in any Section of this Article, and shall inure to his heirs, executors and

administrators.

7.17 **LIABILITY INSURANCE.** The Company may purchase and maintain insurance or another arrangement on behalf of any Person who is or was a Manager, officer, employee, or agent of the Company or who is or was serving at the request of the Company as a Manager, director, officer, partner, venturer, proprietor, trustee, employee, agent, or similar functionary of another foreign or domestic limited liability company, corporation, partnership, joint venture, sole proprietorship, trust, employee benefit plan or other enterprise, against any liability asserted against him and incurred by him in such a capacity or arising out of his status as such a Person, whether or not the Company would have the power to indemnify him against that liability under this Article. If the insurance or other arrangement is with a Person or entity that is not regularly engaged in the business of providing insurance coverage, the insurance or arrangement may provide for payment of a liability with respect to which the Company would not have the power to indemnify the Person only if including coverage for the additional liability has been approved by the Members of the Company. Without limiting the power of the Company to procure or maintain any kind of insurance or other arrangement, the Company may, for the benefit of Persons indemnified by the Company, (1) create a trust fund; (2) establish any form of self-insurance; (3) secure its indemnity obligation by grant of a security interest or other lien on the assets of the Company; or (4) establish a letter of credit, guaranty, or surety arrangement. The insurance or other arrangement may be procured, maintained, or established within the Company or with any insurer or other Person deemed appropriate by the Manager regardless of whether all or part of the stock or other securities of the insurer or other Person are owned in whole or part by the Company. In the absence of fraud, the judgment of the Manager as to the terms and conditions of the insurance or other arrangement and the identity of the insurer or other Person participating in an arrangement shall be conclusive and the insurance or arrangement shall not be avoidable and shall not subject the Manager approving the insurance or arrangement to liability, on any ground, regardless of whether Manager participating in the approval are beneficiaries of the insurance or arrangement.

ARTICLE VIII: CERTIFICATES

8.1 **CERTIFICATES.** Certificates in the form determined by the Manager shall be executed representing all Membership Interests then outstanding, as may change from time to time. Such certificates shall be consecutively numbered, and shall be entered in the books of the Company as they are issued. Each certificate shall state on the face thereof the holder's name, the class of membership, the Membership Interest, and such other matters as may be required by the laws of the State of Nevada. They shall be signed by a Manager or officer of the Company, and may be sealed with the seal of the Company if adopted. A Member has the right to possess the original certificate, provided, however, that the Manager may keep a copy of such certificate in the records of the Company.

8.2 **REPLACEMENT OF LOST OR DESTROYED CERTIFICATE.** The Manager may direct a new certificate or certificates to be issued in place of any certificate or certificates theretofore issued by the Company alleged to have been lost or destroyed, upon the making of an affidavit of that fact by the holder of record thereof, or his duly authorized attorney or legal representative who is claiming the certificate to be lost or destroyed. When authorizing such issue of a new certificate or certificates, the Manager in its discretion and as a condition precedent to the issuance thereof, may require the owner of such lost or destroyed certificate or certificates or his legal representative to advertise the same in such manner as it shall require or to give the Company a bond with surety and in form satisfactory to the Company (which bond shall also name the Company's transfer agents and registrars, if any, as obligees) in such sum as it may direct as indemnity against any claim that may be made against the Company or other obligees with respect to the certificate alleged to have been lost or destroyed, or to both advertise and also give such bond.

8.3 **TRANSFER OF MEMBERSHIP INTEREST.** Upon surrender to the Company or the transfer agent of the Company of a certificate for Membership Interest duly endorsed or accompanied by proper evidence of succession, assignment or authority to transfer, it shall be the duty of the Company to issue a new certificate to the Person entitled thereto, cancel the old certificate, and record the transaction upon its books.

8.4 **REGISTERED MEMBERS.** The Company shall be entitled to treat the holder of record of any certificate or certificate of Membership interest of the Company as the owner thereof for all purposes and, accordingly shall not be bound to recognize any equitable or other claim to or interest in such Membership interest or

any rights deriving from such Membership Interest on the part of any other Person, including (but without limitation) a purchaser, assignee or transferee, unless and until such other Person becomes a Member, whether or not the Company shall have either actual or constructive notice of the interest of such Person, except as otherwise provided by law.

ARTICLE IX: TAXES

9.1 **TAX RETURNS.** The tax matters partner, as defined in Section 9.3, shall cause to be prepared and filed any necessary federal and state income tax returns for the Company, including making the elections described in Section 9.2. Each Member shall furnish to the tax matters partner all pertinent information in its possession relating to Company operations that is necessary to enable the Company's income tax returns to be prepared and filed.

9.2 **TAX ELECTIONS.** The Company may make the following elections on the appropriate tax returns:

A. to adopt the calendar year as the Company's fiscal year;

B. to adopt the cash method of accounting and to keep the Company's books and records on the income-tax method;

C. if a distribution of Company property as described in §734 of the Code occurs or if a transfer of a Membership Interest as described in §743 of the Code occurs, on written request of any Member, to elect, pursuant to §754 of the Code, to adjust the basis of Company properties;

D. to elect to amortize the organizational expenses of the Company and the start-up expenditures of the Company under §195 of the Code as permitted by §709(b) of the Code; and

E. any other election the Manager may deem appropriate and in the best interests of the Members.

9.3 **TAX MATTERS PARTNER.** The Manager shall designate itself to be the "tax matters partner" of the Company pursuant to §6231(a)(7) of the Code. The tax matters partner shall take such action as may be necessary to cause each other Member to become a "notice partner" within the meaning of §6223 of the Code. Any Member who is designated tax matters partner shall inform each other Member of all significant matters that may come to its attention in its capacity as tax matters partner by giving notice thereof on or before the fifth Business Day after becoming aware thereof and, within that time, shall forward to each other Member copies of all significant written communications it may receive in that capacity. The tax matters partner may not take any action contemplated by §§6222 through 6232 of the Code without the consent of a majority of Members but this sentence does not authorize any action left to the determination of an individual Member under §§6222 through 6232 of the Code.

ARTICLE X: NOTICE

10.1 **METHOD.** Whenever by statute or the Articles or this Operating Agreement, notice is required to be given to any Member or the Manager, and no provision is made as to how the notice shall be given, it shall not be construed to mean personal notice, but any such notice may be given in writing, postage prepaid, addressed to the Manager or Member at the address appearing on the books of the Company, or in any other method permitted by law. Any notice required or permitted to be given by mail shall be deemed given at the time when the same is thus deposited in the United States mail.

10.2 **WAIVER.** Whenever, by statute or the Articles or this Operating Agreement, notice is required to be given to any Member or Manager, a waiver thereof in writing signed by the Person or Persons entitled to such notice, whether before or after the time stated in such notice, shall be equivalent to the giving of such notice. Attendance of the Manager or a Member at a meeting shall constitute a waiver of notice of such meeting, except

where a Manager or Member attends for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not lawfully called or convened.

ARTICLE XI: BANKRUPTCY OF A MEMBER

11.1 **BANKRUPTCY.** If any Member becomes a Bankrupt Member, the Company shall have the option, exercisable by notice from the Manager to the Bankrupt Member (or its representative) at any time prior to the 180th day after receipt of notice of the occurrence of the event causing it to become a Bankrupt Member, to buy, and on the exercise of this option the Bankrupt Member's bankruptcy estate (or the trustee thereof) shall sell, its Membership Interest to the Company. The purchase price shall be a dollar amount equal to the Class A Capital Contribution of the Bankrupt Member plus the remaining Class B capital account, if any, of that Bankrupt Member. The payment to be made to the Bankrupt Member or its estate pursuant to this Section is in complete liquidation and satisfaction of all the rights and interest of the Bankrupt Member and its estate (and of all Persons claiming through the Bankrupt Member and its estate) in and in respect to the Company, including, without limitation, any Membership Interest, any rights in specific Company property, and any rights against the Company and (insofar as the affairs of the Company are concerned) against the Members.

ARTICLE XII: DISSOLUTION, LIQUIDATION, AND TERMINATION

12.1 **DISSOLUTION.** The Company shall dissolve and its affairs shall be wound up on the written consent of all Members.

12.2 **LIQUIDATION AND TERMINATION.** On dissolution of the Company, the Manager shall act as liquidator or may appoint one or more Members as liquidator. If there is no Manager then the Members by majority vote will appoint one or more Members as liquidator. The liquidator shall proceed diligently to wind up the affairs of the Company and make final distributions as provided herein and in the Act. The costs of liquidation shall be borne as a Company expense. Until final distribution, the liquidator shall continue to operate the Company properties with all of the power and authority of the Manager. The steps to be accomplished by the liquidator are as follows:

A. as promptly as possible after dissolution and again after final liquidation, the liquidator shall cause a proper accounting to be made by a recognized firm of certified public accountants of the Company's assets, liabilities, and operations through the last day of the calendar month in which the dissolution occurs or the final liquidation is completed, as applicable;

B. the liquidator shall provide written notice to be mailed to each known creditor of and claimant against the Company;

C. the liquidator shall pay, satisfy or discharge from Company funds all of the debts, liabilities and obligations of the Company (including, without limitation, all expenses incurred in liquidation) or otherwise make adequate provision for payment and discharge thereof (including, without limitation, the establishment of a cash escrow fund for contingent liabilities in such amount and for such term as the liquidator may reasonably determine); and

D. all remaining assets of the Company shall be distributed to the Members as follows:

(1) the liquidator may sell any or all Company property, including to Members, and any resulting gain or loss from each sale shall be computed and allocated to the capital accounts of the Members;

(2) with respect to all Company property that has not been sold, the fair market value of that property shall be determined and the capital accounts of the Members shall be adjusted to reflect the manner in which the unrealized income, gain, loss, and deduction inherent in property that has not been reflected in the capital accounts previously would be allocated among the Members if there were a taxable disposition of that property for the fair market

value of that property on the date of distribution; and

(3) Company property shall be distributed among the Members in accordance with the positive capital account balances of the Members, as determined after taking into account all capital account adjustments for the taxable year of the Company during which the liquidation of the partnership occurs (other than those made by reason of this Clause (3)); and those distributions shall be made by the end of the taxable year of the Company during which the liquidation of the Company occurs (or, if later, 90 days after the date of the liquidation). All distributions in kind to the Members shall be made subject to the liability of each distributee for costs, expenses, and liabilities theretofore incurred or for which the Company has committed prior to the date of termination and those costs, expenses, and liabilities shall be allocated to the distributee pursuant to this Section 12.2. The distribution of cash and/or property to a Member in accordance with the provisions of this Section 12.2 constitutes a complete return to the Member of its Capital Contributions and a complete distribution to the Member of its Membership Interest and all the Company's property and constitutes a compromise to which all Members have consented. To the extent that a Member returns funds to the Company, it has no claim against any other Member for those funds.

12.3 **DEFICIT CAPITAL ACCOUNTS.** Notwithstanding anything to the contrary contained in this Operating Agreement, and notwithstanding any custom or rule of law to the contrary, to the extent that the deficit, if any, in the capital account of any Member results from or is attributable to deductions and losses of the Company (including non-cash items such as depreciation), or distributions of money pursuant to this Operating Agreement to all Members in proportion to their respective Capital Contributions, upon dissolution of the Company such deficit shall not be an asset of the Company and such Members shall not be obligated to contribute such amount to the Company to bring the balance of such Member's capital account to zero.

12.4 **ARTICLES OF DISSOLUTION.** On completion of the distribution of Company assets as provided herein, the Company is terminated, and the Manager or a Member shall file Articles of Dissolution with the Secretary of State of Nevada and take such other actions as may be necessary to terminate the Company.

ARTICLE XIII: GENERAL PROVISIONS

13.1 **BOOKS AND RECORDS.**

A. The Company shall maintain those books and records as provided by statute and as it may deem necessary or desirable. All books and records provided for by statute shall be open to inspection of the Members from time to time and to the extent expressly provided by statute. The Manager may examine all such books and records at all reasonable times. The Company shall keep and maintain the following records in its principal office in the United States or make them available in that office within five days after the date of receipt of a written request as may be specified in the Act:

(1) a current list that states:

(a) the name and mailing address of each Member;
(b) the percentage or other interest in the Company owned by each Member; and
(c) if one or more classes or groups are established in or under the Articles or this Operating Agreement, the names of the Members who are Members of each specified class or group;

(2) copies of the federal, state, and local information or income tax returns for the Company's six most recent tax years.

(3) a copy of the Articles and this Operating Agreement, all amendments or restatements, executed copies of any powers of attorney, and copies of any document that creates, in the

manner provided by the Articles or this Operating Agreement, classes or groups of Members;

(4) unless contained in the Articles or this Operating Agreement, a written statement of:

(a) the amount of the cash contribution and a description and statement of the agreed value of any other contribution made by each Member, and the amount of the cash contribution and a description and statement of the agreed value of any other contribution that the Member has agreed to make in the future as an additional contribution;
(b) the times at which additional contributions are to be made or events requiring additional contributions to be made;
(c) events requiring the Company to be dissolved and its affairs wound up; and
(d) the date on which each Member in the Company became a Member; and

(5) correct and complete books and records of accounts of the Company.

B. The Company shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time.

C. The Company shall keep in its registered office in Nevada and make available to Members on reasonable request the street address of its principal United States office in which the records required by this Section are maintained or will be available.

D. A Member, on written request stating the purpose, may examine and copy, in person or by the Member's representative, at any reasonable time, for any proper purpose, and at the Member's expense, records required to be kept under this Section and other information regarding the business, affairs, and financial condition of the Company as is just and reasonable for the Person to examine and copy.

E. On the written request by any Member, the Manager shall provide to the requesting Member or assignee, without charge, true copies of:

(1) the Articles and this Operating Agreement and all amendments or restatements; and
(2) any of the tax returns described in the Act.

13.2 AMENDMENT OR MODIFICATION. This Operating Agreement may be amended or modified from time to time only by a written instrument adopted by the affirmative vote of 98% or more of the Class A Members.

13.3 CHECKS, NOTES, DRAFTS, ETC. All checks, drafts or other orders for payment of money, notes or other evidences of indebtedness issued in the name of or payable to the Company shall be signed or endorsed by one or more designated Persons appointed by the Manager or Chief Financial Officer of the Company, if such officer position exists.

13.4 HEADINGS. The headings used in this Operating Agreement have been inserted for convenience only and do not constitute matter to be construed in interpretation.

13.5 CONSTRUCTION. Whenever the context so requires, the gender of all words used in this Operating Agreement includes the masculine, feminine, and neuter, and the singular shall include the plural, and conversely. All references to Articles and Sections refer to articles and sections of this Operating Agreement, and all references to Exhibits or Schedules, if any, are to Exhibits or Schedules attached hereto, if any, each of which is made a part hereof for all purposes. If any portion of this Operating Agreement shall be invalid or inoperative, then, so far as is reasonable and possible:

A. The remainder of this Operating Agreement shall be considered valid and operative; and
B. Effect shall be given to the intent manifested by the portion held invalid or inoperative.

13.6 **ENTIRE AGREEMENT; SUPERSEDURE.** This Operating Agreement constitutes the entire agreement of the Members of the Company and supersedes all prior contracts or agreements with respect to the Company, whether oral or written.

13.7 **EFFECT OF WAIVER OR CONSENT.** A waiver or consent, express or implied, to or of any breach or default by any Person in the performance by that Person of its obligations with respect to the Company is not a consent or waiver to or of any other breach or default in the performance by that Person of the same or any other obligations of that Person with respect to the Company. Failure on the part of a Person to complain of any act of any Person or to declare any Person in default with respect to the Company, irrespective of how long that failure continues, does not constitute a waiver by that Person of its rights with respect to that default until the applicable statute-of-limitations period has run.

13.8 **BINDING EFFECT.** Subject to the restrictions on Dispositions set forth in this Operating Agreement, this Operating Agreement is binding on and inures to the benefit of the Members and their respective heirs, legal representatives, successors, and assigns.

13.9 **DISPUTE RESOLUTION - BINDING ARBITRATION ELECTION.** Any dispute, controversy or claim arising out of or relating to this Agreement or the breach thereof shall solely be settled by arbitration under the Commercial Arbitration Rules of the American Arbitration Association ("AAA"). The parties specifically waive any rights to litigation as a dispute resolution methodology and further divest any Court of jurisdiction to determine disputes between the parties to this Agreement. Notwithstanding, judgment on the arbitrator's award may be entered in any court having jurisdiction thereof. The arbitration shall be held in the City of Las Vegas and State of Nevada, in the English language, and shall be conducted before three arbitrators, wherein the party calling for arbitration selects one arbiter, the party defending selects one arbiter and the arbiters select a third, agreeable to the parties or, if no agreement can be reached, then selected by the AAA. All costs related to the arbitration shall initially be borne by the aggrieved party. The arbitrators shall make findings of fact and law in writing in support of his decision, and shall award reimbursement of attorney's fees and other costs of arbitration to the prevailing party as the arbitrator deems appropriate. The provisions hereof shall not preclude any party from seeking post arbitration injunctive relief to protect or enforce its rights hereunder, or prohibit any court from making findings of fact in connection with granting or denying such injunctive relief after and in accordance with the decision of the arbitrator. No decision of the arbitrator shall be subject to judicial review or appeal; the parties waive any and all rights of judicial appeal or review, on any ground, of any decision of the arbitrator.

13.10 **LIQUIDATED DAMAGES PROVISION.** Should any party initiate a civil proceeding against any other, notwithstanding the binding arbitration provision above, such party initiating civil litigation shall recognize that it has caused material damage and harm to the other by way of their breach of this agreement, and agrees to provide to the named defendant party, liquidated damages in the amount of any costs of defense incurred by the aggrieved party plus ten thousand dollars ($10,000.00).

13.11 **GOVERNING LAW; SEVERABILITY.** THIS OPERATING AGREEMENT IS GOVERNED BY AND SHALL BE CONSTRUED IN ACCORDANCE WITH THE LAW OF THE STATE OF NEVADA, EXCLUDING ANY CONFLICT-OF-LAWS RULE OR PRINCIPLE THAT MIGHT REFER THE GOVERNANCE OR THE CONSTRUCTION OF THIS OPERATING AGREEMENT TO THE LAW OF ANOTHER JURISDICTION. In the event of a direct conflict between the provisions of this Operating Agreement and (a) any provision of the Articles, or (b) any mandatory provision of the Act, the applicable provision of the Act shall control. If any provision of this Operating Agreement or the application thereof to any Person or circumstance is held invalid or unenforceable to any extent, the remainder of this Operating Agreement and the application of that provision to other Persons or circumstances is not affected thereby and that provision shall be enforced to the greatest extent permitted by law.

13.12 **FURTHER ASSURANCES.** In connection with this Operating Agreement and the transactions contemplated hereby, each Member shall execute and deliver any additional documents and instruments and perform any additional acts that may be necessary or appropriate to effectuate and perform the provisions of this Operating Agreement and those transactions.

13.13 **NOTICE TO MEMBERS OF PROVISIONS OF THIS AGREEMENT.** By executing this

Operating Agreement, each Member acknowledges that it has actual notice of: (a) all of the provisions of this Operating Agreement, including, without limitation, the restrictions on the transfer of Membership Interests set forth in Article III; and (b) all of the provisions of the Articles. Each Member hereby agrees that this Operating Agreement constitutes adequate notice of all such provisions, including, without limitation, any notice requirement under the Chapter 86 of the Nevada Revised Statutes and under the Nevada Uniform Commercial Code, and each Member hereby waives any requirement that any further notice thereunder be given.

13.14 **COUNTERPARTS.** This Operating Agreement may be executed in any number of counterparts with the same effect as if all signing parties had signed the same document. All counterparts shall be construed together and constitute the same instrument.

