IN THE SUPREME COURT OF THE STATE OF NEVADA

FIRST 100, LLC, a Nevada limited liability company; 1st ONE HUNDRED HOLDINGS, LLC, a Nevada limited liability company, Appellants vs. TGC/FARKAS FUNDING, LLC, Respondent.	Supreme Court Case No. 82754 District Court Case No. A-20-822273-C

APPELLANTS' OPPOSITION TO RESPONDENTS MOTION TO DISMISS APPEAL

I. INTRODUCTION

As indicated on Section 13 of their docketing statement, Appellants First 100, LLC and 1st One Hundred Holdings, LLC (collectively "First 100" or "Appellants") have appealed a post-judgment Findings of Fact, Conclusions of Law, and Order ("FFCL") in a civil case.

That post-judgment FFCL cannot be tidily categorized as a "contempt order." To the contrary, the post-judgment FFCL followed an evidentiary hearing which covered three main issues: (1) Respondent TGC/Farkas Funding, LLC's motion for an order to show cause as to why First 100 and non-party Jay Bloom should not be found in contempt of court for failing to comply with the Judgment Order entered November 2020; (2) First 100's motion to enforce a settlement agreement and vacate post judgment discovery proceedings; and (3) TGC/Farkas Funding, LLC's motion for sanctions in conjunction with its opposition to the motion to enforce settlement filed by First 100. *See* **Exhibit A**, FFCL at p. 1. Also heard during the evidentiary hearing was TGC/Farkas Funding, LLC's motion for sanctions regarding Raffi Nahabedian, Esq. (who did not serve as counsel for First 100 or for non-party Jay Bloom) asserting privilege objections during his deposition. *Id.*

The post-judgment FFCL substantively affected First 100's rights, as that order for the first time held that both First 100 and non-party Jay Bloom were "alter egos" and held that they were "jointly and severally responsible for the payment of all the reasonable costs incurred by [TGC/Farkas]" since entry of the Judgment Order entered November 2020. *See* Ex. 1 at p. 32; 35.

First 100's post-judgment motion to enforce a settlement agreement also effectively operated as a request for relief from the final judgment under NRCP 60(b), as that motion to enforce was also seeking relief in the form of vacating the post-judgment discovery proceedings. *See* **Exhibit B**, Motion to Enforce Settlement.

As such, contrary to TGC/Farkas Funding, LLC's arguments otherwise in its motion to dismiss, this is not purely an appeal of a "contempt order", but an appeal of a FFCL that is otherwise appealable as a special order after final judgment or an order denying a motion pursuant to NRCP 60(b). The motion to dismiss should therefore be denied in its entirety.

II. STATEMENT OF FACTS

The underlying dispute stems from TGC/Farkas Funding, LLC claiming to be a member of First 100 and entitled to review First 100's books and records. That dispute went to arbitration pursuant to an arbitration clause in First 100's Operating Agreement. The only parties to that arbitration proceeding were TGC/Farkas Funding, LLC and First 100 – not non-party Jay Bloom, who is the founding director of First 100.

First 100 concurs that this action was initiated through TGC/Farkas Funding, LLC's October 1, 2020 filing of a motion to confirm an arbitration award, which sought to confirm an American Arbitration Association decision awarding TGC/Farkas Funding, LLC fees and costs, and compelling the production of First 100 books and records. Again, the only parties in the underlying district court action were TGC/Farkas Funding, LLC and First 100 – not non-party Jay Bloom.