13.15 **CONFLICTING PROVISIONS.** To the extent that one or more provisions of this Operating Agreement appear to be in conflict with one another, then the Manager shall have the right to choose which of the conflicting provisions are to be enforced. Wide latitude is given to the Manager in interpreting the provisions of this Operating Agreement to accomplish the purposes and objectives of the Company, and the Manager may apply this Operating Agreement in such a manner as to be in the best interest of the Company, in their sole discretion, even if such interpretation or choice of conflicting provisions to enforce is detrimental to one or more Members or the Manager.

# # # # #

IN WITNESS WHEREOF, the undersigned hereby certify that the foregoing Operating Agreement was unanimously adopted by the Members and Manager, effective as of the first date written in the preamble above, and we have hereunto affixed our signatures.

MANAGER:

MANAGER: **SJC VENTURES HOLDING COMPANY LLC**, a Delaware limited liability company

By: _____
Jay Bloom, Manager

MEMBERS:

MEMBER: **SJC VENTURES HOLDING COMPANY LLC**, a Delaware limited liability company

By: _____
Jay Bloom, Manager

MEMBER: **CBWE, LLC**, a Nevada limited liability company

By: _____
Carlos Cardenas, Manager

MEMBER: **MAMBER VENTURES LLC**, a Nevada limited liability company

By: _____
Manuel A. Ramirez Pleitez, Manager

MEMBER: **PALADIN VENTURES, LLC**, a Nevada limited liability company

By: **LS MARLO TRUST**

By: _____
J. Chris Morgando, Trustee

MEMBER: **BART RENDEL**, an individual

By: _____
Bart Rendel, individually

MEMBER: **DUSTIN LEWIS**, an individual

By: _____
Dustin Lewis, individually

MEMBER: **SCOTT OLIFANT**, an individual

By: _____
Scott Olifant, Esq., individually

MEMBER: **ROBERT CURTLEY**, an individual

By: _____
Robert Curley, individually

MEMBER: **HANNAH HARVEY**, an individual

By: _____
Hannah Harvey, individually

MEMBER: **JETHRO WAYNE GORDON**, an individual

By: _____
Jethro Wayne Gordon., individually

MEMBER: **WENDELL BROWN**, an individual

By: _____
Wendell Brown, individually

MEMBER: **JEFFREY ALBRECHTS**, an individual

By: _____
Jeffrey Albrechts, individually

MEMBER: **GLENN PLANTONE**, an individual

By: _____
Glenn Plantone, individually

MEMBER: **ERIN QUATRALE**, an individual

By: _____
Erin Quatrale, individually

MEMBER: **MARILYN WILEY**, an individual

By: _____
Marilyn Wiley, individually

MEMBER: **DENNIS WILEY**, an individual

By: _____
Dennis Wiley, individually

MEMBER: **MARK HOSTETLER**, an individual

By: _____
Mark Hostetler, individually

MEMBER: **ALAN AND THERESA LAHRS**, jointly and individually

By: _____ _____
Alan Lahrs Theresa Lahrs

MEMBER: IZZY ZALCBERG, an individual

By: _____
Izzy Zalcberg, individually

Kregg Hale, individual

By: _____
Kregg Hale, individually

MEMBER: JEAN KEMPNER, an individual

By: _____
Jean Kempner, individually

MEMBER: AMY AND ARMAND FARR, jointly and individually

By: _____
Amy Farr Armand Farr

MEMBER: KENT ADAMSON, an individual

By: _____
Kent Adamson, individually

MEMBER: BASIS INVESTMENTS, LLC a Texas Limited Liability Company

By: _____
Paul Bourassa, Member

MEMBER: GREG AND LAURIE DARROCH, jointly and individually

By: _____
Greg Darroch Laurie Darroch

MEMBER: CATHERYN COPE, an individual

By: _____
Catheryn Cope, individually

Schedule A:
List of Members

Paid in Capital		Series A	PIC	Series B	PIC	Series C	PIC
$ 185.00	Paladin Ventures, LLC	7.500%	$ 185.00				
$ 185.00	Mamber Ventures, LLC	7.500%	$ 185.00				
$ 185.00	CBWE, LLC	6.000%	$ 185.00				
$ 185.00	SJC, LLC	45.625%	$ 185.00				
$ 65.00	Mark Hostetler	6.500%	$ 65.00				
$ 30.00	Bart Rendel, COO	3.000%	$ 30.00				
$ 20.00	Dustin Lewis, CFO	2.000%	$ 20.00				
$ 20.00	Rob Curley, CTO	2.000%	$ 20.00				
$ 20.00	Wendell Brown	2.000%	$ 20.00				
$ 17.50	Dennis Wiley	1.750%	$ 17.50				
$ 15.00	Scott Olifant, Esq	1.625%	$ 16.25				
$ 6.88	Marilyn Wiley	0.688%	$ 6.88				
$ 5.00	Jeffrey Albregts	0.500%	$ 5.00				
$ 1.88	Glenn Plantone	0.188%	$ 1.88				
$ 1.25	Hannah Harvey	0.125%	$ 1.25				
$ 1.25	Jethro Gordon	0.125%	$ 1.25				
$ 0.63	Erin Quatrale	0.063%	$ 0.63				
$ 500,000.00	Basis Investments, LLC	5.000%	$ 50.00	50.00%	$ 499,950.00		
$ 100,000.00	Marylin Wiley	1.000%	$ 10.00	10.00%	$ 99,990.00		
$ 100,000.00	Kent Adamson	1.000%	$ 10.00	10.00%	$ 99,990.00		
$ 50,000.00	Alan & Theresa Lahrs	0.500%	$ 5.00	5.00%	$ 49,995.00		
$ 50,000.00	Alan & Theresa Lahrs	0.500%	$ 5.00	5.00%	$ 49,995.00		
$ 50,000.00	Jean Kempner	0.500%	$ 5.00	5.00%	$ 49,995.00		
$ 50,000.00	Jeffrey Albregts	0.500%	$ 5.00	5.00%	$ 49,995.00		
$ 50,000.00	Amy and Armond Farr	0.500%	$ 5.00	5.00%	$ 49,995.00		
$ 25,000.00	Scott Olifant, Esq	0.250%	$ 2.50	2.50%	$ 24,997.50		
$ 25,000.00	Glenn Plantone	0.250%	$ 2.50	2.50%	$ 24,997.50		
$ 1.88	Scott Olifant, Esq	0.188%	$ 1.88				
$ 3.75	Glenn Plantone	0.375%	$ 3.75				
$ 1.25	JWL Management	0.125%	$ 1.25				
$ 2.50	Greg and Laurie Darroch	0.250%	$ 2.50				
$ 100,000.00	Greg and Laurie Darroch	0.500%	$ 5.00			2.00%	$ 99,995.00
$ 50,000.00	Laurie Darroch	0.250%	$ 2.50			1.00%	$ 49,997.50
$ 50,000.00	Catheryn Cope	0.250%	$ 2.50			1.00%	$ 49,997.50
$ 50,000.00	JWL Management	0.250%	$ 2.50			1.00%	$ 49,997.50
$ 50,000.00	Glenn Plantone	0.250%	$ 2.50			1.00%	$ 49,997.50
$ 75,000.00	Scott Olifant	0.375%	$ 3.75			1.00%	$ 74,996.25
$ 1,375,953.76	Total	100.000%	$ 1,073.76	100.00%	$ 999,900.00	7.00%	$ 374,981.25

MOT

GARMAN TURNER GORDON LLP
ERIKA PIKE TURNER
Nevada Bar No. 6454
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Las Vegas, Nevada 89119
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Attorneys for Plaintiff

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

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, Defendants.	CASE NO. DEPT. **MOTION TO CONFIRM ARBITRATION AWARD** **HEARING REQUESTED**

Plaintiff TGC/FARKAS FUNDING, LLC ("Plaintiff"), by and through counsel, Garman Turner Gordon LLP, hereby moves this Honorable Court for an Order confirming the Arbitration Award, attached hereto as **Exhibit 1**, dated September 15, 2020, by Arbitrator and Panel Chair, Philip J. Dabney, Esq., Arbitrator, Nikki L. Baker, Esq., and Arbitrator, Anthony J. DiRaimondo, Esq., ("Arbitration Panel") in the matter entitled *TGS/Farkas Funding, LLC v. First 100, LLC*, AAA Arbitration Case No. 01-20-0000-0613.

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This motion is made pursuant to NRS 38.239 and 38.243(1) and is based on the following Memorandum of Points and Authorities; the Decision and Award of Arbitration Panel (1) Compelling Production of Company Records; and (2) Ordering Reimbursement of Claimant's Attorneys' Fees and Costs, attached hereto as **Exhibit 1**; the First Amended Operating Agreement of First 100, LLC, attached hereto as **Exhibit 2**; all pleadings, papers, and documents on file with the Court in this action; and such further documentary evidence as the Court deems appropriate.

DATED this 1st day of October, 2020.

GARMAN TURNER GORDON LLP

/s/ Erika Pike Turner
ERIKA PIKE TURNER
Nevada Bar No. 6454
7251 Amigo Street, Suite 210
Tel: (725) 777-3000
Fax: (725) 777-3112
Attorneys for Plaintiff

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

On January 7, 2020, Plaintiff initiated an arbitration with the American Arbitration Association against First 100, LLC and First One Hundred Holdings, LLC ("Defendants") relating to whether Plaintiff was entitled to production and examination of company records of Defendants and pursuant to section 13.9 of the parties' arbitration agreement. Exh. 2 § 13.9.

On September 15, 2020, after the Arbitration Panel deliberated, it issued its Decision and Award of Arbitration Panel (1) Compelling Production of Company Records; and (2) Ordering Reimbursement of Claimant's Attorneys' Fees and Costs (the "Award"). *See* Exh. 1. The Award requires Defendants to "make all the requested documents and information available from both companies to Claimant [Plaintiff] for inspection and copying" and to pay within ten (10) days, or by September 25, 2020, the total sum of $23,975.00 for arbitration filing fees paid by the Plaintiff, and all the fees for the Arbitration Panel, and $17,011.50 in attorneys' fees (together, the "Expenses"). *Id.* Defendants have refused and/or failed to comply with the Award obligations. By this Motion, Plaintiff seeks to confirm the Award under applicable Nevada law so that it can

be enforced.

II. THE PARTIES, JURISDICTION AND VENUE

Defendants are and were at all times herein, Nevada limited-liability companies. Personal jurisdiction and venue are proper pursuant to NRS 13.010, NRS 38.244, and NRS.246. Defendants are Nevada entities doing business in Clark County, Nevada. Further, the operative First Amended Operating Agreement of First 100, LLC, which binds the parties and subjected the same to arbitration in Las Vegas, Nevada, "confers exclusive jurisdiction on the court to enter judgment on an award" and "a motion . . . must be made in the court of the county in which the agreement to arbitrate specifies . . . ." NRS 38.244, 38.246; *see* also Exh. 2. § 13.9.

Plaintiff now seeks to have this Court confirm this Award and enter Judgment for Plaintiff under NRS 38.239 and NRS 38.243(1).

III. RELEVANT FACTS

Plaintiff was forced to seek the Award when Defendants repeatedly and steadfastly refused to produce the business records of Defendant for inspection, which records were requested for the purpose of informing Plaintiff regarding the status of its membership interest obtained in exchange for $1 million and other valuable consideration. *See* Exh. 1.

On September 15, 2020, the Arbitration Panel issued its Award in favor of Plaintiff requiring that Defendants produce the requested company records to Plaintiff. Further, as the fees and costs incurred to enforce Plaintiff's membership rights are awardable under the Operating Agreements for Defendants, the Arbitration Panel required Defendants to pay Plaintiff the Expenses. The Award was reasoned, and based on the fact that (1) Plaintiff holds a membership interest regardless of Defendants' contrary contentions, (2) Defendants were obligated to produce the records to Plaintiff given the financial circumstances occurring relating to Defendants, and Plaintiff's request for records were not overbroad pursuant to NRS 86.241(2). *Id.*

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Garman Turner Gordon LLP
Attorneys At Law
7251 Amigo Street, Suite 210
Las Vegas, Nevada 89119
(725) 777-3000

IV. LEGAL ANALYSIS

A. NEVADA LAW REQUIRES CONFIRMATION OF THE ARBITRATION AWARD ENTERED IN PLAINTIFF'S FAVOR.

NRS 38.239 authorizes this Court to enter a judgment confirming the Award so that it may be enforced.

NRS 38.239 provides in pertinent part:

> After a party to an arbitral proceeding received notice of an award, he may make a motion to the court for an order confirming the award at which time the court *shall issue a confirming order* unless the award is modified or corrected pursuant to NRS 38.237 or 38.242 or is vacated pursuant to NRS 38.241.

(Emphasis added). *See also Casey v. Wells Fargo Bank, N.A.*, 128 Nev. 713, 714, 290 P.3d 265, 266 (2012). The Award in this case has not been modified or corrected pursuant to NRS 38.237 or 38.242. Nor has it been vacated pursuant to NRS 38.241. The plain language of NRS 38.239 therefore compels the confirmation of the Award at this time.

NRS 38.243(1) states, in relevant part:

> Upon granting an order confirming . . . an award, the court *shall* enter a judgment in in conformity therewith. The judgment may be recorded, docketed and enforced as any other judgment in a civil action.

(Emphasis added). Upon this Court confirming the Award, judgment shall be entered in Plaintiff's favor.

V. CONCLUSION

For the foregoing, Plaintiff respectfully requests that the Court enter: (1) an Order confirming the Award dated September 15, 2020; and (2) enter judgment in Plaintiff's favor in conformity with the Court's order confirming the Award.

DATED this 1st day of October, 2020.

GARMAN TURNER GORDON LLP

/s/ Erika Pike Turner
ERIKA PIKE TURNER
Nevada Bar No. 6454
7251 Amigo Street, Suite 210
Las Vegas, Nevada 89119
Tel: (725) 777-3000
Fax: (725) 777-3112
Attorneys for Plaintiff

Exhibit 1

AMERICAN ARBITRATION ASSOCIATION | INTERNATIONAL CENTRE FOR DISPUTE RESOLUTION®

AMERICAN ARBITRATION ASSOCIATION

COMMERCIAL ARBITRATION TRIBUNAL

In the Matter of the Arbitration between:

Claimant TGC/Farkas Funding, LLC, hereinafter referred to as "Claimant"

-and-

Respondents First 100, LLC, and First One Hundred Holdings, LLC, hereinafter collectively referred to as "Respondents"

AAA Case No: 01-20-0000-0613

Decision and AWARD of Arbitration Panel (1) Compelling Production of Company Records; and (2) Ordering Reimbursement of Claimant's Attorneys' Fees and Costs

The undersigned Arbitrators, having been designated in accordance with the arbitration agreement entered into between the above-named parties[1], and having been duly sworn, and having duly heard the proofs and allegations of the Parties, hereby AWARD as follows:

This matter came before the Panel for a hearing to determine whether Claimant is entitled to production and examination of company records of Respondents. The Parties requested that the Panel not hold an evidentiary hearing but instead render a reasoned decision based on the briefings and documents presented. The Parties presented their briefs; the Panel convened and considered the briefs and evidence; the Panel then requested further evidence regarding the alleged Redemption Agreement. Upon receipt of the additional evidence, the Panel declared the hearing closed and further deliberated. This decision is the product of that deliberation.

[1] During the Preliminary Hearing, the Parties confirmed that party-appointed arbitrators Baker and DiRaimondo were serving as neutral, non-partisan arbitrators for purposes of these proceedings.

Respondents appear to be in the business of purchasing unpaid receivables of HOAs on discounted terms and profiting from those purchases in various ways. Exhibit 1 to Claimant's Appendix to Claimant's Arbitration Brief ("Appendix" or "Appx"). Claimant is an entity owned by Matthew Farkas and Adam Flatto. Exhibit 1 to Claimant's Response to Order Regarding Additional Evidence Request. Matthew Farkas was an officer/employee of Respondents. Exhibits 1 and5 to Claimant's Appx. Claimant invested $1 million into the business of Respondents in exchange for a one percent (1%) membership interest. That was parlayed into a three percent (3%) total interest in First 100, LLC, after Respondents granted a two percent (2%) ownership interest to Mr. Farkas for his "services rendered in the VP of Finance position…" Exhibits 4 and 5 to Claimant's Appx. It is not clear exactly when Claimant became a member of Respondents, due to a lack of dates on many of the exhibits, but it appears from Exhibit 1 to Claimant's Appendix that Respondents were marketing membership interests in 2013. Claimants' interest is acknowledged by Exhibit 5 to Claimant's Appendix, an undated letter from Respondent 1st One Hundred, LLC. Exhibit 4 appears to conclusively establish that Claimant held 3% of Respondent First 100, LLC's membership interests.

Likely in 2017, possibly on or about April 13, 2017, Respondents sent a memo to members describing litigation against a funding source, financial issues facing the companies, and recommending that members execute a redemption agreement due to the financial condition of Respondents. The memo included a draft of the "Membership Interest Redemption Agreement" (the "Redemption Agreement"), which was to be entered into by and between Claimant and Respondent 1st One Hundred Holdings, LLC. Exhibit 6 to Appx. The Redemption Agreement states, among other things, that Respondent 1st One Hundred Holdings, LLC "desires to redeem all of [Claimant's] membership interests in [Respondent 1st One Hundred Holdings, LLC], as well as any interest claimed in any and all subsidiaries…." *Id.* The memo also apparently accompanied the IRS Schedule K-1 to Claimant TCG/Farkas Funding, LLC, as a member of "First 100 Holdings, LLC", dated April 13, 2017. Exhibit 6 to Appx. This Schedule K-1 appears to be conclusive evidence that Respondents considered Claimant to be a Member of "First 100 Holdings, LLC".

By letter dated May 2, 2017, to the law firm representing Respondents, Claimant's counsel set forth objections to the proposed Redemption Agreement, concerns about the financial condition of Respondents, and requests for production of the company records of Respondents. Exhibit 9 to Appx. This appears to be the initial request for company records that is the subject of the arbitration demand filed by Claimant.

Exhibit 11 to Claimant's Appendix is the first response from counsel for the Respondents to the request to inspect the company records of the Respondents. It is dated June 6, 2017. Significantly, Respondents' counsel concedes in this letter that Claimant "holds a membership interest in 1st One Hundred Holdings, LLC." Nevertheless, it is the first in a long and bad faith effort by Respondents to avoid their statutory and contractual duties to a member to produce requested records.

On September 13, 2019, counsel for Claimant made another request for company records to counsel for Respondents. Exhibit 13 to Appx.. On September 24, 2017, counsel for Respondents refused to honor the request to inspect based on a claim that counsel for Claimant might not represent Claimant, and based on the argument that the request was overbroad. Exhibit 14 to Appx. Nothing in this letter contends that the execution of the Redemption Agreement by Mr. Farkas for Claimant constituted a legitimate basis to refuse to make the records available for inspection. Thereafter, Claimant initiated this arbitration proceeding.

In the arbitration proceeding, Respondents make three arguments why they are not required to produce the records requested by Claimant. First, they argue that Claimant may not be a Member, and as such is only entitled to a refund of the investment money paid to the Respondents and no records. Second, they argue that the signing of a Redemption Agreement by Mathew Farkas releases the Respondents from any responsibility to make company records available to Claimant. Third, they argue that the request is overbroad and must be pared down. None of these arguments has merit, as discussed below.

The contention that Claimant is not a member of Respondents is belied by the records of the Respondents, as discussed above. The fact that Respondents believe that the Claimant signed a Redemption Agreement as a member of Respondents is an additional admission on the part of the Respondents that the Claimant is a Member of the Respondents with standing to inspect records of the Company.

It was not clear from the initial briefs and exhibits whether Mathew Farkas signed a Redemption Agreement for Claimant. However, the additional evidence clarified that he actually did sign such an Agreement. However, the evidence also shows two additional points that render the Redemption Agreement irrelevant for the purpose of this proceeding. First, the evidence shows that Mr. Farkas did not have authority to bind Claimant to the Redemption Agreement, as he did not seek and obtain the consent of Mr. Flatto. Exhibit 1 to Supplemental Declaration of Flatto attached to Claimant's Response to Order Regarding Additional Evidence Request; Supplemental Declarations of Flatto and Farkas attached to Claimant's Response to Order Regarding Additional Evidence Request. And, Claimant notified Respondents via email on April 18, 2017, that Mr. Farkas did not have the authority to bind Claimant under the Redemption Agreement "unless and until approved by Adam Flatto." Exhibit 12 to Claimant's Appx. at Ex. 3.

Secondly, the Respondents have yet to perform under the terms of the Redemption Agreement. Specifically, Section 2(a) requires payment by the Company to Redeemer. Exhibit A to Supplemental Declaration of Jay Bloom in support of Respondents' Arbitration Brief. Respondents concede that payment has **not** been made and that Respondents only "intend[]" to "fully perform" at a later point in time, when sufficient funds are available. Supplemental Declaration of Jay Bloom in support of Respondents' Arbitration Brief ¶ 16. The Redemption

Agreement, therefore, does not constitute a basis for Respondents to refuse to make company records available to Claimant as a Member of Respondents.

Finally, Respondents contend the records inspection request is overbroad. NRS 86.241(2) applies to the fact of this case:

> 2.* * Each member of a limited-liability company is entitled to obtain from the company, from time to time upon reasonable demand, for any purpose reasonably related to the interest of the member as a member of the company:
>
> (a)* The records required to be maintained pursuant to subsection 1;
>
> (b)* True and, in light of the member's stated purpose, complete records regarding the activities and the status of the business and financial condition of the company;
>
> (c)* Promptly after becoming available, a copy of the company's federal, state and local income tax returns for each year;
>
> (d)* True and complete records regarding the amount of cash and a description and statement of the agreed value of any other property or services contributed by each member and which each member has agreed to contribute in the future, and the date on which each became a member; and
>
> (e)* Other records regarding the affairs of the company as is just and reasonable under the circumstances and in light of the member's stated purpose for demanding such records.
>
> The right to obtain records under this subsection includes, if reasonable, the right to make copies or abstracts by photographic, xerographic, electronic or other means.

The language of subsection (e) applies here and justifies Claimant requesting the records requested, even if not specifically listed in the previous sections. These include litigation information and insurance policies. Given the circumstances of the request – pending litigation by Respondents, representations by Respondents suggesting the viability of the companies is in jeopardy, and the proposal that members sign a Redemption Agreement that substantially compromises their rights as members – all justify the categories of information requested by Claimant. The fact that Respondents have spent more than three years resisting the requested inspection further supports the justification to examine all these categories of documents.

Therefore, the Panel awards in favor of Claimant and against Respondents in all respects on the primary claim, and orders Respondents to forthwith, but no later than ten (10) calendar days from the date of this AWARD, make all the requested documents and information available from both companies to Claimant for inspection and copying.

Claimant has requested an award of attorneys' fees and costs. Section 13.9 of the Operating Agreement at Exhibit 3 to the Appendix sets forth the following pertinent language: "The arbitrators shall make findings of fact and law in writing in support of his (sic) decision, and shall award reimbursement of attorney fees and other costs of arbitration to the prevailing party as the arbitrator deems appropriate."

In this case, the Panel deems it appropriate to award all of the attorneys' fees requested by Claimant against Respondents, in the amount of $17,011.50. The Panel also deems it appropriate to award to Claimant and against Respondent all of the arbitration filing fee(s) paid by the Claimant, and all of the fees for the arbitration Panel paid by Claimant. The total sum of $23,975.00 shall be paid by Respondents to Claimant within ten (10) calendar days of the date of this AWARD.

The administrative fees of the American Arbitration Association totaling $4,400.00 and the compensation of the arbitrators totaling $19,575.00 shall be borne Respondent. Therefore, Respondent shall reimburse Claimant the sum of $23,975.00, representing that portion of said fees and expenses in excess of the apportioned costs previously incurred by Claimant.

This Award is in full settlement of all claims submitted to this arbitration. All claims not expressly granted herein are hereby denied.

This Award may be executed in any number of counterparts, each of which shall be deemed an original, and all of which shall constitute together one and the same instrument.

Philip J. Dabney, Esq.,
Arbitrator and Panel Chair

Date: 9-15-20

Nikki L. Baker

Date: 9-15-2020
Arbitrator

Nikki L. Baker, Esq.,

Date: 9-15-2020
Arbitrator

Anthony J. DiRaimondo, Esq.,

Exhibit 2

FIRST AMENDED OPERATING AGREEMENT
of
FIRST 100, LLC

This operating agreement of **FIRST 100, LLC**, a Nevada limited liability company, Adopted April 11, 2012, and further Amended December 12, 2012, having an effective date of December 12, 2012, is: (i) adopted by the Manager (as defined below); and (ii) executed and agreed to, for good and valuable consideration, by the Members (as defined below).

ARTICLE I: DEFINITIONS

As used in this Operating Agreement, unless the context clearly indicates otherwise, the following terms have the following meanings:

1.1 **"Act"** means Chapter 86 of the Nevada Revised Statutes and any successor statute, as amended from time to time.

1.2 **"Articles"** means the Articles of Organization filed with the Nevada Secretary of State by which the Company was organized as a Nevada limited liability company under and pursuant to the Act.

1.3 **"Bankrupt Member"** means any Member: (a) that (i) makes a general assignment for the benefit of creditors; (ii) files a voluntary bankruptcy petition; (iii) becomes the subject of an order for relief or is declared insolvent in any federal or state bankruptcy or insolvency proceedings; (iv) files a petition or answer seeking for the Member a reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any law, (v) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against the Member in a proceeding of the type described in sub-clauses (i) through (iv) of this Clause (a); or (vi) seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the Member's or of all or any substantial part of the Member's properties; or (b) against which, a proceeding seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any law has been commenced and 120 days have expired without dismissal thereof or with respect to which, without the Member's consent or acquiescence, a trustee, receiver, or liquidator of the Member or of all or any substantial part of the Member's properties has been appointed and 90 days have expired without the appointment's having been vacated or stayed, or 90 days have expired after the date of expiration of a stay, if the appointment has not previously been vacated.

1.4 **"Business Day"** means any day other than a Saturday, a Sunday, or a holiday on which national banking associations in the State of Nevada are closed.

1.5 **"Capital Contribution"** means any contribution by a Member to the capital of the Company.

1.6 **"Class A Member"** means a Member identified on SCHEDULE A hereto.

1.7 **"Class A Membership Interest"** means, with respect to any Class A Member, the percentage interest set forth opposite such Class A Member's name on SCHEDULE A, as may be amended from time to time.

1.8 **"Class B Member"** means a Member identified on SCHEDULE A hereto.

1.9 **"Class B Membership Interest"** means with respect to any Non Voting Class B Member, the percentage interest set forth opposite such Class B Member's name on SCHEDULE A, as may be amended from time to time.

1.10 **"Class C Member"** means a Member identified on SCHEDULE A hereto.

1.11 **"Class C Membership Interest"** means with respect to any Non Voting Class C Member, the percentage interest set forth opposite such Class C Member's name on SCHEDULE A, as may be amended from time to time.

1.12 **"Code"** means the Internal Revenue Code of 1986 and any successor statute, as amended from time to time.

1.13 **"Company"** means First 100, LLC, a Nevada limited liability company

1.14 **"Default Interest Rate"** means a rate per annum equal to the lesser of (a) one percent (1.0%) plus a varying rate per annum that is equal to the Wall Street Journal prime rate as quoted in the money rates section of the Wall Street Journal which is also the base rate on corporate loans at large United States money center commercial banks, from time to time as its prime commercial or similar reference interest rate, with adjustments in that varying rate to be made on the same date as any change in that rate, and (b) the maximum rate permitted by applicable law.

1.15 **"Delinquent Member"** means a Member who does not contribute by the time required all or any portion of a Capital Contribution that Member is required to make as provided in this Operating Agreement.

1.16 **"Dispose," "Disposing," or "Disposition"** means a sale, assignment, transfer, exchange, mortgage, pledge, grant of a security interest, or other disposition or encumbrance (including, without limitation, by operation of law), or the acts thereof.

1.17 **"General Interest Rate"** means a rate per annum equal to the lesser of (a) the Wall Street Journal prime rate as quoted in the money rates section of the Wall Street Journal which is also the base rate on corporate loans at large United States money center commercial banks, from time to time as its prime commercial or similar reference interest rate, with adjustments in that varying rate to be made on the same date as any change in that rate, and (b) the maximum rate permitted by applicable law.

1.18 **"Lending Member"** means those Members, whether one or more, who advance the portion of the Delinquent Member's Capital Contribution that is in default.

1.19 **"Manager"** means SJC Ventures Holding Company, LLC, a Delaware limited liability company. There is only one Manager of the Company.

1.20 **"Member"** means any Person executing this Operating Agreement as of the date of this Operating Agreement as a Member, or hereafter admitted to the Company as a Member as provided in this Operating Agreement, but does not include any Person who has ceased to be a Member in the Company.

1.21 **"Membership Interest"** means the interest of a Member in the Company, including, without limitation, rights to distributions (liquidating or otherwise), allocations, information, and to consent or approve.

1.22 **"NRS"** means Nevada Revised Statutes.

1.23 **"NRS Chapter 86"** means the Nevada statutes contained in Chapter 86 of the Nevada Revised Statutes concerning limited-liability companies, and any successor statute, as amended from time to time.

1.24 **"Operating Agreement"** means this Operating Agreement, as approved or amended by the Members, as herein provided.

1.25 **"Permitted Transferee"** means any member of such Member's immediate family, or a trust, including a charitable remainder trust, corporation, limited liability company, or partnership controlled by such Member or members of such Member's immediate family, or another Person controlling, controlled by, or under common control with such Member.

1.26 **"Person"** includes an individual, partnership, limited partnership, limited liability company,

foreign limited liability company, trust, estate, corporation, custodian, trustee, executor, administrator, nominee or entity in a representative capacity.

1.27 **"Priority Return"** means a sum equal to that particular Class B Member's principal amount of Class B Capital Contribution.

1.28 **"Proceeding"** means any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, arbitrative or investigative.

ARTICLE II: ORGANIZATION

2.1 **FORMATION.** The Company has been organized as a Nevada limited liability company by the filing of Articles under and pursuant to the Act and the issuance of a certificate of organization for the Company by the Secretary of State of Nevada.

2.2 **NAME.** The name of the Company is **FIRST 100, LLC** and all Company business must be conducted in that name, or such other registered names that comply with applicable law as the Manager may select from time to time.

2.3 **REGISTERED OFFICE; REGISTERED AGENT; PRINCIPAL OFFICE IN THE UNITED STATES; OTHER OFFICES.** The registered office of the Company required by the Act to be maintained in the State of Nevada shall be the office of the initial registered agent named in the Articles or such other office (which need not be a place of business of the Company) as the Manager may designate from time to time in the manner provided by law. The registered agent of the Company in the State of Nevada shall be the initial registered agent named in the Articles or such other Person or Persons as the Manager may designate from time to time in the manner provided by law. The principal office of the Company in the United States shall be at such place as the Manager may designate from time to time, which need not be in the State of Nevada, and the Company shall maintain records there as required by NRS §86.241 and shall keep the street address of such principal office at the registered office of the Company in the State of Nevada. The Company may have such other offices as the Manager may designate from time to time.

2.4 **PURPOSES.** The purpose of the Company is everything allowable by law.

2.5 **FOREIGN QUALIFICATION.** Prior to the Company's conducting business in any jurisdiction other than Nevada, the Manager shall cause the Company to comply, to the extent procedures are available and those matters are reasonably within the control of the Manager or Members, with all requirements necessary to qualify the Company as a foreign limited liability company in that jurisdiction. At the request of the Manager or Members, each Member shall execute, acknowledge, swear to, and deliver all certificates and other instruments conforming with this Operating Agreement that are necessary or appropriate to qualify, continue, and terminate the Company as a foreign limited liability company in all such jurisdictions in which the Company may conduct business.

2.6 **TERM.** The Company commenced on the date the Nevada Secretary of State issued a certificate of organization for the Company and shall continue in existence for the period fixed in the Articles for the duration of the Company, or such earlier time as this Operating Agreement may specify.

2.7 **MERGERS AND EXCHANGES.** The Company may be a party to: (a) a merger; or (b) an exchange or acquisition permitted by the Act, subject to the requirements of this Operating Agreement.

2.8 **NO STATE-LAW PARTNERSHIP.** The Members intend that the Company not be a partnership (including, without limitation, a limited partnership) or joint venture, for any purposes other than federal and state tax purposes, and this Operating Agreement may not be construed to suggest otherwise.

ARTICLE III: MEMBERS

3.1 THREE CLASSES OF MEMBERSHIP INTEREST. The Company shall have three classes of Membership Interests: Class A Voting Membership Interests, Class B Non Voting Membership Interests and Class C Non Voting Membership Interests. Each of the Class A Membership Interests. Class B Membership Interests and Class C Membership Interests shall have certain rights, obligations and privileges, as provided in this Agreement.

3.2 MEMBERSHIP INTERESTS. The Member names and Class A Membership Interests of the Class A Members are set forth on SCHEDULE A. The Member names and Class B Membership Interests of the Class B Members are set forth on SCHEDULE A. The Member names and Class C Membership Interests of the Class C Members are set forth on SCHEDULE A.

3.3 CLASSES AND VOTING. The Company may issue voting Membership Interests and non-voting Membership Interests. The Membership certificates shall clearly designate so as to distinguish between voting and non-voting classes. Upon adoption of this Operating Agreement:

i. Class A Members shall have voting rights. All references in this Operating Agreement to discretionary actions subject to a vote of Members shall solely refer to Class A Members.

ii. Class B Members are **non-voting** Membership Interests.

iii. Class C Members are **non-voting** Membership Interests.

3.4 VOTING; PROXIES. Each outstanding Class A Membership Interest shall be entitled to one vote per one full percent of Class A Membership Interest owned by the Member on each matter submitted to a vote at a meeting of Members. A Member may vote either in person or by proxy executed in writing by the Member or by his duly authorized attorney in fact. No proxy shall be valid after eleven (11) months from the date of its execution unless otherwise provided in the proxy. Each proxy shall be revocable unless the proxy form conspicuously states that the proxy is irrevocable and the proxy is coupled with an interest.

3.5 QUORUM. Unless otherwise provided in the Articles, the holders of a simple majority of the Membership Interest entitled to vote, represented in person or by proxy, shall constitute a quorum at a meeting of Class A Members.

3.6 MAJORITY VOTE. With respect to any matter when a quorum is present at any meeting, the vote of the holders of a simple majority of the Membership Interest, present in person or represented by proxy, having voting power with respect to that matter, shall decide such matter brought before such meeting, unless the matter is one upon which, by express provision of the Articles or this Operating Agreement, or by an express provision of the Act which is applicable to such vote unless overridden by the Articles, a different vote is required, in which case such express provision shall govern and control the decision of such matter.

3.7 PLACE AND MANNER OF MEETING. All meetings of the Members shall be held at such time and place, within or without the State of Nevada, as shall be stated in the notice of the meeting or in a duly executed waiver of notice thereof. Members may participate in such meetings by means of conference telephone or similar communications equipment by means of which all Persons participating in the meeting can hear each other, and participation in a meeting as provided herein shall constitute presence in person at such meeting, except where a Person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

3.8 CONDUCT OF MEETINGS. All meetings of the Members shall be presided over by the chairman of the meeting, who shall be a Person designated by the Manager. The chairman of any meeting of Members shall determine the order of business and the procedure at the meeting, including such regulation of the manner of voting and the conduct of discussion as seem to him in order.

3.9 ANNUAL MEETING. An annual meeting of the Members shall be held each year. Failure to hold the annual meeting at the designated time shall not work as a dissolution of the Company.

3.10 SPECIAL MEETINGS. Special meetings of the Members may be called at any time by: (i) the

Manager of the Company; (ii) the President of the Company if such office exists; or (iii) the holders of at least five percent (5%) of the Class A Membership interests. Unless waived, notice of such special meeting must be made in writing at least ten days prior to the meeting date, and such notice shall state the purpose of such special meeting and the matters proposed to be acted on thereat. A quorum must be present for such meeting to be recognized and effective.

3.11 NOTICE. Written or printed notice stating the place, day and hour of the meeting and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than ten nor more than sixty days before the date of the meeting either personally or by mail, to each Member, provided that such notice may be waived as provided in this Operating Agreement. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail addressed to the Member at his address as it appears on the records of the Company, with postage thereon prepaid.

3.12 CLOSING RECORD BOOKS AND FIXING RECORD DATE. For the purpose of determining Members entitled to notice of or to vote at any meeting of Members or any adjournment thereof, or entitled to distribution or in order to make a determination of Members for any other proper purpose, the Manager may provide that the record books shall be closed for a stated period not exceeding sixty (60) days. If the record books shall be closed for the purpose of determining Members entitled to notice of or to vote at a meeting of Members, such books shall be closed for at least ten (10) days immediately preceding such meeting. In lieu of closing the record books, the Manager may fix in advance a date as the record date for any such determination of Members, such date in any case to be not more than sixty (60) days and in the case of a meeting of Members, not less than ten (10) days prior to the date of which the particular action requiring such determination of Members is to be taken. If the record books are not closed and no record date is fixed for the determination of Members entitled to notice of or to vote at a meeting of Members, or Members entitled to receive distribution, the date on which notice of the meeting is mailed or the date on which the resolution of the Manager, declaring such distribution is adopted, as the case may be, shall be the record date for such determination of Members. When a determination of Members entitled to vote at any meeting of Members has been made as provided in this Section, such determination shall apply to any adjournment thereof, except where the determination has been made through the closing of record books and the stated period of closing has expired.

3.13 ACTION WITHOUT MEETING. Any meeting, or any action required by the Act to be taken at a meeting of the Members, or any action which may be taken at a meeting of the Members (including any action requiring less than unanimous vote of the members), may be taken without a formal meeting, and without prior notice, but only if consent in writing, setting forth the action so taken, shall have been signed by the holders of all the Membership Interest for each class entitled to vote and such consent shall have the same force and effect as vote by formal meeting of the Members. Written consents made pursuant to this Section shall be signed and dated.

3.14 CONFIDENTIAL INFORMATION. The Members acknowledge that from time to time, they may receive information from the Manager or other Persons regarding the Company or Persons with which it does business. Each Member shall hold in strict confidence any information it receives regarding the Company that is identified as being confidential (and if that information is provided in writing, that is so marked) and may not disclose it to any person other than to another Member or a Manager, except for disclosures: (i) compelled by law (but the Member must notify the Manager promptly of any request for that information, before disclosing it, if practicable); (ii) to advisers or representatives of the Member or Persons to which that Member's Membership Interest may be Disposed as permitted by this Operating Agreement, but only if the recipients have agreed to be bound by the provisions of this Section; or (iii) of information that Member also has received from a source independent of the Company that the Member reasonably believes obtained that information without breach of any obligation of confidentiality. The Members acknowledge that breach of the provisions of this Section may cause irreparable injury to the Company for which monetary damages are inadequate, difficult to compute, or both. Accordingly, the Members agree that the provisions of this Section may be enforced by specific performance. The Members acknowledge that the Manager from time to time may determine, due to contractual obligations, business concerns, or other considerations, that certain information regarding the business, affairs, properties, and financial condition of the Company should be kept confidential and not provided to some or all other Members, and that it is not just or reasonable for those Members to examine or copy that information.