The arbitration award was confirmed on November 17, 2020 and reduced to a final judgment with a nominal amount of $23,975.00 being awarded to TGC/Farkas

Funding, LLC as fees and costs, as shown on Ex. 2 of TGC/Farkas Funding, LLC's motion to dismiss. Thereafter, TGC/Farkas Funding, LLC conducted aggressive post-judgment discovery and enforcement efforts, and various post-judgment motions were filed. Among the post-judgment motions filed were:

(1) A motion from TGC/Farkas Funding, LLC for an order to show cause why First 100 and non-party Jay Bloom should not be held in contempt for violating the underlying judgment;

(2) A motion from First 100 to enforce a settlement agreement and to vacate post-judgment discovery after TGC/Farkas Funding, LLC member Matthew Farkas executed a settlement agreement with First 100 resolving the dispute; and

(3) A motion from TGC/Farkas Funding, LLC for sanctions associated with First 100's motion to enforce the settlement agreement.

The district court preliminarily denied both First 100's motion to enforce the settlement agreement and TGC/Farkas Funding, LLC's motion for sanctions, but specifically ordered that both would be reconsidered upon further evidence presented at an evidentiary hearing. *See* Mot. to Dismiss at Ex. 4.

Thereafter, an evidentiary hearing was held on all three issues, and the Court entered its post-judgment Findings of Fact, Conclusions of Law, and Order – which it did not style as an "Order of Contempt," as the order resolved numerous issues.

The post-judgment FFCL substantively affected First 100's rights, as that order for the first time held that both First 100 and non-party Jay Bloom were "alter egos" and held that they were "jointly and severally responsible for the payment of all the reasonable costs incurred by [TGC/Farkas]" since entry of the Judgment Order entered November 2020. *See* Ex. 1 at p. 32; 35.

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III. LEGAL ARGUMENT

First 100 recognizes that the Court's appellate jurisdiction is limited, as set forth in *Valley Bank of Nev. v. Ginsburg,* 110 Nev. 440, 444, 874 P.2d 729, 732 (1994), and the Court may only consider appeals authorized by statute or court rule.

First 100 also recognizes that contempt orders, standing alone, are not independently appealable, as set forth in *Pengilly v. Rancho Santa Fe Homeowners Ass'n*, 116 Nev. 646, 649, 5 P.3d 569, 571 (2000).

However, this Court does have jurisdiction to consider a contempt finding or sanction on appeal, so long as it is "included in an order that is otherwise independently appealable." *Vaile v. Vaile*, 133 Nev. 213, 217, 396 P.3d 791, 795 (2017). *See also Lewis v. Lewis*, 132 Nev. 453, 457, 373 P.3d 878, 881 (2016) (considering a challenge to contempt findings in an appeal from a post-judgment order modifying custody of a minor child and child support obligation).

Here, included in the FFCL was a final order on the motion to enforce the settlement agreement, with the district court concluding it would not be granting reconsideration of that motion. *See* Ex. A at p. 34. The motion to enforce settlement also went beyond a mere request to dismiss the case, as it also requested the vacating of post-judgment discovery and effectively served as a motion for relief from the final judgment pursuant to NRCP 60(b).

Additionally, the FFCL affected the rights of First 100, growing out of the judgment previously entered, because for the first time that FFCL deemed non-party Jay Bloom to be the "alter ego" of First 100, even though that was not a finding made in the underlying judgment. As such, that FFCL concluded that First 100 and non-party Jay Bloom were "jointly and severally responsible for the payment of all the reasonable costs incurred by [TGC/Farkas]" since entry of the Judgment Order entered November 2020. *See* Ex. 1 at p. 32; 35. To be clear, in its post-judgment FFCL, the district court was deeming non-party Jay Bloom in contempt of the underlying judgment order that he was not individually subjected to, as he was not a party to the underlying arbitration

matter, or to the underlying judgment. This Court therefore has jurisdiction due to the FFCL being a special order made after final judgment.

To be appealable under NRAP 3A(b)(2), "a special order made after final judgment must be an order affecting the rights of some party to the action, growing out of the judgment previously entered. It must be an order affecting rights incorporated in the judgment." *Gumm v. Mainor*, 118 Nev. 912, 914, 59 P.3d 1220, 1221 (2002). The post-judgment FFCL being appealed in this case clearly qualifies: it affects First 100's rights by deeming non-party Jay Bloom an "alter ego" of First 100, and it ultimately affects liability, as now both First 100 and non-party Jay Bloom have been deemed "jointly and severally" responsible for the payment of costs incurred since entry of the underlying judgment order. Prior to the FFCL being entered, First 100 had sole responsibility for any judgment, and now that has been substantively changed, which makes the FFCL appealable as a special order after final judgment.