3.15 LIABILITIES TO THIRD PARTIES. Except as otherwise expressly agreed in writing, no

Member or the Manager shall be liable for the debts, obligations or liabilities of the Company.

3.16 WITHDRAWAL / SURRENDER. A Member may unilaterally withdraw from the Company as a Member, but only by ways of a written surrender of membership interest tendered to the Company and all Members then in existence.

3.17 LACK OF AUTHORITY TO BIND OR OBLIGATE. The Company is Manager-managed. No Member (other than a Manager or a duly appointed officer) has the authority or power to act for or on behalf of the Company, to do any act that would be obligating or binding on the Company, or to incur any expenditures on behalf of the Company.

3.18 REPRESENTATIONS AND WARRANTIES. Each Member hereby represents and warrants to the Company and each other Member that (a) if that Member is a corporation, it is duly organized, validly existing and in good standing under the law of the state of its incorporation and is duly qualified and in good standing as a foreign corporation in the jurisdiction of its principal place of business (if not incorporated therein); (b) if that Member is a limited liability company, it is duly organized, validly existing, and (if applicable) in good standing under the law of the state of its organization and is duly qualified and (if applicable) in good standing as a foreign limited liability company in the jurisdiction of its principal place of business (if not organized therein); (c) if that Member is a partnership, trust, or other entity, it is duly formed, validly existing, and (if applicable) in good standing under the law of the state of its formation, and if required by law is duly qualified to do business and (if applicable) in good standing in the jurisdiction of its principal place of business (if not formed therein), and the representations and warranties in Clause (a), (b), or (c), as applicable, are true and correct with respect to each partner (other than limited partners), trustee, or other Member thereof, (d) that Member has full corporate, limited liability company, partnership, trust, or other applicable power and authority to execute and agree to this Operating Agreement and to perform its obligations hereunder and all necessary actions by the board of directors, shareholders, Manager, Member(s), partners, trustees, beneficiaries, or other Persons necessary for the due authorization, execution, delivery, and performance of this Operating Agreement by that Member have been duly taken; (e) that Member has duly executed and delivered this Operating Agreement; and (f) that Member's authorization, execution, delivery, and performance of this Operating Agreement do not conflict with any other agreement or arrangement to which that Member is a party or by which it is bound.

3.19 ADMISSION OF ADDITIONAL MEMBERS. Following adoption of this Operating Agreement, the Company may admit one or more additional Members from time to time, but only upon the majority vote of all Class A Members then in existence. The terms of admission or issuance must specify the Capital Contributions applicable thereto, and may also provide for the creation of additional classes of Members and having different rights, powers, and duties, but is so then this Operating Agreement shall be amended to reflect such added classes. Upon the admission to the Company of any additional members, the Membership Interests of the other Members shall be reduced accordingly on a pro rata basis. SCHEDULE A shall be amended from time to time as of the effective date of the admission of an additional member to the Company. As a condition to being admitted to the Company, each additional member shall execute an agreement to be bound by the terms and conditions of this Agreement.

3.20 RESTRICTIONS ON TRANSFERENCE OF MEMBERSHIP INTEREST. Notwithstanding anything herein to the contrary, the Membership Interest and transferability of Membership Interest in the Company are substantially restricted. Neither record title nor beneficial ownership of a Membership Interest may be transferred or encumbered without the consent of all Members. This Company is formed by a closely-held group, who will have surrendered certain management rights (in exchange for limited liability) based upon their relationship and trust. Capital is also material to the business and investment objectives of the Company and its federal tax status. An unauthorized transfer of a Membership Interest could create a substantial hardship to the Company, jeopardize its capital base, and adversely affect its tax structure. These restrictions upon ownership and transfer are not intended as a penalty, but as a method to protect and preserve existing relationships based upon trust and the Company's capital and its financial ability to continue. Notwithstanding the foregoing restrictions upon transfer and ownership, the following transfers are permitted:

A. Death of a Member Who Is A Natural Person. The personal representative of a deceased Member's estate, or his or her contract beneficiary, may exercise all of the decedent's rights and powers as a Member,

and the decedent's Membership Interest in the Company will continue and pass to those entitled thereto upon the Member's death. It is specifically provided that a Member may prepare a written and acknowledged document in which he or she designates one or more beneficiaries of that Person's Membership Interest, and his or her written designation will be binding upon the Company if delivered to the Company before or within at least sixty 60 days after the death of the Member.

B. Estate Planning Transfers. A Member will also have the right to make estate planning transfers of all or any part of his or her Membership Interest in the Company. The term "estate planning transfer" will mean any transfer made during the life of a Member without value, or for less than full consideration, by way of a marital partition agreement and/or a transfer of all or any part of a Membership Interest to a trust whose beneficiary or beneficiaries are the Member and/or the spouse of a Member, and/or the descendants of a Member, and/or one or more beneficiaries qualified to receive a charitable gift under § 170(c) of the Code. The Articles and this Operating Agreement will bind the transferee of any estate planning transfer to the exact terms and conditions of the Articles and this Operating Agreement.

C. Transfers for Convenience. A Member who is a company may freely transfer its Membership to another company whose ownership is identical to the ownership of the assignor Member, provided, however, that such Member may not cause or permit an interest, direct or indirect, in itself to be disposed of such that, after the disposition, (a) the Company would be considered to have terminated within the meaning of §708 of the Code or (b) that Member shall cease to be controlled by substantially the same Persons who control it as of the date of its admission to the Company. On any breach of the provisions of clause (b) of the immediately preceding sentence, the Company shall have the option to buy, and on exercise of that option the breaching Member shall sell, the breaching Member's Membership Interest all in accordance with Article XI as if the breaching Member were a Bankrupt Member.

D. Approved Sale or Transfers. A Member may transfer its Membership to another Person upon the unanimous vote of all Class A Members.

3.21 DISPUTED TRANSFERS. The Company will not be required to recognize the interest of any transferee who has obtained a purported interest as the result of a transfer of ownership which is not an authorized transfer. If the Membership Interest is in doubt, or if there is reasonable doubt as to who is entitled to a distribution of the income realized from a Membership Interest, the Company may accumulate the income until this issue is finally determined and resolved. Accumulated income will be credited to the capital account of the Member whose interest is in question.

3.22 RIGHT OF FIRST REFUSAL. If any Person or agency should acquire the interest of a Member as the result of an order of a court of competent jurisdiction which the Company is required to recognize, or if a Member makes an unauthorized transfer of a Membership Interest which the Company is required to recognize, the interest of the transferee may then be acquired by the Company upon the following terms and conditions:

(a) The Company will have the unilateral option to re-acquire the Membership Interest by giving written notice to the transferee of its intent to purchase within 90 days from the date it is finally determined that the Company is required to recognize the transfer.

(b) The Company will have 180 days from the first day of the month following the month in which it delivers notice exercising its option to purchase the Membership Interest. The valuation date for the Membership Interest will be the first day of the month following the month in which notice is delivered.

(c) Unless the Company and the transferee agree otherwise, the fair market value of a Member's Membership Interest is to be determined by the written appraisal of a Person or firm qualified to value this type of business. The appraiser selected by the Company must be a member of and qualified by the American Society of Appraisers, Business Valuations Division, [P. O. Box 17265, Washington, DC 20041] to perform appraisals.

(d) Closing of the sale will occur at the registered office of the Company at 10 o'clock A.M. on the

first Tuesday of the month following the month in which the valuation report is accepted by the transferee (called the "closing date"). The transferee must accept or reject the valuation report within 30 days from the date it is delivered. If not rejected in writing within the required period, the report will be accepted as written. If rejected, closing of the sale will be postponed until the first Tuesday of the month following the month in which the valuation of the Membership Interest is resolved. The transferee will be considered a non-voting owner of the Membership Interest, and entitled to all items of income, deduction, gain or loss from the Membership Interest, plus any additions or subtractions therefrom until closing.

(e) In order to reduce the burden upon the resources of the Company, the Company will have the option, to be exercised in writing delivered at closing, to pay its purchase money obligation in 10 equal annual installments (or the remaining terms of the Company if less than 10 years) with interest thereon at market rates, adjusted annually as of the first day of each calendar year at the option of the Manager. The term "market rates" will mean the rate of interest prescribed as the "prime rate" as quoted in the money rates section of the Wall Street Journal, which is also the base rate on corporate loans at large United States money center commercial banks, as of the first day of the calendar year. If §§483 and 1274A of the Code apply to this transaction, the rate of interest of the purchase money obligation will be fixed at the rate of interest then required by law. The first installment of principal, with interest due thereon, will be due and payable on the first day of the calendar year following closing, and subsequent annual installments, with interest due thereon, will be due and payable, in order, on the first day of each calendar year which follows until the entire amount of the obligation, principal and interest, is fully paid. The Company will have the right to prepay all or any part of the purchase money obligation at any time without premium or penalty.

(f) The Manager may assign the Company's option to purchase to one or more of the Members (this with the affirmative consent of no less than 50% of the remaining Members, excluding the interest of the Member or transferee whose interest is to be acquired), and when done, any rights or obligations imposed upon the Company will instead become, by substitution, the rights and obligations of the Members who are assignees.

(g) Neither the transferee of an unauthorized transfer or the Member causing the transfer will have the right to vote during the prescribed option period, or if the option to purchase is timely exercised, until the sale is actually closed.

3.23 TAX TREATMENT OF TRANSFERRED MEMBERSHIP INTERESTS. With respect to any transferred Membership Interest that may occur, all items of income, gain, loss, deduction, and credit allocable to any transferred Membership Interest shall for tax purposes be allocated between the transferor and the transferee based on the portion of the calendar year during which each was recognized as owning that Membership Interest without regard to the results of Company operations during any particular portion of that calendar year and without regard to whether cash distributions were made to the transferor or the transferee during that calendar year; provided, however, that this allocation must be made in accordance with a method permissible under §706 of the Code and the regulations thereunder.

ARTICLE IV: CAPITAL CONTRIBUTIONS

4.1 INITIAL CONTRIBUTIONS. Contemporaneously with the execution by such Member of this Operating Agreement, each Member shall make the Capital Contributions described for that Member in SCHEDULES A and B. No interest shall be earned or paid on Capital Contributions or a member's capital account.

4.2 SUBSEQUENT CONTRIBUTIONS. If necessary and appropriate to enable the Company to meet its costs, expenses, obligations, and liabilities, and if no lending source is available, then the Manager shall notify each Class A Member ("Capital Call") of the need for any additional capital contributions, and such capital demand shall be made on each Class A Member in proportion to its Class A Membership Interest. Any such Capital Call notice must include a statement in reasonable detail of the proposed uses of the required additional capital

contributions and a date (which date may be no earlier than the fifth Business Day following each Member's receipt of its notice) before which the additional capital contributions must be made.

4.3 FAILURE TO CONTRIBUTE. If a Member does not contribute all of its share of a Capital Call by the time required, then either:

1) One or more Class A Members may provide the additional capital, with such added capital to be reflected in that Class A Member's Capital Contribution, however, such additional capital to be entitled to priority return superior to those set forth in Article V.

or

2) Any other Members, individually or in concert (the "Lending Member," whether one or more), to advance the portion of the Delinquent Member's Capital Call that is in default, with the following results:

(a) the sum advanced constitutes a loan from the Lending Member to the Delinquent Member and a Capital Contribution of that sum to the Company by the Delinquent Member pursuant to the applicable provisions of this Operating Agreement;

(b) the principal balance of the loan and all accrued unpaid interest thereon is due and payable in whole on the tenth day after written demand therefore by the Lending Member to the Delinquent Member;

(c) the amount loaned bears interest at the Default Interest Rate from the day that the advance is deemed made until the date that the loan, together with all interest accrued on it, is repaid to the Lending Member;

(d) all distributions from the Company that otherwise would be made to the Delinquent Member (whether before or after dissolution of the Company) instead shall be paid to the Lending Member until the loan and all interest accrued on it have been paid in full to the Lending Member (with payments being applied first to accrued and unpaid interest and then to principal);

(e) the payment of the loan and interest accrued on it is secured by a security interest in the Delinquent Member's Membership Interest, and the Lending Member may file a financing statement evidencing and perfecting such security interest; and

(f) the Lending Member has the right, in addition to the other rights and remedies granted to it pursuant to this Operating Agreement or available to it at law or in equity, to take any action (including, without limitation, court proceedings) that the Lending Member may deem appropriate to obtain payment by the Delinquent Member of the loan and all accrued and unpaid interest on it, at the cost and expense of the Delinquent Member.

4.4 RETURN OF CONTRIBUTIONS. Class A Members are not entitled to the return of any part of their Capital Contributions. In accordance with Article V, Class B Members and Class C Members are entitled to priority return of all of their Capital Contributions. An un-repaid Capital Contribution is not a liability of the Company or of any Member.

4.5 ADVANCES BY MEMBERS. If the Company does not have sufficient cash to pay its obligations, any Member(s) that may agree to do so with the Manager's consent may advance all or part of the needed funds to or on behalf of the Company. An advance described in this Section constitutes a loan from the Member to the Company, bears interest at the General Interest Rate from the date of the advance until the date of payment, and is not a Capital Contribution.

4.6 CAPITAL ACCOUNTS. A capital account shall be established and maintained for each Member,

by Class. The Members' capital accounts also shall be maintained and adjusted as permitted by the provisions of Treas. Reg. § 1.704-1 (b)(2)(iv)(f) and as required by the other provisions of Treas. Reg. § 1.704-1 (b)(2)(iv) and 1.704-1(b)(4), including adjustments to reflect the allocations to the Members of depreciation, depletion, amortization, and gain or loss as computed for book purposes rather than the allocation of the corresponding items as computed for tax purposes, as required by Treas. Reg. §1.704-l(b)(2)(iv)(g). On the transfer of all or part of a Membership Interest, the capital account of the transferor that is attributable to the transferred Membership Interest or part thereof shall carry over to the transferee Member in accordance with the provisions of Treas. Reg. §1.704-l(b)(2)(iv)(l).

ARTICLE V: ALLOCATIONS AND DISTRIBUTIONS

5.1 DISTRIBUTIONS. From time to time (but at least once each calendar quarter) the Manager shall determine in its reasonable judgment to what extent (if any) the Company's cash on hand exceeds its current and anticipated needs, including, without limitation, for operating expenses, debt service, acquisitions, and a reasonable contingency reserve. If such an excess exists, the Manager shall cause the Company to distribute to the Members an amount in cash (or property other than cash) equal to that excess. Distributions by the Manager shall be mandatory upon the affirmative vote of 95% or more of the Class A Members, subject to Section 5.5.

5.2 ALLOCATION OF PROFIT DISTRIBUTIONS OF THE COMPANY. Profit distributions of the Company in each fiscal quarter shall be allocated to the Members as follows:

i. first to the Class B Members, in proportion to their respective Class B Capital Contributions, in accordance with Section 5.3 ("Priority Return");

ii. next to the Class C Members, in proportion to their respective Class C Capital Contributions, in accordance with Section 5.3 ("Priority Return");

iii. next to the Class A Members in accordance with their respective Class A Membership Interests; provided, however, that Class A Members will only be allocated profit distributions after Class B Members and Class C Members have been paid their entire Priority Return.

5.3 TREATMENT OF CLASS B DISTRIBUTIONS. Class B profit distributions made pursuant to Section 5.2(i) shall be treated as a return of capital, and accordingly each Class B Member's Capital Contribution will be proportionately reduced by the dollar amount equal to the allocation of profit distributions made to that particular Class B Member, until their Capital Contribution is returned in full. Once each Class B Member's Capital Contribution is reduced to $0, the Class B class will cease to exist.

5.4 TREATMENT OF CLASS C DISTRIBUTIONS. Class C profit distributions made pursuant to Section 5.2(ii) shall be treated as a return of capital, and accordingly each Class C Member's Capital Contribution will be proportionately reduced by the dollar amount equal to the allocation of profit distributions made to that particular Class C Member, until their Capital Contribution is returned in full. Once each Class C Member's Capital Contribution is reduced to $0, the Class C class will cease to exist.

5.5 RIGHT TO RECEIVE DISTRIBUTIONS. Except as otherwise provided in NRS §86.391 and §86.521, at the time a Member becomes entitled to receive a distribution, the Member has the status of and is entitled to all remedies available to a creditor of the Company with respect to the distribution.

5.6 LIMITATION ON DISTRIBUTION. Notwithstanding any other provision in this Article, the Manager may not make a distribution to the Company's Members to the extent that, immediately after giving effect to the distribution, all liabilities of this Company, other than liabilities to Members with respect to their interests and liabilities for which the recourse of creditors is limited to specified property of this Company, exceed the fair value of this Company assets, except that the fair value of property that is subject to a liability for which recourse of creditors is limited shall be included in this Company's assets only to the extent that the fair value of that property exceeds that liability. However, a Member who receives such a distribution has no liability under the Act to return the distribution unless the Member knew that the distribution violated any provision of the Act.

ARTICLE VI: MANAGER

6.1 MANAGEMENT BY MANAGER.

A. Except for situations in which the approval of the Members is required by this Operating Agreement or by non-waivable provisions of applicable law, the powers of the Company shall be exercised by or under the authority of, and the business and affairs of the Company shall be managed under the direction of the Manager. No member shall take part in the management of the Company's business, transact any business in the Company's name or have the power to sign documents or otherwise bind the Company. The Manager may make all decisions and take all actions for the Company not otherwise provided for in this Operating Agreement, including, without limitation, the following:

(1) hiring, managing, and terminating officers, employees, and independent contractors

(2) entering into, making, and performing contracts, agreements, and other undertakings binding the Company that may be necessary, appropriate, or advisable in furtherance of the purposes of the Company;

(3) opening and maintaining bank and investment accounts and arrangements, drawing checks and other orders for the payment of money, and designating individuals with authority to sign or give instructions with respect to those accounts and arrangements;

(4) maintaining the assets of the Company in good order;

(5) collecting sums due the Company;

(6) to the extent that funds of the Company are available therefore, paying debts and obligations of the Company;

(7) acquiring, utilizing for Company purposes, and Disposing of any asset of the Company;

(8) borrowing money or otherwise committing the credit of the Company for Company activities and voluntary prepayments or extensions of debt;

(9) selecting, removing, and changing the authority and responsibility of lawyers, accountants, and other advisers and consultants;

(10) obtaining insurance for the Company;

(11) determining distributions of Company cash and other property as provided in Article V; and

(12) the institution, prosecution and defense of any proceeding in the Company's name.

B. Notwithstanding the provisions of Section 6.1 A., the Manager may not cause the Company to do any of the following without complying with the applicable requirements set forth below:

(1) sell, lease, exchange or otherwise dispose of (other than by way of a pledge, mortgage, deed of trust or trust indenture) all or substantially all the Company's property and assets (with or without good will), other than in the usual and regular course of the Company's business, without complying with the applicable procedures set forth in the Act, including, without limitation, the requirements set forth in this Operating Agreement regarding approval by the Members (unless such provision is rendered inapplicable by another provision of applicable law);

(2) be a party to (i) a merger, or (ii) an exchange or acquisition, without complying with the

applicable procedures set forth in the Act, including, without limitation, the requirements set forth in this Operating Agreement regarding approval by the Members (unless such provision is rendered inapplicable by another provision of applicable law);

(3) amend or restate the Articles, without complying with the applicable procedures set forth in the Act, including, without limitation, the requirements set forth in this Operating Agreement regarding approval by the Members, unless such provision is rendered inapplicable by another provision of applicable law.

6.2 ACTIONS BY MANAGER; DELEGATION OF AUTHORITY AND DUTIES.

A. In managing the business and affairs of the Company and exercising its powers, the Manager shall act: (i) collectively through meetings and written consents consistent as may be provided or limited in other provisions of this Operating Agreement; (ii) through officers to whom management authority and duties have been delegated, pursuant to subsection (C) below; and (iii) through committees comprised of Members and management, if any so may be appointed.

B. The Manager may, from time to time, designate one or more advisory boards to provide guidance and insight to the Company's strategic direction and operations, provided, however, that any such advisory board shall have no managerial authority or any other authority to act on behalf of or bind the Company.

C. The Manager may, from time to time, designate one or more natural persons to be officers of the Company. No officer need be a resident of the State of Nevada or a Member. Any officers so designated shall have such authority and perform such duties as the Manager may, from time to time, delegate to them. The Manager may assign titles to particular officers. Unless the Manager decide otherwise, if the title is one commonly used for officers of a business corporation formed under the NRS Chapter 78, the assignment of such title shall constitute the delegation to such officer of the authority and duties that are normally associated with that office but may also include other such specific delegation of authority and duties made to such officer by the Manager. Each officer shall hold office until his successor shall be duly designated and shall qualify or until his death or until he shall resign or shall have been terminated by Manager or the President of the Company, if any. Any number of offices may be held by the same person. The salaries or other compensation, if any, of the officers and agents of the Company shall be fixed from time to time by the Manager or the President of the Company (if such position has been appointed). Any officer may resign as such at any time. Such resignation shall be made in writing and shall take effect at the time specified therein, or if no time be specified, at the time of its receipt by the Manager. The acceptance of a resignation shall not be necessary to make it effective, unless expressly so provided in the resignation. Any officer may be removed as such, either with or without cause, by the Manager whenever in their judgment the best interests of the Company will be served thereby; provided, however, that such removal shall be without prejudice to the contract rights, if any, of the Person so removed. Designation of an officer shall not of itself create contract rights. Any vacancy occurring in any office of the Company may be filled by the Manager.

D. Any Person dealing with the Company, other than a Member, may rely on the authority of the Manager or officer in taking any action in the name of the Company without inquiry into the provisions of this Operating Agreement or compliance herewith, regardless of whether that action actually is taken in accordance with the provisions of this Operating Agreement.

6.3 AGENCY. The Manager and any appointed officers are agents of this Company for the purpose of any act carrying out the business of the Company, including the execution in the name of the Company of any instrument for apparently carrying on in the usual way the business of this Company.

6.4 COMPENSATION. The Manager shall be paid reasonable compensation and reimbursed for all expenses incurred on behalf of the Company.

6.5 REMOVAL AND RESIGNATION. The Manager may not be removed or terminated by the Members except by unanimous vote. The Manager may resign at any time. Such resignation shall be made in writing and shall take effect at the time specified therein.

6.6 VACANCIES. Any vacancy occurring in the position of Manager may be filled by the affirmative

vote of a majority of Class A Members by election at a special meeting of Members called for that purpose.

6.7 APPROVAL OR RATIFICATION OF ACTS OR CONTRACTS BY MEMBERS. The Manager in its discretion may submit any act or contract for approval or ratification at any annual meeting of the Members, or at any special meeting of the Members called for the purpose of considering any such act or contract, and any act or contract that shall be approved or be ratified by 98% of the Class A Members shall be as valid and as binding upon the Company and upon all the Members as if it shall have been approved or ratified by every Member of the Company.

6.8 INTERESTED MANAGER, OFFICERS AND MEMBERS.

A. No contract or transaction shall be voidable between this Company and any other Person in which the Company's Manager, any Member, or any officer is (i) that Person or (ii) holds a financial interest in that Person, if:

(1) The material facts as to the relationship or interest and as to the contract or transaction are disclosed or are known to all of the Members, and the Manager or committee in good faith authorizes the contract or transaction; or

(2) The material facts as to the relationship or interest and as to the contract or transaction are disclosed or are known to all Members entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of the Members; or

(3) The contract or transaction is fair as to this Company as of the time it is authorized, approved, or
ratified by the Manager or the Members.

B. A Member who is a Manager may be counted in determining the presence of a quorum at a meeting of the Members which authorizes the contract or transaction.

ARTICLE VII: INDEMNIFICATION

7.1 DEFINITIONS. For purposes of this Article VII:

A. "Limited Liability Company" includes any domestic or foreign predecessor entity of the Company in a merger, consolidation, or other transaction in which the liabilities of the predecessor are transferred to the Company by operation of law and in any other transaction in which the Company assumes the liabilities of the predecessor but does not specifically exclude liabilities that are the subject matter of this Article.

B. "Manager" means any Person who is or was a Manager of the Company and any Person who, while a Manager of the Company, is or was serving at the request of the Company as a Manager, officer, partner, venturer, proprietor, trustee, employee, agent, or similar functionary of another foreign or domestic limited liability company, corporation, partnership, joint venture, sole proprietorship, trust, employee benefit plan, or other enterprise.

C. "Expenses" include court costs and attorneys' fees.

D. "Official capacity" means: (1) when used with respect to a Manager, the office of Manager in the Company; and (2) when used with respect to a Person other than a Manager, the elective or appointive office in the Company held by the officer or the employment or agency relationship undertaken by the employee or agent on behalf of the Company; provided, however, that "official capacity" does not include service for any other foreign or domestic limited liability company, corporation, or any partnership, joint venture, sole proprietorship, trust, employee benefit plan, or other enterprise.

E. "Proceeding" means any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, arbitrative, or investigative, any appeal in such an action, suit, or proceeding, and any

inquiry or investigation that could lead to such an action, or proceeding.

7.2 STANDARD FOR INDEMNIFICATION. The Company shall indemnify a Person who was, is, or is threatened to be made a named defendant or respondent in a proceeding because the Person is or was a Manager or Officer of the Company, or for any action, related to Company or non-Company matters, if it is determined either by the Manager for any reason, or in accordance with this Article, that the Person:

A. conducted himself in good faith;

B. reasonably believed (i) in the case of conduct in his official capacity as a Manager of the Company, that his conduct was in the Company's best interests, and (ii) in all other cases, that his conduct was at least not opposed to the Company's best interests;

C. in the case of any criminal proceeding, had no reasonable cause to believe his conduct was unlawful; or

D. for any other reason as may be determined solely in the discretion of the Manager.

7.3 PROHIBITED INDEMNIFICATION. Except to the extent permitted by this Article, a Manager or Member may not be indemnified under any Section of this Article in respect of a proceeding:

A. in which the Person is found liable on the basis that personal benefit from company assets was improperly received by him; or

B. in which the Person is found liable to the Company.

Either the Manager or majority of the membership may elect to provide for such indemnification of the Manager or any party under any circumstance.

7.4 EFFECT OF TERMINATION OF PROCEEDING. The termination of a proceeding by judgment, order, settlement, or conviction, or on a plea of nolo contendere or its equivalent is not of itself determinative that the Person did not meet the requirements set forth in any Section of this Article. A Person shall be deemed to have been found liable in respect of any claim, issue or matter only after the Person shall have been so adjudged by a court of competent jurisdiction after exhaustion of all appeals therefrom. Until such time as to a final disposition, the Company shall provide the indemnification and defenses contemplated herein.

7.5 EXTENT OF INDEMNIFICATION. A Person shall be indemnified under this Article against judgments, penalties (including excise and similar taxes), fines, settlements, and reasonable expenses actually incurred by the Person in connection with the proceeding; but if the Person is found liable to the Company or is found liable on the basis that Personal benefit was improperly received by the Person, the indemnification shall (a) be limited to reasonable expenses actually incurred, and (b) not be made in respect of any proceeding in which the Person shall have been found liable for willful or intentional misconduct in the performance of such Person's duty to the Company.

7.6 DETERMINATION OF INDEMNIFICATION. A determination of indemnification under any Section of this Article may be made by (i) the Manager, (ii) legal counsel to the company, or (iii) by the Members in a vote.

7.7 AUTHORIZATION OF INDEMNIFICATION. Authorization of indemnification and determination as to reasonableness of expenses must be made in the same manner as the determination that indemnification is permissible, except that: (i) if the determination that indemnification is permissible is made by special legal counsel, authorization of indemnification and determination as to reasonableness of expenses must be made in the manner specified by the foregoing Section for the selection of special legal counsel; and (ii) the provision of this Article making indemnification mandatory in certain cases specified herein shall be deemed to constitute authorization in the manner specified by this Section of indemnification in such cases.

7.8 SUCCESSFUL DEFENSE OF PROCEEDINGS. Except as provided otherwise by law or by this Operating Agreement, the Company shall indemnify a Manager against reasonable expenses incurred by him in connection with a proceeding in which he is a named defendant or respondent if he has been wholly successful, on the merits or otherwise, in the defense of the proceeding.

7.9 COURT ORDER IN SUIT FOR INDEMNIFICATION. Indemnification required by the foregoing Section shall be subject to Order upon request by an indemnified party in a court of competent jurisdiction upon claim by the Manager as to entitlement to indemnification under that Section, the court shall order indemnification and shall award to the Manager the expenses incurred in securing the indemnification.

7.10 COURT DETERMINATION OF INDEMNIFICATION. Upon application of a Manager, a court of competent jurisdiction shall determine, after giving any notice the court considers necessary, that the Manager is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, whether or not he has met the requirements set forth in any Section of this Article or has been found liable in the circumstances described in any Section of this Article. The court shall order the indemnification that the court determines is proper and equitable; but, if the Person is found liable to the Company or is found liable on the basis that personal benefit was improperly received by the Person, the indemnification shall be limited to reasonable expenses actually incurred by the Person in connection with the proceeding.

7.11 ADVANCEMENT OF EXPENSES. Reasonable expenses incurred by a Manager who was, is, or is threatened to be made a named defendant or respondent in a proceeding shall be paid or reimbursed by the Company in advance of the final disposition of the proceeding, without the authorization or determination specified in this Article, after the Company receives a written affirmation by the Manager of his good faith belief that he has met the standard of conduct necessary for indemnification under this Article and a written undertaking, which must be an unlimited general obligation of the Manager (and can be accepted without reference to financial ability to make repayment) but need not be secured, made by or on behalf of the Manager to repay the amount paid or reimbursed if it is ultimately determined that he has not met that standard or if it is ultimately determined that indemnification of the Manager against expenses incurred by him in connection with that proceeding is prohibited by this Article. A provision contained in the Articles, this Operating Agreement, a resolution of Members or Manager, or an agreement that makes mandatory the payment or reimbursement permitted under this Section shall be deemed to constitute authorization of that payment or reimbursement.

7.12 EXPENSES OF WITNESS. Notwithstanding any other provision of this Article, the Company may pay or reimburse expenses incurred by a Manager in connection with his appearance as a witness or other participation in a proceeding at a time when he is not a named defendant or respondent in the proceeding, given that such appearance or participation occurs by reason of his being or having been a Manager of the Company.

7.13 INDEMNIFICATION OF OFFICERS. The Company may, at the discretion of the Manager, indemnify and advance or reimburse expenses to a Person who is or was an officer of the Company to the same extent that it shall indemnify and advance or reimburse expenses to Manager under this Article.

7.14 INDEMNIFICATION OF OTHER PERSONS. The Company may, at the discretion of the Manager, indemnify and advance expenses to any Person who is not or was not an officer, employee, or agent of the Company but who is or was serving at the request of the Company as a Manager, director, officer, partner, venturer, proprietor, trustee, employee, agent, or similar functionary of another foreign or domestic limited liability company, corporation, partnership, joint venture, sole proprietorship, trust, employee benefit plan or other enterprise to the same extent that it shall indemnify and advance expenses to Manager under this Article.

7.15 ADVANCEMENT OF EXPENSES TO OFFICERS AND OTHERS. The Company shall indemnify and advance expenses to an officer, and may indemnify and advance expenses to an employee or agent of the Company, or other Person who is identified in the foregoing Section and who is not a Manager, to such further extent as such Person may be entitled by law, agreement, vote of Members or otherwise.

7.16 CONTINUATION OF INDEMNIFICATION. The indemnification and advance payments provided by this Article shall continue as to a Person who has ceased to hold his position as a Manager, officer, employee or agent, or other Person described in any Section of this Article, and shall inure to his heirs, executors and

administrators.

7.17 LIABILITY INSURANCE. The Company may purchase and maintain insurance or another arrangement on behalf of any Person who is or was a Manager, officer, employee, or agent of the Company or who is or was serving at the request of the Company as a Manager, director, officer, partner, venturer, proprietor, trustee, employee, agent, or similar functionary of another foreign or domestic limited liability company, corporation, partnership, joint venture, sole proprietorship, trust, employee benefit plan or other enterprise, against any liability asserted against him and incurred by him in such a capacity or arising out of his status as such a Person, whether or not the Company would have the power to indemnify him against that liability under this Article. If the insurance or other arrangement is with a Person or entity that is not regularly engaged in the business of providing insurance coverage, the insurance or arrangement may provide for payment of a liability with respect to which the Company would not have the power to indemnify the Person only if including coverage for the additional liability has been approved by the Members of the Company. Without limiting the power of the Company to procure or maintain any kind of insurance or other arrangement, the Company may, for the benefit of Persons indemnified by the Company, (1) create a trust fund; (2) establish any form of self-insurance; (3) secure its indemnity obligation by grant of a security interest or other lien on the assets of the Company; or (4) establish a letter of credit, guaranty, or surety arrangement. The insurance or other arrangement may be procured, maintained, or established within the Company or with any insurer or other Person deemed appropriate by the Manager regardless of whether all or part of the stock or other securities of the insurer or other Person are owned in whole or part by the Company. In the absence of fraud, the judgment of the Manager as to the terms and conditions of the insurance or other arrangement and the identity of the insurer or other Person participating in an arrangement shall be conclusive and the insurance or arrangement shall not be avoidable and shall not subject the Manager approving the insurance or arrangement to liability, on any ground, regardless of whether Manager participating in the approval are beneficiaries of the insurance or arrangement.

ARTICLE VIII: CERTIFICATES

8.1 CERTIFICATES. Certificates in the form determined by the Manager shall be executed representing all Membership Interests then outstanding, as may change from time to time. Such certificates shall be consecutively numbered, and shall be entered in the books of the Company as they are issued. Each certificate shall state on the face thereof the holder's name, the class of membership, the Membership Interest, and such other matters as may be required by the laws of the State of Nevada. They shall be signed by a Manager or officer of the Company, and may be sealed with the seal of the Company if adopted. A Member has the right to possess the original certificate, provided, however, that the Manager may keep a copy of such certificate in the records of the Company.

8.2 REPLACEMENT OF LOST OR DESTROYED CERTIFICATE. The Manager may direct a new certificate or certificates to be issued in place of any certificate or certificates theretofore issued by the Company alleged to have been lost or destroyed, upon the making of an affidavit of that fact by the holder of record thereof, or his duly authorized attorney or legal representative who is claiming the certificate to be lost or destroyed. When authorizing such issue of a new certificate or certificates, the Manager in its discretion and as a condition precedent to the issuance thereof, may require the owner of such lost or destroyed certificate or certificates or his legal representative to advertise the same in such manner as it shall require or to give the Company a bond with surety and in form satisfactory to the Company (which bond shall also name the Company's transfer agents and registrars, if any, as obligees) in such sum as it may direct as indemnity against any claim that may be made against the Company or other obligees with respect to the certificate alleged to have been lost or destroyed, or to both advertise and also give such bond.

8.3 TRANSFER OF MEMBERSHIP INTEREST. Upon surrender to the Company or the transfer agent of the Company of a certificate for Membership Interest duly endorsed or accompanied by proper evidence of succession, assignment or authority to transfer, it shall be the duty of the Company to issue a new certificate to the Person entitled thereto, cancel the old certificate, and record the transaction upon its books.

8.4 REGISTERED MEMBERS. The Company shall be entitled to treat the holder of record of any certificate or certificate of Membership interest of the Company as the owner thereof for all purposes and, accordingly shall not be bound to recognize any equitable or other claim to or interest in such Membership interest or

any rights deriving from such Membership Interest on the part of any other Person, including (but without limitation) a purchaser, assignee or transferee, unless and until such other Person becomes a Member, whether or not the Company shall have either actual or constructive notice of the interest of such Person, except as otherwise provided by law.

ARTICLE IX: TAXES

9.1 TAX RETURNS. The tax matters partner, as defined in Section 9.3, shall cause to be prepared and filed any necessary federal and state income tax returns for the Company, including making the elections described in Section 9.2. Each Member shall furnish to the tax matters partner all pertinent information in its possession relating to Company operations that is necessary to enable the Company's income tax returns to be prepared and filed.

9.2 TAX ELECTIONS. The Company may make the following elections on the appropriate tax returns:

A. to adopt the calendar year as the Company's fiscal year;

B. to adopt the cash method of accounting and to keep the Company's books and records on the income-tax method;

C. if a distribution of Company property as described in §734 of the Code occurs or if a transfer of a Membership Interest as described in §743 of the Code occurs, on written request of any Member, to elect, pursuant to §754 of the Code, to adjust the basis of Company properties;

D. to elect to amortize the organizational expenses of the Company and the start-up expenditures of the Company under §195 of the Code as permitted by §709(b) of the Code; and

E. any other election the Manager may deem appropriate and in the best interests of the Members.

9.3 TAX MATTERS PARTNER. The Manager shall designate itself to be the "tax matters partner" of the Company pursuant to §6231(a)(7) of the Code. The tax matters partner shall take such action as may be necessary to cause each other Member to become a "notice partner" within the meaning of §6223 of the Code. Any Member who is designated tax matters partner shall inform each other Member of all significant matters that may come to its attention in its capacity as tax matters partner by giving notice thereof on or before the fifth Business Day after becoming aware thereof and, within that time, shall forward to each other Member copies of all significant written communications it may receive in that capacity. The tax matters partner may not take any action contemplated by §§6222 through 6232 of the Code without the consent of a majority of Members but this sentence does not authorize any action left to the determination of an individual Member under §§6222 through 6232 of the Code.

ARTICLE X: NOTICE

10.1 METHOD. Whenever by statute or the Articles or this Operating Agreement, notice is required to be given to any Member or the Manager, and no provision is made as to how the notice shall be given, it shall not be construed to mean personal notice, but any such notice may be given in writing, postage prepaid, addressed to the Manager or Member at the address appearing on the books of the Company, or in any other method permitted by law. Any notice required or permitted to be given by mail shall be deemed given at the time when the same is thus deposited in the United States mail.

10.2 WAIVER. Whenever, by statute or the Articles or this Operating Agreement, notice is required to be given to any Member or Manager, a waiver thereof in writing signed by the Person or Persons entitled to such notice, whether before or after the time stated in such notice, shall be equivalent to the giving of such notice. Attendance of the Manager or a Member at a meeting shall constitute a waiver of notice of such meeting, except

where a Manager or Member attends for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not lawfully called or convened.

ARTICLE XI: BANKRUPTCY OF A MEMBER

11.1 BANKRUPTCY. If any Member becomes a Bankrupt Member, the Company shall have the option, exercisable by notice from the Manager to the Bankrupt Member (or its representative) at any time prior to the 180th day after receipt of notice of the occurrence of the event causing it to become a Bankrupt Member, to buy, and on the exercise of this option the Bankrupt Member's bankruptcy estate (or the trustee thereof) shall sell, its Membership Interest to the Company. The purchase price shall be a dollar amount equal to the Class A Capital Contribution of the Bankrupt Member plus the remaining Class B capital account, if any, of that Bankrupt Member. The payment to be made to the Bankrupt Member or its estate pursuant to this Section is in complete liquidation and satisfaction of all the rights and interest of the Bankrupt Member and its estate (and of all Persons claiming through the Bankrupt Member and its estate) in and in respect to the Company, including, without limitation, any Membership Interest, any rights in specific Company property, and any rights against the Company and (insofar as the affairs of the Company are concerned) against the Members.