IV. CONCLUSION

Based upon the foregoing, this Court does have jurisdiction over the post-judgment FFCL order, as the order is independently appealable by virtue of (1) serving as an order denying a motion pursuant to NRCP 60(b), and (2) serving as a special order after final judgment.

DATED this 9th day of June, 2021.

Respectfully submitted,

MAIER GUTIERREZ & ASSOCIATES

/s/ Joseph A. Gutierrez

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CERTIFICATE OF SERVICE

I certify that on the 9th day of June, 2021, this document was electronically filed with the Nevada Supreme Court, thus electronic service of the foregoing **APPELLANTS' OPPOSITION TO RESPONDENT'S MOTION TO DISMISS APPEAL** shall be made in accordance with the Master Service List as follows:

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EXHIBIT “A”

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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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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

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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

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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

Maier Gutierrez & Associates
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8816 Spanish Ridge Avenue
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EXHIBIT “B”

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Attorneys for Defendants First 100, LLC and 1st One Hundred Holdings, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

TGC FARKAS FUNDING, LLC, Plaintiff, vs. FIRST 100, LLC, a Nevada limited liability company; 1st ONE HUNDRED HOLDINGS, LLC, a Nevada limited liability company, Defendants.	Case No: A-20-822273-C Dept. No.: XIII **DEFENDANTS' MOTION TO ENFORCE SETTLEMENT AGREEMENT AND VACATE POST-JUDGMENT DISCOVERY PROCEEDINGS ON *EX PARTE* ORDER SHORTENING TIME** **[HEARING REQUESTED]**

Defendants First 100, LLC and 1st One Hundred Holdings, LLC (collectively "First 100"), by and through their attorneys of record, the law firm MAIER GUTIERREZ & ASSOCIATES, hereby submit this motion to enforce settlement agreement and vacate post-judgment discovery proceedings on *ex parte* order shortening time. This motion is based on the following Memorandum of Points and Authorities, the affidavit of Jason R. Maier, Esq., filed with this motion, the exhibits attached hereto, and any oral argument entertained at the hearing on the motion.

/ / /

/ / /

AFFIDAVIT OF COUNSEL

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

Jason R. Maier, Esq., being first duly sworn, deposes and says:

1. I am a partner with the law firm of MAIER GUTIERREZ & ASSOCIATES, attorneys for Plaintiff. I am knowledgeable of the facts contained herein and am competent to testify thereto.

2. I am over the age of 18 and I have personal knowledge of all matters set forth herein. If called to do so, I would competently and truthfully testify to all matters set forth herein, except for those matters stated to be based upon information and belief, and as to those matters I am informed and believe them to be true.

3. I make this affidavit in support of defendants First 100 and 1st One Hundred Holdings' ("First 100") motion to enforce settlement agreement and vacate post-judgment discovery proceedings on *ex parte* order shortening time.

4. First 100 has been forced to file a motion to enforce settlement agreement in light of conflicting information that First 100 has received following execution of the settlement agreement regarding exactly who is representing TGC/Farkas Funding, LLC – its counsel of record Garman Turner Gordon, or its apparent new counsel the Law Office of Raffi A. Nahabedian – and the conflicting information that each has provided regarding a settlement agreement that Matthew Farkas signed on behalf of TGC/Farkas Funding, LLC resolving this dispute.