ARTICLE XII: DISSOLUTION, LIQUIDATION, AND TERMINATION

12.1 DISSOLUTION. The Company shall dissolve and its affairs shall be wound up on the written consent of all Members.

12.2 LIQUIDATION AND TERMINATION. On dissolution of the Company, the Manager shall act as liquidator or may appoint one or more Members as liquidator. If there is no Manager then the Members by majority vote will appoint one or more Members as liquidator. The liquidator shall proceed diligently to wind up the affairs of the Company and make final distributions as provided herein and in the Act. The costs of liquidation shall be borne as a Company expense. Until final distribution, the liquidator shall continue to operate the Company properties with all of the power and authority of the Manager. The steps to be accomplished by the liquidator are as follows:

A. as promptly as possible after dissolution and again after final liquidation, the liquidator shall cause a proper accounting to be made by a recognized firm of certified public accountants of the Company's assets, liabilities, and operations through the last day of the calendar month in which the dissolution occurs or the final liquidation is completed, as applicable;

B. the liquidator shall provide written notice to be mailed to each known creditor of and claimant against the Company;

C. the liquidator shall pay, satisfy or discharge from Company funds all of the debts, liabilities and obligations of the Company (including, without limitation, all expenses incurred in liquidation) or otherwise make adequate provision for payment and discharge thereof (including, without limitation, the establishment of a cash escrow fund for contingent liabilities in such amount and for such term as the liquidator may reasonably determine); and

D. all remaining assets of the Company shall be distributed to the Members as follows:

(1) the liquidator may sell any or all Company property, including to Members, and any resulting gain or loss from each sale shall be computed and allocated to the capital accounts of the Members;

(2) with respect to all Company property that has not been sold, the fair market value of that property shall be determined and the capital accounts of the Members shall be adjusted to reflect the manner in which the unrealized income, gain, loss, and deduction inherent in property that has not been reflected in the capital accounts previously would be allocated among the Members if there were a taxable disposition of that property for the fair market

value of that property on the date of distribution; and

(3) Company property shall be distributed among the Members in accordance with the positive capital account balances of the Members, as determined after taking into account all capital account adjustments for the taxable year of the Company during which the liquidation of the partnership occurs (other than those made by reason of this Clause (3)); and those distributions shall be made by the end of the taxable year of the Company during which the liquidation of the Company occurs (or, if later, 90 days after the date of the liquidation). All distributions in kind to the Members shall be made subject to the liability of each distributee for costs, expenses, and liabilities theretofore incurred or for which the Company has committed prior to the date of termination and those costs, expenses, and liabilities shall be allocated to the distributee pursuant to this Section 12.2. The distribution of cash and/or property to a Member in accordance with the provisions of this Section 12.2 constitutes a complete return to the Member of its Capital Contributions and a complete distribution to the Member of its Membership Interest and all the Company's property and constitutes a compromise to which all Members have consented. To the extent that a Member returns funds to the Company, it has no claim against any other Member for those funds.

12.3 DEFICIT CAPITAL ACCOUNTS. Notwithstanding anything to the contrary contained in this Operating Agreement, and notwithstanding any custom or rule of law to the contrary, to the extent that the deficit, if any, in the capital account of any Member results from or is attributable to deductions and losses of the Company (including non-cash items such as depreciation), or distributions of money pursuant to this Operating Agreement to all Members in proportion to their respective Capital Contributions, upon dissolution of the Company such deficit shall not be an asset of the Company and such Members shall not be obligated to contribute such amount to the Company to bring the balance of such Member's capital account to zero.

12.4 ARTICLES OF DISSOLUTION. On completion of the distribution of Company assets as provided herein, the Company is terminated, and the Manager or a Member shall file Articles of Dissolution with the Secretary of State of Nevada and take such other actions as may be necessary to terminate the Company.

ARTICLE XIII: GENERAL PROVISIONS

13.1 BOOKS AND RECORDS.

A. The Company shall maintain those books and records as provided by statute and as it may deem necessary or desirable. All books and records provided for by statute shall be open to inspection of the Members from time to time and to the extent expressly provided by statute. The Manager may examine all such books and records at all reasonable times. The Company shall keep and maintain the following records in its principal office in the United States or make them available in that office within five days after the date of receipt of a written request as may be specified in the Act:

(1) a current list that states:

- **(a)** the name and mailing address of each Member;
- **(b)** the percentage or other interest in the Company owned by each Member; and
- **(c)** if one or more classes or groups are established in or under the Articles or this Operating Agreement, the names of the Members who are Members of each specified class or group;

(2) copies of the federal, state, and local information or income tax returns for the Company's six most recent tax years.

(3) a copy of the Articles and this Operating Agreement, all amendments or restatements, executed copies of any powers of attorney, and copies of any document that creates, in the

manner provided by the Articles or this Operating Agreement, classes or groups of Members;

(4) unless contained in the Articles or this Operating Agreement, a written statement of:

(a) the amount of the cash contribution and a description and statement of the agreed value of any other contribution made by each Member, and the amount of the cash contribution and a description and statement of the agreed value of any other contribution that the Member has agreed to make in the future as an additional contribution;
(b) the times at which additional contributions are to be made or events requiring additional contributions to be made;
(c) events requiring the Company to be dissolved and its affairs wound up; and
(d) the date on which each Member in the Company became a Member; and

(5) correct and complete books and records of accounts of the Company.

B. The Company shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time.

C. The Company shall keep in its registered office in Nevada and make available to Members on reasonable request the street address of its principal United States office in which the records required by this Section are maintained or will be available.

D. A Member, on written request stating the purpose, may examine and copy, in person or by the Member's representative, at any reasonable time, for any proper purpose, and at the Member's expense, records required to be kept under this Section and other information regarding the business, affairs, and financial condition of the Company as is just and reasonable for the Person to examine and copy.

E. On the written request by any Member, the Manager shall provide to the requesting Member or assignee, without charge, true copies of:

(1) the Articles and this Operating Agreement and all amendments or restatements; and
(2) any of the tax returns described in the Act.

13.2 AMENDMENT OR MODIFICATION. This Operating Agreement may be amended or modified from time to time only by a written instrument adopted by the affirmative vote of 98% or more of the Class A Members.

13.3 CHECKS, NOTES, DRAFTS, ETC. All checks, drafts or other orders for payment of money, notes or other evidences of indebtedness issued in the name of or payable to the Company shall be signed or endorsed by one or more designated Persons appointed by the Manager or Chief Financial Officer of the Company, if such officer position exists.

13.4 HEADINGS. The headings used in this Operating Agreement have been inserted for convenience only and do not constitute matter to be construed in interpretation.

13.5 CONSTRUCTION. Whenever the context so requires, the gender of all words used in this Operating Agreement includes the masculine, feminine, and neuter, and the singular shall include the plural, and conversely. All references to Articles and Sections refer to articles and sections of this Operating Agreement, and all references to Exhibits or Schedules, if any, are to Exhibits or Schedules attached hereto, if any, each of which is made a part hereof for all purposes. If any portion of this Operating Agreement shall be invalid or inoperative, then, so far as is reasonable and possible:

A. The remainder of this Operating Agreement shall be considered valid and operative; and
B. Effect shall be given to the intent manifested by the portion held invalid or inoperative.

13.6 ENTIRE AGREEMENT; SUPERSEDURE. This Operating Agreement constitutes the entire agreement of the Members of the Company and supersedes all prior contracts or agreements with respect to the Company, whether oral or written.

13.7 EFFECT OF WAIVER OR CONSENT. A waiver or consent, express or implied, to or of any breach or default by any Person in the performance by that Person of its obligations with respect to the Company is not a consent or waiver to or of any other breach or default in the performance by that Person of the same or any other obligations of that Person with respect to the Company. Failure on the part of a Person to complain of any act of any Person or to declare any Person in default with respect to the Company, irrespective of how long that failure continues, does not constitute a waiver by that Person of its rights with respect to that default until the applicable statute-of-limitations period has run.

13.8 BINDING EFFECT. Subject to the restrictions on Dispositions set forth in this Operating Agreement, this Operating Agreement is binding on and inures to the benefit of the Members and their respective heirs, legal representatives, successors, and assigns.

13.9 DISPUTE RESOLUTION - BINDING ARBITRATION ELECTION. Any dispute, controversy or claim arising out of or relating to this Agreement or the breach thereof shall solely be settled by arbitration under the Commercial Arbitration Rules of the American Arbitration Association ("AAA"). The parties specifically waive any rights to litigation as a dispute resolution methodology and further divest any Court of jurisdiction to determine disputes between the parties to this Agreement. Notwithstanding, judgment on the arbitrator's award may be entered in any court having jurisdiction thereof. The arbitration shall be held in the City of Las Vegas and State of Nevada, in the English language, and shall be conducted before three arbitrators, wherein the party calling for arbitration selects one arbiter, the party defending selects one arbiter and the arbiters select a third, agreeable to the parties or, if no agreement can be reached, then selected by the AAA. All costs related to the arbitration shall initially be borne by the aggrieved party. The arbitrators shall make findings of fact and law in writing in support of his decision, and shall award reimbursement of attorney's fees and other costs of arbitration to the prevailing party as the arbitrator deems appropriate. The provisions hereof shall not preclude any party from seeking post arbitration injunctive relief to protect or enforce its rights hereunder, or prohibit any court from making findings of fact in connection with granting or denying such injunctive relief after and in accordance with the decision of the arbitrator. No decision of the arbitrator shall be subject to judicial review or appeal; the parties waive any and all rights of judicial appeal or review, on any ground, of any decision of the arbitrator.

13.10 LIQUIDATED DAMAGES PROVISION. Should any party initiate a civil proceeding against any other, notwithstanding the binding arbitration provision above, such party initiating civil litigation shall recognize that it has caused material damage and harm to the other by way of their breach of this agreement, and agrees to provide to the named defendant party, liquidated damages in the amount of any costs of defense incurred by the aggrieved party plus ten thousand dollars ($10,000.00).

13.11 GOVERNING LAW; SEVERABILITY. THIS OPERATING AGREEMENT IS GOVERNED BY AND SHALL BE CONSTRUED IN ACCORDANCE WITH THE LAW OF THE STATE OF NEVADA, EXCLUDING ANY CONFLICT-OF-LAWS RULE OR PRINCIPLE THAT MIGHT REFER THE GOVERNANCE OR THE CONSTRUCTION OF THIS OPERATING AGREEMENT TO THE LAW OF ANOTHER JURISDICTION. In the event of a direct conflict between the provisions of this Operating Agreement and (a) any provision of the Articles, or (b) any mandatory provision of the Act, the applicable provision of the Act shall control. If any provision of this Operating Agreement or the application thereof to any Person or circumstance is held invalid or unenforceable to any extent, the remainder of this Operating Agreement and the application of that provision to other Persons or circumstances is not affected thereby and that provision shall be enforced to the greatest extent permitted by law.

13.12 FURTHER ASSURANCES. In connection with this Operating Agreement and the transactions contemplated hereby, each Member shall execute and deliver any additional documents and instruments and perform any additional acts that may be necessary or appropriate to effectuate and perform the provisions of this Operating Agreement and those transactions.

13.13 NOTICE TO MEMBERS OF PROVISIONS OF THIS AGREEMENT. By executing this

Operating Agreement, each Member acknowledges that it has actual notice of: (a) all of the provisions of this Operating Agreement, including, without limitation, the restrictions on the transfer of Membership Interests set forth in Article III; and (b) all of the provisions of the Articles. Each Member hereby agrees that this Operating Agreement constitutes adequate notice of all such provisions, including, without limitation, any notice requirement under the Chapter 86 of the Nevada Revised Statutes and under the Nevada Uniform Commercial Code, and each Member hereby waives any requirement that any further notice thereunder be given.

13.14 COUNTERPARTS. This Operating Agreement may be executed in any number of counterparts with the same effect as if all signing parties had signed the same document. All counterparts shall be construed together and constitute the same instrument.

13.15 CONFLICTING PROVISIONS. To the extent that one or more provisions of this Operating Agreement appear to be in conflict with one another, then the Manager shall have the right to choose which of the conflicting provisions are to be enforced. Wide latitude is given to the Manager in interpreting the provisions of this Operating Agreement to accomplish the purposes and objectives of the Company, and the Manager may apply this Operating Agreement in such a manner as to be in the best interest of the Company, in their sole discretion, even if such interpretation or choice of conflicting provisions to enforce is detrimental to one or more Members or the Manager.

# # # # #

IN WITNESS WHEREOF, the undersigned hereby certify that the foregoing Operating Agreement was unanimously adopted by the Members and Manager, effective as of the first date written in the preamble above, and we have hereunto affixed our signatures.

MANAGER:

MANAGER: **SJC VENTURES HOLDING COMPANY LLC**, a Delaware limited liability company

By: _____
Jay Bloom, Manager

MEMBERS:

MEMBER: **SJC VENTURES HOLDING COMPANY LLC**, a Delaware limited liability company

By: _____
Jay Bloom, Manager

MEMBER: **CBWE, LLC**, a Nevada limited liability company

By: _____
Carlos Cardenas, Manager

MEMBER: **MAMBER VENTURES LLC**, a Nevada limited liability company

By: _____
Manuel A. Ramirez Pleitez, Manager

MEMBER: **PALADIN VENTURES, LLC**, a Nevada limited liability company

By: **LS MARLO TRUST**

By: _____
J. Chris Morgando, Trustee

MEMBER: **BART RENDEL**, an individual

By: _____
Bart Rendel, individually

MEMBER: **DUSTIN LEWIS**, an individual

By: _____
Dustin Lewis, individually

MEMBER: **SCOTT OLIFANT**, an individual

By: _____
Scott Olifant, Esq., individually

MEMBER: **ROBERT CURLEY**, an individual

By: _____
Robert Curley, individually

Chris Wood, an individual

By: _____
Chris Wood, individually

MEMBER: **HANNAH HARVEY**, an individual

By: _____
Hannah Harvey, individually

MEMBER: **JETHRO WAYNE GORDON**, an individual

By: _____
Jethro Wayne Gordon., individually

MEMBER: **WENDELL BROWN**, an individual

By: _____
Wendell Brown, individually

MEMBER: **JEFFREY ALBREGTS**, an individual

By: _____
Jeffrey Albregts, individually

MEMBER: **GLENN PLANTONE**, an individual

By: _____
Glenn Plantone, individually

MEMBER: **ERIN QUATRALE**, an individual

By: _____
Erin Quatrale, individually

MEMBER: **MARILYN WILEY**, an individual

By: _____
Marilyn Wiley, individually

MEMBER: **DENNIS WILEY**, an individual

By: _____
Dennis Wiley, individually

MEMBER: **MARK HOSTETLER**, an individual

By: _____
Mark Hostetler, individually

MEMBER: **ALAN AND THERESA LAHRS**, jointly and individually

By: _____
Alan Lahrs Theresa Lahrs

MEMBER: **IZZY ZALCBERG**, an individual

By: _____
Izzy Zalcberg, individually

Kregg Hale, an individual

By: Kregg S. Hale
Kregg Hale, individually

MEMBER: **JEAN KEMPNER**, an individual

By: _____
Jean Kempner, individually

MEMBER: **AMY AND ARMAND FARR**, jointly and individually

By: _____
Amy Farr Armand Farr

MEMBER: **KENT ADAMSON**, an individual

By: _____
Kent Adamson, individually

MEMBER: **BASIS INVESTMENTS**, LLC a Texas Limited Liability Company

By: _____
Phil Bourassa, Member

MEMBER: **GREG AND LAURIE DARROCH**, jointly and individually

By: _____
Greg Darroch Laurie Darroch

MEMBER: **CATHERYN COPE**, an individual

By: _____
Catheryn Cope, individually

Schedule A:
List of Members

Paid in Capital		Series A	PIC	Series B	PIC	Series C	PIC
$ 185.00	Paladin Ventures, LLC	7.500%	$ 185.00				
$ 185.00	Mamber Ventures, LLC	7.500%	$ 185.00				
$ 185.00	CBWE, LLC	6.000%	$ 185.00				
$ 185.00	SJC, LLC	45.625%	$ 185.00				
$ 65.00	Mark Hostetler	6.500%	$ 65.00				
$ 30.00	Bart Rendel, COO	3.000%	$ 30.00				
$ 20.00	Dustin Lewis, CFO	2.000%	$ 20.00				
$ 20.00	Rob Curley, CTO	2.000%	$ 20.00				
$ 20.00	Wendell Brown	2.000%	$ 20.00				
$ 17.50	Dennis Wiley	1.750%	$ 17.50				
$ 15.00	Scott Olifant, Esq	1.625%	$ 16.25				
$ 6.88	Marilyn Wiley	0.688%	$ 6.88				
$ 5.00	Jeffrey Albregts	0.500%	$ 5.00				
$ 1.88	Glenn Plantone	0.188%	$ 1.88				
$ 1.25	Hannah Harvey	0.125%	$ 1.25				
$ 1.25	Jethro Gordon	0.125%	$ 1.25				
$ 0.63	Erin Quatrale	0.063%	$ 0.63				
$ 500,000.00	Basis Investments, LLC	5.000%	$ 50.00	50.00%	$ 499,950.00		
$ 100,000.00	Marylin Wiley	1.000%	$ 10.00	10.00%	$ 99,990.00		
$ 100,000.00	Kent Adamson	1.000%	$ 10.00	10.00%	$ 99,990.00		
$ 50,000.00	Alan & Theresa Lahrs	0.500%	$ 5.00	5.00%	$ 49,995.00		
$ 50,000.00	Alan & Theresa Lahrs	0.500%	$ 5.00	5.00%	$ 49,995.00		
$ 50,000.00	Jean Kempner	0.500%	$ 5.00	5.00%	$ 49,995.00		
$ 50,000.00	Jeffrey Albregts	0.500%	$ 5.00	5.00%	$ 49,995.00		
$ 50,000.00	Amy and Armond Farr	0.500%	$ 5.00	5.00%	$ 49,995.00		
$ 25,000.00	Scott Olifant, Esq	0.250%	$ 2.50	2.50%	$ 24,997.50		
$ 25,000.00	Glenn Plantone	0.250%	$ 2.50	2.50%	$ 24,997.50		
$ 1.88	Scott Olifant, Esq	0.188%	$ 1.88				
$ 3.75	Glenn Plantone	0.375%	$ 3.75				
$ 1.25	JWL Management	0.125%	$ 1.25				
$ 2.50	Greg and Laurie Darroch	0.250%	$ 2.50				
$ 100,000.00	Greg and Laurie Darroch	0.500%	$ 5.00			2.00%	$ 99,995.00
$ 50,000.00	Laurie Darroch	0.250%	$ 2.50			1.00%	$ 49,997.50
$ 50,000.00	Catheryn Cope	0.250%	$ 2.50			1.00%	$ 49,997.50
$ 50,000.00	JWL Management	0.250%	$ 2.50			1.00%	$ 49,997.50
$ 50,000.00	Glenn Plantone	0.250%	$ 2.50			1.00%	$ 49,997.50
$ 75,000.00	Scott Olifant	0.375%	$ 3.75			1.00%	$ 74,996.25
$ 1,375,953.76	Total	100.000%	$ 1,073.76	100.00%	$ 999,900.00	7.00%	$ 374,981.25

ORDR

GARMAN TURNER GORDON LLP
ERIKA PIKE TURNER
Nevada Bar No. 6454
Email: eturner@gtg.legal
7251 Amigo Street, Suite 210
Las Vegas, Nevada 89119
Tel: (725) 777-3000
Fax: (725) 777-3112
Attorneys for Plaintiff

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 **ORDER GRANTING PLAINTIFF'S MOTION TO CONFIRM ARBITRATION AWARD AND DENYING DEFENDANTS' COUNTERMOTION TO MODIFY AWARD; AND JUDGMENT** **Date of Hearing: November 2, 2020** **Time of Hearing: 9:00 a.m.**

On October 1, 2020, Plaintiff TGC/FARKAS FUNDING, LLC ("Plaintiff") filed the *Motion to Confirm Arbitration Award* (the "Motion"). Defendants First 100, LLC and First One Hundred Holdings, LLC ("Defendants") filed their *Limited Opposition to Confirm Arbitration Award* (the "Opposition") *and Countermotion to Modify Award Per NRS 38.242* (the "Countermotion") on October 15, 2020, and Plaintiff filed its *Reply to Defendants' Limited Opposition to Confirm Arbitration Award and Countermotion to Modify Award Per NRS 38.242* (the "Reply") on October 26, 2020. This Court held a hearing on November 2, 2020.

The Court, having considered the Motion, the Opposition and Countermotion, and the Reply, as well as the oral argument of counsel, finds and concludes as follows:

On January 7, 2020, Plaintiff initiated an arbitration with the American Arbitration Association against Defendants relating to whether Plaintiff was entitled to the production and examination of Defendants' records. The requested records were set forth in Exhibit 13 to

Claimant's Appendix to Claimant's Arbitration Brief.

On September 15, 2020, the Arbitration Panel issued its Decision and Award of Arbitration Panel (the "Final Award") (1) ordering that Defendants "forthwith, but no later than ten (10) calendar days from the date of [the Final Award], make all the requested documents and information available from both companies to [Plaintiff] for inspection and copying," and (2) awarding attorneys' fees and arbitration panel fees to Plaintiff in the total sum of $23,975.00, which sum was also to be paid within ten (10) calendar days from the date of the Final Award.

Plaintiff served Defendants with this action and Motion on October 7 and October 8, 2020.

Defendants are both Nevada limited-liability companies and subject to the Court's jurisdiction.

NRS 38.239 authorizes an applicant to move for confirmation of a final arbitration decision. The plain language of the statute requires this Court to confirm the Final Award unless it is modified, corrected, or vacated. Furthermore, Defendants do not oppose the confirmation of the Final Award.

Instead, Defendants' Countermotion requests that the Court modify the Final Award to require Plaintiff to pay, in advance, fees and costs associated with Defendants' production of the requested company records. Defendants contend that the requested modification is permitted under NS 38.242(1)(c).

NRS 38.242 allows an award to be modified or corrected, but only if:

> (a) There was an evident mathematical miscalculation or an evident mistake in the description of a person, thing or property referred to in the award;
> (b) The arbitrator has made an award on a claim not submitted to the arbitrator and the award may be corrected without affecting the merits of the decision upon the claims submitted; or
> (c) The award is imperfect in a matter of form not affecting the merits of the decision on the claims submitted.

NRS 38.242(1). The Court finds that none of these situations apply here.

The Court finds that the modification requested in the Countermotion is not a mere correction of an "imperfection in a matter of form," but instead seeks to alter the merits of the Final Award to award Defendants relief that was absent from the Final Award.

Garman Turner Gordon LLP
Attorneys At Law
7251 Amigo Street, Suite 210
Las Vegas, Nevada 89119
(725) 777-3000

Based upon the foregoing, and good cause appearing therefore,

IT IS HEREBY ORDERED that Plaintiff's Motion to Confirm Arbitration Award is **GRANTED**.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Plaintiff TGC/FARKAS FUNDING, LLC, shall have **JUDGMENT** jointly and severally against Defendants FIRST 100, LLC, and FIRST ONE HUNDRED HOLDINGS, LLC, aka 1st ONE HUNDRED HOLDINGS, LLC, in the amount of TWENTY-THREE THOUSAND, NINE HUNDRED AND SEVENTY-FIVE DOLLARS ($23,975.00), plus statutory interest, to be adjusted as set forth in NRS 17.130, which as of the date of the entry of Judgment was $3.45 per day, from October 8, 2020, until this Judgment is satisfied.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendants shall make all the requested documents and information available from both companies to Plaintiff for inspection and copying, as set forth in the Final Award and Exhibit 13 to Claimant's Appendix to Claimant's Arbitration Brief.

IT IS FURTHER ORDERED that Defendants' Countermotion to Modify Award Per NRS 38.242 is **DENIED**.

IT IS SO ORDERED this 17 day of November, 2020.

DISTRICT JUDGE

Garman Turner Gordon LLP
Attorneys At Law
7251 Amigo Street, Suite 210
Las Vegas, Nevada 89119
(725) 777-3000

Respectfully submitted:

GARMAN TURNER GORDON LLP

/s/ Dylan T. Ciciliano

ERIKA PIKE TURNER
Nevada Bar No. 6454
DYLAN T. CICILIANO
Nevada Bar No. 12348
7251 Amigo Street, Suite 210
Tel: (725) 777-3000
Fax: (725) 777-3112
Attorneys for Plaintiff

Approved as to form and content:

MAIER GUTIERREZ & ASSOCIATES

/s/ Danielle J. Barraza

JOSEPH A. GUTIERREZ
Nevada Bar No. 9046
DANIELLE J. BARRAZA
Nevada Bar No. 13822
8816 Spanish Ridge Avenue
Las Vegas, Nevada 89148
Attorneys for Defendants

From: Danielle Barraza <djb@mgalaw.com>
Sent: Thursday, November 12, 2020 11:40 AM
To: Dylan Ciciliano
Cc: Erika Turner; Joseph Gutierrez; Max Erwin
Subject: RE: Order Re: Motion to Confirm

Yes, you can affix my e-signature on this version.

Thanks,

Danielle J. Barraza | Associate
MAIER GUTIERREZ & ASSOCIATES
8816 Spanish Ridge Avenue
Las Vegas, Nevada 89148
Tel: 702.629.7900 | Fax: 702.629.7925
djb@mgalaw.com | www.mgalaw.com

From: Dylan Ciciliano <dciciliano@Gtg.legal>
Sent: Thursday, November 12, 2020 11:27 AM
To: Danielle Barraza <djb@mgalaw.com>
Cc: Erika Turner <eturner@Gtg.legal>; Joseph Gutierrez <jag@mgalaw.com>; Max Erwin <MErwin@Gtg.legal>
Subject: RE: Order Re: Motion to Confirm

Danielle,

I accepted your redline changes. Can I affix your signature?

Dylan T. Ciciliano, Esq.

Attorney

Phone: 725 777 3000 | Fax: 725 777 3112

GARMAN | TURNER | GORDON
7251 AMIGO STREET, SUITE 210
LAS VEGAS, NV 89119

Visit us online at www.gtg.legal

From: Danielle Barraza <djb@mgalaw.com>
Sent: Thursday, November 12, 2020 11:12 AM
To: Dylan Ciciliano <dciciliano@Gtg.legal>
Cc: Erika Turner <eturner@Gtg.legal>; Joseph Gutierrez <jag@mgalaw.com>; Max Erwin <MErwin@Gtg.legal>
Subject: RE: Order Re: Motion to Confirm

Dylan, I'm not seeing that the Court actually made the majority of the findings set forth in the drafted order. In any event, we have kept most of the findings in-tact and made only a few redlines in an effort to come to an agreement on this. See attached.

Thank you,

Danielle J. Barraza | Associate
MAIER GUTIERREZ & ASSOCIATES
8816 Spanish Ridge Avenue
Las Vegas, Nevada 89148
Tel: 702.629.7900 | Fax: 702.629.7925
djb@mgalaw.com | www.mgalaw.com

From: Dylan Ciciliano <dciciliano@Gtg.legal>
Sent: Thursday, November 12, 2020 10:15 AM
To: Danielle Barraza <djb@mgalaw.com>
Cc: Erika Turner <eturner@Gtg.legal>; Joseph Gutierrez <jag@mgalaw.com>; Max Erwin <MErwin@Gtg.legal>
Subject: FW: Order Re: Motion to Confirm

Danielle,

I wanted to follow up on the attached. We intend on submitting the order to the Court by noon tomorrow.

Thank you,

Dylan

Dylan T. Ciciliano, Esq.

Attorney

Phone: 725 777 3000 | Fax: 725 777 3112

GARMAN | TURNER | GORDON
7251 AMIGO STREET, SUITE 210
LAS VEGAS, NV 89119

Visit us online at www.gtg.legal

From: Dylan Ciciliano
Sent: Monday, November 9, 2020 9:24 PM
To: Danielle Barraza <djb@mgalaw.com>
Cc: Erika Turner <eturner@Gtg.legal>; jag@mgalaw.com; Max Erwin <MErwin@Gtg.legal>
Subject: Order Re: Motion to Confirm

Danielle,

Attached is the draft order on Plaintiff TGC/FARKAS FUNDING, LLC's *Motion to Confirm Arbitration Award*. Please let me know if I may affix your signature.

Thank you,

Dylan

Dylan T. Ciciliano, Esq.

Attorney

Phone: 725 777 3000 | Fax: 725 777 3112

GARMAN | TURNER | GORDON
7251 AMIGO STREET, SUITE 210
LAS VEGAS, NV 89119

Visit us online at www.gtg.legal

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04/07/2021 1:44 PM
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

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

FINDINGS OF FACT

1. In 2013, Plaintiff was formed for the purpose of facilitating an investment in Defendants consisting of $1 million from 50% member TGC 100 Investor, LLC, managed by Adam Flatto ("Flatto"), and services (aka sweat equity) from 50% member Matthew Farkas ("Farkas").[1] In exchange for Plaintiff's contributions, Plaintiff received a 3% membership interest in Defendants.[2]

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

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

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[1] Exhibit 20, PLTF_154, 170.

[2] Exhibit 2, PLTF_006.

[3] Exhibits 7 and 8; Hearing Transcript of Testimony, March 3, 2021 ("3/3 Trans."), 8:10-16.

[4] 3/3 Trans., 160:3-7.

[5] Exhibits 25-26.

[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.

[7] 3/3 Trans., 159:23-160:2.

affiliated entities in 2017 (the "Ngan Judgment"). As Plaintiff did not receive any accounting to show what happened to Defendants' business or its assets and had questions, on May 2, 2017, Plaintiff made a written demand for the books and records of Defendants pursuant to the terms of Defendants' operating agreements and NRS 86.241.[8] Defendants did not provide any documents in response to Plaintiff's demand, resulting in Plaintiff filing an arbitration demand under a provision of Defendants' operating agreements requiring that such matters be determined through arbitration with the party bringing the matter required to pay all the upfront costs of the arbitration, subject to reimbursement in the event said party prevailed.[9]

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

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

[8] Exhibit 1.

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

[10] Exhibits 2 and II.

[11] Exhibit 2, PLTF_006.

[12] 3/3 Trans., 123:2-13.

[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.

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

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

7. The Arb. Award granted relief in favor of Plaintiff and against Defendants "in all respects" on the claim for books and records of Defendants arising from Defendants' operating agreements and NRS 86.241[19] and ordered Defendants to "forthwith, but no later than ten (10) calendar days from the date of this AWARD, make all the requested documents and information available from both companies to [Plaintiff] for inspection and copying."[20] Fees and costs were awarded Plaintiff.[21] The Arb. Award further provided that the "Award is in full settlement of all claims submitted to this arbitration. All claims not expressly granted herein are hereby

---

[15] Exhibit 26, PLTF_218, and Exhibit 27, PLTF_235.

[16] Exhibit 22.

[17] Exhibit 2, PLTF_007.

[18] *Id.*

[19] *See* Exhibit 1, PLTF_002.

[20] Exhibit 2, PLTF_009.

[21] *Id.*

denied."[22]

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

9. The Order was entered November 17, 2020, constituting a final, appealable judgment. No appeal was filed by Defendants. On December 18, 2020, the OSC was filed upon Plaintiff's application citing no compliance or communicated intention to comply with the Order. The OSC scheduled a hearing for January 21, 2021.[26] The OSC was served on MGA on December 18, 2020; in addition, Bloom was personally served with the OSC on December 22, 2020.[27] On December 21, 2020, notices of judgment debtor examinations for each of Defendants and post-judgment discovery were served on MGA.[28] Bloom was also personally

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[22] *Id.*

[23] Exhibit 3.

[24] Exhibits 7 and 8, § 13.9.

[25] Exhibit 4, PLTF_019, ll. 15-27.

[26] Exhibit 5.

[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] *See* the December 21, 2020 Notice of Entry of Order for Judgment Debtor Examinations.

served with post-judgment discovery under NRCP 69(2) on December 29, 2020.[29]

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

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

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

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

[30] Exhibit 13, PLTF_106.

[31] *Id.*

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

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

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

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

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[32] Exhibit 11, PLTF_097.

[33] Exhibit 25.

[34] *See* Exhibit 38, PLTF_405 (Nahabedian's email).

[35] Exhibits FF and J.

[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.

[37] *See, e.g.*, Exhibit 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).

of a management role with Plaintiff and left everything to Flatto and counsel, whether or not that was reflected in a formal amendment to Plaintiff's operating agreement.[40] Further, whether Defendants could rely on the signature of Farkas alone to bind Plaintiff was specifically addressed in multiple communications to Defendants. First, there was the April 18, 2017 email,[41] then the July 13, 2017 letter[42] (attaching the April 18, 2017 email and further stating "Farkas is not the manager." "Farkas does not have the authority to bind [Plaintiff]"), and then there was the Arb. Award's conclusion that a document executed by Farkas was irrelevant without the consent of Flatto as Farkas' signature alone did not bind Plaintiff.[43]

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

18. The circumstances surrounding how the Settlement Agreement was prepared and executed are also relevant. The Settlement Agreement was drafted by Bloom[46] and executed by Bloom, as manager of Defendants.[47] It is dated January 6, 2021 but was executed by Farkas on January 7, 2021 at the same time that Farkas executed other documents sent by Bloom to a UPS

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[40] 3/3 Trans., 108:5-17.

[41] Exhibit 21.

[42] Exhibit 22, PLTF_, 179, 190.

[43] Exhibit 2, PLTF_007

[44] Exhibit 23.

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

[46] Id., 193:25-194:2.

[47] Exhibit 13, PLTF_108.

store for Farkas' signing and return.[48] Farkas did not know he was signing a Settlement Agreement when he signed it,[49] and there is no evidence he intended to bind Plaintiff to anything when he executed the documents. Notwithstanding the express terms of the Settlement Agreement providing that the signatories were duly authorized,[50] Farkas did not read that provision (or any provision)[51] and testified he never otherwise represented to Bloom or anyone else that he had authority to enter into the Settlement Agreement on behalf of Plaintiff.[52] Farkas testified he did not negotiate the terms of the Settlement Agreement with Bloom, which is corroborated by the lack of evidence of any back and forth on terms prior to the agreement being finalized by Bloom.[53] There is no evidence Bloom provided Farkas a copy of the Settlement Agreement for Farkas, Flatto or counsel's review prior to sending it to the UPS store with other documents to be signed.[54] Farkas testified he believed that the documents he signed at the UPS store related to resolution of a threatened claim against him by Defendants in connection with his prior employment and included the retention of personal counsel for him.[55] This testimony was corroborated by Nahabedian's January14, 2021 correspondence referencing a threat of adverse action against Farkas from Defendants[56] and the fact that a form of Release between Farkas and Defendants was executed at the same time as the Settlement Agreement.[57]

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

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

[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.

[50] Exhibit 13, PLTF_107, § 14.

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

[52] *Id.*, 136:16-19.

[53] 3/3 Trans., 137:1-8, 13-15.

[54] *Id.*, 211:17-25; 213:15-23.

[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.

[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.

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

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

It was revealed from Nahabedian's records:

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

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

[60] *See Nevada Speedway v. Bloom, et al.*, Case No. A-20-809882-B of the Eighth Jud. Dist. Court (showing Nahabedian represented Bloom in the relevant January 2021 time period), 3/3 Trans., 13-15; 3/10 Trans., 45:11-19. 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.

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

[62] Exhibit 28, PLTF_240-244.

[63] 3/3 Trans., 149:25-150:7.

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

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

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

[65] 3/10 Trans., 35:5-16

[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.

[67] Exhibit 28, PLTF_245.

[68] *See* Exhibit 17, PLTF_123.

[69] Exhibit 28, PLTF_245-261.

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

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

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[70] *Id.* at PLTF_245 (emphasis added).

[71] *Id.* at PLTF_266.

[72] *Id.* at PLTF_278.

[73] *Id.* at PLTF_281, 284, 288.

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

[75] Exhibit 11.

[76] *Id.* at PLTF-097.

[77] 3/3 Trans.,144:22-148:24.

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

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

22. Although there is dispute between Farkas and Bloom regarding when Bloom was specifically informed that Farkas was removed from having *any* management interest in Plaintiff in September 2020,[80] Bloom and Nahabedian both knew that Farkas had officially resigned his management position in September 2020 by at least the time the Motion to Enforce was filed.[81] Despite learning of the restriction on Farkas' authority, Bloom and his counsel[82] were unfazed and moved forward on their enforcement efforts.

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

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[78] PLTF_311, 316-317, 318, 323, 328-332.

[79] 3/10 Trans., 51:17-20.

[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 testified that the January 9-11 time subject of his sworn declaration submitted to the Court in support of the Reply in support of the Motion to Enforce was qualified by "on or about" because the dates were not certain; however, the timing of January 9-11 are actually consistent with the timing that Nahabedian started inquiring about Farkas' 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.

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

24. Not only did Bloom disregard the Arb. Award, but also the basis for the Arb. Award, including the April 18, 2017 email to Defendants providing notice that Farkas cannot bind Plaintiff without Flatto's consent in addition to the declarations of Flatto and Farkas.[86] Further, on July 13, 2017, Plaintiff also sent written correspondence to MGA[87] representing Farkas is "not the manager" of Plaintiff and that "Farkas does not have the authority to bind [Plaintiff]."[88] Bloom did not heed any of the notices of Farkas' restricted authority to bind Plaintiff.

25. In the Motion to Enforce, Maier testified[89] that Farkas had authority based on Plaintiff's engagement letter with GTG, which Farkas executed as a member of Plaintiff "and

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[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).

[84] 3/10 Trans., 87:25-88:14.

[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).

[86] Exhibit 2, PLTF_007.

[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 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.

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

26. In addition, Maier testified in support of the Motion to Enforce[92] that Plaintiff's operating agreement provided the apparent authority for Farkas to bind Plaintiff to the terms of the Settlement Agreement. Section 3.4 of the operating agreement, which was in effect prior to September 2020, provides that the Administrative Member (Farkas) could not act without first obtaining the consent of the other members (Flatto).[93] At Section 4.4, it provides that persons dealing with Plaintiff are entitled to rely conclusively upon the power and authority of the Administrative Member (Farkas until September 2020).[94] However, by the time of the Motion to Enforce, Defendants and Bloom had received notice of the amendment executed in September 2020 that changed the Administrative Member to Flatto and Flatto was the only person with authority to bind Plaintiff subsequent to that date.[95] In addition, the entry of the Arb. Award and 2017 communications providing notice of a restriction on Farkas' authority post-dated the operating agreement, negating Defendants' ability to conclusively rely upon Farkas' signature as binding authority under Section 4.4.

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

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[90] Exhibit 28, PLTF_299-300.

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

[92] Motion to Enforce, 3:6-11.

[93] Exhibit 20, PLTF_159.

[94] *Id.* at Exhibit 20, PLTF_162.

[95] *See* fn. 81 above.

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

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

29. The Settlement Agreement expressly provides that, in exchange for dismissal, if Defendants sell the Ngan Judgment, Defendants will pay Plaintiff $1,000,000.00, plus 6% interest.[96] There is no evidence of any actual sale, or even ability to sell[97] the Ngan Judgment for a sufficient sum to pay Plaintiff $1,000,000.00 plus interest. Further, Defendants' promise for payment in the future upon a sale of the Ngan Judgment is particularly speculative upon the concession that the Ngan Judgment has not resulted in any collections since its entry in 2017, despite diligent collection efforts from MGA and other collection counsel.[98]

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

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[96] Exhibit 13, PLTF_106.

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

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

[99] Exhibits 7 and 8, Article V.

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

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

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

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

[100] 3/3 Trans., 72:15- 73:5.

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

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

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

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

[102] 3/3 Trans., 116:1-21, 119:9-16.

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

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

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

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

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

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

[105] *Id.* at 102:17-20.

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

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

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

> 1) The Company's company books, inclusive of any and all agreements relating to the Company's governance (Company operating agreements, amendments, consents and resolutions)
> 2) Financial Statements, inclusive of balance sheets and profit & loss statements
> 3) General ledger and back up, inclusive of invoices
> 4) Documents sufficient to show the Company's assets and their location
> 5) Documents relating to value of the Company and/or the Company's assets
> 6) Documents sufficient to show the Company's members and their status, inclusive of any redeemed members
> 7) Tax returns for the Company
> 8) Documents sufficient to show the accounts payable incurred by the Company, paid by the Company, and remaining due from the Company
> 9) Documents sufficient to show payments made to the Company managers, members and/or affiliates of any managers or members
> 10) Company insurance policies
> 11) Documents sufficient to show the status of any Company lawsuits
> 12) Documents sufficient to show the use of the Investors' funds (and 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

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[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.

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

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

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

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

Defendants are not incapable of abiding by the Order; Bloom merely determined to do nothing to comply with the Order.[115] Bloom's affiliated SJC is the 45.625% Class A Member of First 100. [116]

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[111] 3/10 Trans., 14:9-18.

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

[113] Exhibits 26 and 27.

[114] Exhibits 7 and Exhibit 8, p. 8.

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

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

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

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

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

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[116] Exhibit 7, p. 28.

[117] Exhibit 8, p. 29.

[118] Exhibits 7-8, 26-27.

[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

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legal consequences for the principal, the agent reasonably believes, in accordance with the principal's manifestations to the agent, that the principal wishes the agent so to act." *Simmons Self-Storage*, at 549, 331 P.3d at 856 (citing Restatement (Third) of Agency § 2.01 (2006)). When examining whether actual authority exists, the courts are to focus on an agent's reasonable belief. *Id.* (citing § 2.02 & cmt. e ("Whether an agent's belief is reasonable is determined from the viewpoint of a reasonable person in the agent's situation under all of the circumstances of which the agent has notice.")).

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

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

[120] 3/3 Trans., 72:19-23.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[121] Exhibit V.

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

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

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

[122] Exhibit 4.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29. Both Defendants are in "default" status with the Nevada Secretary of State. The testimony of Bloom demonstrated that Defendants have no continued operations, there are no employees, there are no bank accounts, there are no records being maintained as required under the operating agreements or NRS 86.241, and there is no active governance of any kind.[126] While Bloom self-servingly represents that there are "directors" and "officers" of Defendants, he concedes, as he must, that there were no writings to reflect that any director or officer has any 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.

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

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

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

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

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

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

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

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

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

ORDER

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

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

2) Based on its determination that Defendants and Bloom disobeyed and resisted the Order in contempt of Court (civil), the Court orders immediate compliance. In order to purge their contempt, Defendants, and any manager, representative or other agent of Defendants receiving notice of this order shall take all reasonable steps to comply with the Order, and within 10 days of notice of entry of this order, shall produce the following books and records for Defendants to Plaintiff[128] at their expense:[129]

> 1) Each of Defendants' company books, inclusive of any and all agreements relating to governance (operating agreements, amendments, consents and resolutions);
> 2) Financial Statements, inclusive of balance sheets and profit & loss statements;
> 3) General ledger and back up, inclusive of invoices;
> 4) Documents sufficient to show each of Defendants' assets and their location;
> 5) Documents relating to value of each of each of Defendants and/or their assets;
> 6) Documents sufficient to show Defendants' members and their status, inclusive of any redeemed members;
> 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.

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

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

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

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

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

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

MARK R. DENTON
DISTRICT JUDGE
DEPARTMENT THIRTEEN
LAS VEGAS, NV 89155

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

TGC/Farkas Funding, LLC, Plaintiff(s) vs. First 100, LLC, Defendant(s)	CASE NO: A-20-822273-C DEPT. NO. Department 13

AUTOMATED CERTIFICATE OF SERVICE

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

Service Date: 4/7/2021

Dylan Ciciliano	dciciliano@gtg.legal
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If indicated below, a copy of the above mentioned filings were also served by mail via United States Postal Service, postage prepaid, to the parties listed below at their last known addresses on 4/8/2021

Joseph Gutierrez

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Attorneys for Plaintiff

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
ERIKA PIKE TURNER
Nevada Bar No. 6454
DYLAN T. CICILIANO
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7251 Amigo Street, Suite 210
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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:

Joseph A. Gutierrez, Esq.
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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

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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

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

FINDINGS OF FACT

1. In 2013, Plaintiff was formed for the purpose of facilitating an investment in Defendants consisting of $1 million from 50% member TGC 100 Investor, LLC, managed by Adam Flatto ("Flatto"), and services (aka sweat equity) from 50% member Matthew Farkas ("Farkas").[1] In exchange for Plaintiff's contributions, Plaintiff received a 3% membership interest in Defendants.[2]

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

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

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[1] Exhibit 20, PLTF_154, 170.

[2] Exhibit 2, PLTF_006.

[3] Exhibits 7 and 8; Hearing Transcript of Testimony, March 3, 2021 ("3/3 Trans."), 8:10-16.

[4] 3/3 Trans., 160:3-7.

[5] Exhibits 25-26.

[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.

[7] 3/3 Trans., 159:23-160:2.

affiliated entities in 2017 (the "Ngan Judgment"). As Plaintiff did not receive any accounting to show what happened to Defendants' business or its assets and had questions, on May 2, 2017, Plaintiff made a written demand for the books and records of Defendants pursuant to the terms of Defendants' operating agreements and NRS 86.241.[8] Defendants did not provide any documents in response to Plaintiff's demand, resulting in Plaintiff filing an arbitration demand under a provision of Defendants' operating agreements requiring that such matters be determined through arbitration with the party bringing the matter required to pay all the upfront costs of the arbitration, subject to reimbursement in the event said party prevailed.[9]

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

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

[8] Exhibit 1.

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

[10] Exhibits 2 and II.

[11] Exhibit 2, PLTF_006.

[12] 3/3 Trans., 123:2-13.

[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.

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

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

7. The Arb. Award granted relief in favor of Plaintiff and against Defendants "in all respects" on the claim for books and records of Defendants arising from Defendants' operating agreements and NRS 86.241[19] and ordered Defendants to "forthwith, but no later than ten (10) calendar days from the date of this AWARD, make all the requested documents and information available from both companies to [Plaintiff] for inspection and copying."[20] Fees and costs were awarded Plaintiff.[21] The Arb. Award further provided that the "Award is in full settlement of all claims submitted to this arbitration. All claims not expressly granted herein are hereby

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[15] Exhibit 26, PLTF_218, and Exhibit 27, PLTF_235.

[16] Exhibit 22.

[17] Exhibit 2, PLTF_007.

[18] *Id.*

[19] *See* Exhibit 1, PLTF_002.

[20] Exhibit 2, PLTF_009.

[21] *Id.*

denied."[22]

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

9. The Order was entered November 17, 2020, constituting a final, appealable judgment. No appeal was filed by Defendants. On December 18, 2020, the OSC was filed upon Plaintiff's application citing no compliance or communicated intention to comply with the Order. The OSC scheduled a hearing for January 21, 2021.[26] The OSC was served on MGA on December 18, 2020; in addition, Bloom was personally served with the OSC on December 22, 2020.[27] On December 21, 2020, notices of judgment debtor examinations for each of Defendants and post-judgment discovery were served on MGA.[28] Bloom was also personally

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[22] *Id.*

[23] Exhibit 3.

[24] Exhibits 7 and 8, § 13.9.

[25] Exhibit 4, PLTF_019, ll. 15-27.

[26] Exhibit 5.

[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] *See* the December 21, 2020 Notice of Entry of Order for Judgment Debtor Examinations.

served with post-judgment discovery under NRCP 69(2) on December 29, 2020.[29]

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

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

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

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

[30] Exhibit 13, PLTF_106.

[31] *Id.*

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

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

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

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

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[32] Exhibit 11, PLTF_097.

[33] Exhibit 25.

[34] *See* Exhibit 38, PLTF_405 (Nahabedian's email).

[35] Exhibits FF and J.

[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.

[37] *See, e.g.*, Exhibit 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).

of a management role with Plaintiff and left everything to Flatto and counsel, whether or not that was reflected in a formal amendment to Plaintiff's operating agreement.[40] Further, whether Defendants could rely on the signature of Farkas alone to bind Plaintiff was specifically addressed in multiple communications to Defendants. First, there was the April 18, 2017 email,[41] then the July 13, 2017 letter[42] (attaching the April 18, 2017 email and further stating "Farkas is not the manager." "Farkas does not have the authority to bind [Plaintiff]"), and then there was the Arb. Award's conclusion that a document executed by Farkas was irrelevant without the consent of Flatto as Farkas' signature alone did not bind Plaintiff.[43]

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

18. The circumstances surrounding how the Settlement Agreement was prepared and executed are also relevant. The Settlement Agreement was drafted by Bloom[46] and executed by Bloom, as manager of Defendants.[47] It is dated January 6, 2021 but was executed by Farkas on January 7, 2021 at the same time that Farkas executed other documents sent by Bloom to a UPS

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[40] 3/3 Trans., 108:5-17.

[41] Exhibit 21.

[42] Exhibit 22, PLTF_, 179, 190.

[43] Exhibit 2, PLTF_007

[44] Exhibit 23.

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

[46] Id., 193:25-194:2.

[47] Exhibit 13, PLTF_108.

store for Farkas' signing and return.[48] Farkas did not know he was signing a Settlement Agreement when he signed it,[49] and there is no evidence he intended to bind Plaintiff to anything when he executed the documents. Notwithstanding the express terms of the Settlement Agreement providing that the signatories were duly authorized,[50] Farkas did not read that provision (or any provision)[51] and testified he never otherwise represented to Bloom or anyone else that he had authority to enter into the Settlement Agreement on behalf of Plaintiff.[52] Farkas testified he did not negotiate the terms of the Settlement Agreement with Bloom, which is corroborated by the lack of evidence of any back and forth on terms prior to the agreement being finalized by Bloom.[53] There is no evidence Bloom provided Farkas a copy of the Settlement Agreement for Farkas, Flatto or counsel's review prior to sending it to the UPS store with other documents to be signed.[54] Farkas testified he believed that the documents he signed at the UPS store related to resolution of a threatened claim against him by Defendants in connection with his prior employment and included the retention of personal counsel for him.[55] This testimony was corroborated by Nahabedian's January14, 2021 correspondence referencing a threat of adverse action against Farkas from Defendants[56] and the fact that a form of Release between Farkas and Defendants was executed at the same time as the Settlement Agreement.[57]

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

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

[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.

[50] Exhibit 13, PLTF_107, § 14.

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

[52] *Id.*, 136:16-19.

[53] 3/3 Trans., 137:1-8, 13-15.

[54] *Id.*, 211:17-25; 213:15-23.

[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.

[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.

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

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

It was revealed from Nahabedian's records:

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

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

[60] *See Nevada Speedway v. Bloom, et al.*, Case No. A-20-809882-B of the Eighth Jud. Dist. Court (showing Nahabedian represented Bloom in the relevant January 2021 time period), 3/3 Trans., 13-15; 3/10 Trans., 45:11-19. 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.

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

[62] Exhibit 28, PLTF_240-244.

[63] 3/3 Trans., 149:25-150:7.

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

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

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

[65] 3/10 Trans., 35:5-16

[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.

[67] Exhibit 28, PLTF_245.

[68] *See* Exhibit 17, PLTF_123.

[69] Exhibit 28, PLTF_245-261.

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

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

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[70] *Id.* at PLTF_245 (emphasis added).

[71] *Id.* at PLTF_266.

[72] *Id.* at PLTF_278.

[73] *Id.* at PLTF_281, 284, 288.

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

[75] Exhibit 11.

[76] *Id.* at PLTF-097.

[77] 3/3 Trans.,144:22-148:24.

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

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

22. Although there is dispute between Farkas and Bloom regarding when Bloom was specifically informed that Farkas was removed from having *any* management interest in Plaintiff in September 2020,[80] Bloom and Nahabedian both knew that Farkas had officially resigned his management position in September 2020 by at least the time the Motion to Enforce was filed.[81] Despite learning of the restriction on Farkas' authority, Bloom and his counsel[82] were unfazed and moved forward on their enforcement efforts.

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

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[78] PLTF_311, 316-317, 318, 323, 328-332.

[79] 3/10 Trans., 51:17-20.

[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 testified that the January 9-11 time subject of his sworn declaration submitted to the Court in support of the Reply in support of the Motion to Enforce was qualified by "on or about" because the dates were not certain; however, the timing of January 9-11 are actually consistent with the timing that Nahabedian started inquiring about Farkas' 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.

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

24. Not only did Bloom disregard the Arb. Award, but also the basis for the Arb. Award, including the April 18, 2017 email to Defendants providing notice that Farkas cannot bind Plaintiff without Flatto's consent in addition to the declarations of Flatto and Farkas.[86] Further, on July 13, 2017, Plaintiff also sent written correspondence to MGA[87] representing Farkas is "not the manager" of Plaintiff and that "Farkas does not have the authority to bind [Plaintiff]."[88] Bloom did not heed any of the notices of Farkas' restricted authority to bind Plaintiff.

25. In the Motion to Enforce, Maier testified[89] that Farkas had authority based on Plaintiff's engagement letter with GTG, which Farkas executed as a member of Plaintiff "and

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[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).

[84] 3/10 Trans., 87:25-88:14.

[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).

[86] Exhibit 2, PLTF_007.

[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 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.

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

26. In addition, Maier testified in support of the Motion to Enforce[92] that Plaintiff's operating agreement provided the apparent authority for Farkas to bind Plaintiff to the terms of the Settlement Agreement. Section 3.4 of the operating agreement, which was in effect prior to September 2020, provides that the Administrative Member (Farkas) could not act without first obtaining the consent of the other members (Flatto).[93] At Section 4.4, it provides that persons dealing with Plaintiff are entitled to rely conclusively upon the power and authority of the Administrative Member (Farkas until September 2020).[94] However, by the time of the Motion to Enforce, Defendants and Bloom had received notice of the amendment executed in September 2020 that changed the Administrative Member to Flatto and Flatto was the only person with authority to bind Plaintiff subsequent to that date.[95] In addition, the entry of the Arb. Award and 2017 communications providing notice of a restriction on Farkas' authority post-dated the operating agreement, negating Defendants' ability to conclusively rely upon Farkas' signature as binding authority under Section 4.4.

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

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[90] Exhibit 28, PLTF_299-300.

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

[92] Motion to Enforce, 3:6-11.

[93] Exhibit 20, PLTF_159.

[94] *Id.* at Exhibit 20, PLTF_162.

[95] *See* fn. 81 above.

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

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

29. The Settlement Agreement expressly provides that, in exchange for dismissal, if Defendants sell the Ngan Judgment, Defendants will pay Plaintiff $1,000,000.00, plus 6% interest.[96] There is no evidence of any actual sale, or even ability to sell[97] the Ngan Judgment for a sufficient sum to pay Plaintiff $1,000,000.00 plus interest. Further, Defendants' promise for payment in the future upon a sale of the Ngan Judgment is particularly speculative upon the concession that the Ngan Judgment has not resulted in any collections since its entry in 2017, despite diligent collection efforts from MGA and other collection counsel.[98]

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

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[96] Exhibit 13, PLTF_106.

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

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

[99] Exhibits 7 and 8, Article V.

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

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

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

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

[100] 3/3 Trans., 72:15- 73:5.

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

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

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

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

[102] 3/3 Trans., 116:1-21, 119:9-16.

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

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

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

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

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

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

[105] *Id.* at 102:17-20.

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

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

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

> 1) The Company's company books, inclusive of any and all agreements relating to the Company's governance (Company operating agreements, amendments, consents and resolutions)
> 2) Financial Statements, inclusive of balance sheets and profit & loss statements
> 3) General ledger and back up, inclusive of invoices
> 4) Documents sufficient to show the Company's assets and their location
> 5) Documents relating to value of the Company and/or the Company's assets
> 6) Documents sufficient to show the Company's members and their status, inclusive of any redeemed members
> 7) Tax returns for the Company
> 8) Documents sufficient to show the accounts payable incurred by the Company, paid by the Company, and remaining due from the Company
> 9) Documents sufficient to show payments made to the Company managers, members and/or affiliates of any managers or members
> 10) Company insurance policies
> 11) Documents sufficient to show the status of any Company lawsuits
> 12) Documents sufficient to show the use of the Investors' funds (and 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

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[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.

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

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

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

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

Defendants are not incapable of abiding by the Order; Bloom merely determined to do nothing to comply with the Order.[115] Bloom's affiliated SJC is the 45.625% Class A Member of First 100. [116]

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[111] 3/10 Trans., 14:9-18.

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

[113] Exhibits 26 and 27.

[114] Exhibits 7 and Exhibit 8, p. 8.

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

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

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

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

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

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[116] Exhibit 7, p. 28.

[117] Exhibit 8, p. 29.

[118] Exhibits 7-8, 26-27.

[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

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legal consequences for the principal, the agent reasonably believes, in accordance with the principal's manifestations to the agent, that the principal wishes the agent so to act." *Simmons Self-Storage*, at 549, 331 P.3d at 856 (citing Restatement (Third) of Agency § 2.01 (2006)). When examining whether actual authority exists, the courts are to focus on an agent's reasonable belief. *Id.* (citing § 2.02 & cmt. e ("Whether an agent's belief is reasonable is determined from the viewpoint of a reasonable person in the agent's situation under all of the circumstances of which the agent has notice.")).

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

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

[120] 3/3 Trans., 72:19-23.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[121] Exhibit V.

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

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

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

[122] Exhibit 4.

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

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

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

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

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

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

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

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

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

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

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

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DEPARTMENT THIRTEEN
LAS VEGAS, NV 89155

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

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

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

29. Both Defendants are in "default" status with the Nevada Secretary of State. The testimony of Bloom demonstrated that Defendants have no continued operations, there are no employees, there are no bank accounts, there are no records being maintained as required under the operating agreements or NRS 86.241, and there is no active governance of any kind.[126] While Bloom self-servingly represents that there are "directors" and "officers" of Defendants, he concedes, as he must, that there were no writings to reflect that any director or officer has any 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.

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

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

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

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

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

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

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

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

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

ORDER

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

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

2) Based on its determination that Defendants and Bloom disobeyed and resisted the Order in contempt of Court (civil), the Court orders immediate compliance. In order to purge their contempt, Defendants, and any manager, representative or other agent of Defendants receiving notice of this order shall take all reasonable steps to comply with the Order, and within 10 days of notice of entry of this order, shall produce the following books and records for Defendants to Plaintiff[128] at their expense:[129]

> 1) Each of Defendants' company books, inclusive of any and all agreements relating to governance (operating agreements, amendments, consents and resolutions);
> 2) Financial Statements, inclusive of balance sheets and profit & loss statements;
> 3) General ledger and back up, inclusive of invoices;
> 4) Documents sufficient to show each of Defendants' assets and their location;
> 5) Documents relating to value of each of each of Defendants and/or their assets;
> 6) Documents sufficient to show Defendants' members and their status, inclusive of any redeemed members;
> 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.

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

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

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

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

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

MARK R. DENTON
DISTRICT JUDGE
DEPARTMENT THIRTEEN
LAS VEGAS, NV 89155

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

TGC/Farkas Funding, LLC, Plaintiff(s) vs. First 100, LLC, Defendant(s)	CASE NO: A-20-822273-C DEPT. NO. Department 13

AUTOMATED CERTIFICATE OF SERVICE

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

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

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