5. On January 7, 2021, my office received a signed copy of the settlement agreement executed by Matthew Farkas on behalf of plaintiff TGC/Farkas Funding, LLC and Jay Bloom on behalf of defendants First 100, LLC and 1st One Hundred Holdings, LLC. *See* **Exhibit A**, Settlement Agreement. My law firm did not have any involvement with the preparation or negotiation of the settlement agreement, which was prepared and negotiated by the parties without counsel pursuant to Cmt. 4 to Model Rule 4.2 ("Parties to a matter may communicate directly with each other.").

6. Upon receipt of the settlement agreement, my office believed that the parties had resolved their differences themselves and that no further work would be necessary on post-judgment discovery and proceedings.

7. Upon information and belief, Matthew Farkas is a member and manager of TGC/Farkas Funding, LLC, with actual and/or apparent authority to bind TGC/Farkas Funding, LLC and settle these claims. This is based on the Garman Turner Gordon engagement letter that TGC/Farkas, Funding, LLC disclosed in the underlying dispute that went to arbitration, which Mr. Farkas executed as a member of TGC/Farkas Funding, LLC and also interlineated a restriction of no litigation against First 100. *See* **Exhibit B**, Garman Turner Gordon Engagement Letter With Handwritten Preclusion of Litigation Against First 100. The TGC/Farkas Funding, LLC Operating Agreement, also disclosed by TGC/Farkas Funding, LLC in the underlying arbitration matter, states that Mr. Farkas is a 50% member of TGC/Farkas Funding, LLC, as well as the CEO of the company with full authority to appoint and terminate agents and consultants of TGC/Farkas Funding, LLC. *See* **Exhibit C**, Operating Agreement at Sections 3.1 and 4.5.

8. On January 14, 2021, my law firm received a copy of a letter from Raffi A. Nahabedian, Esq. to Garman Turner Gordon, indicating that he had been retained as counsel for TGC/Farkas Funding, LLC and that Garman Turner Gordon had been terminated as counsel, following Mr. Farkas' growing concerns about Garman Turner Gordon exceeding the scope of its authority set forth in the engagement letter that Mr. Farkas had signed on behalf of TGC/Farkas Funding, LLC, which indicated that litigation against First 100 was prohibited.

9. On January 15, 2021, my office received correspondence from Dylan Ciciliano, Esq. of Garman Turner Gordon indicating that there was no settlement and no substitution of counsel regarding representation of TGC/Farkas Funding, LLC, which conflicts with the settlement agreement that our office previously received.

10. This motion is now being filed to enforce the settlement agreement that was executed by Matthew Farkas on behalf of TGC/Farkas Funding, LLC and Jay Bloom on behalf of First 100 and 1st One Hundred Holdings, in light of Garman Turner Gordon's subsequent representations that there has been no settlement, which conflicts with the plain language of the settlement agreement.

11. Moreover, until this dispute is resolved, it does not make sense for First 100 to be responding to post-judgment discovery, as one of the underlying purposes of settlement agreements is providing assurances to the parties that the underlying matter will no longer be pursued, and forcing

First 100 to further engage in post-judgment discovery would directly conflict with the terms of the settlement agreement.

12. For the above reasons, as well as because there is a show cause hearing presently scheduled for January 21, 2021, I respectfully request that this motion be heard on an order shortening time. If this motion cannot be heard prior to January 21, 2021, I respectfully request that the show cause hearing scheduled for January 21, 2021, be continued until after the Court has an opportunity to hear this motion to enforce settlement agreement.

13. This affidavit is made in good faith and not for purposes of delay.

FURTHER YOUR AFFIANT SAYETH NAUGHT

JASON R. MAIER, ESQ.

SUBSCRIBED and SWORN to before me
this 11th day of January, 2021.

Notary Public for Said County and State

NATALIE VAZQUEZ
NOTARY PUBLIC
STATE OF NEVADA
My Commission Expires: 05-20-21
Certificate No: 13-11107-1

ORDER SHORTENING TIME

IT IS HEREBY ORDERED that the above DEFENDANTS' MOTION TO ENFORCE SETTLEMENT AGREEMENT AND VACATE POST-JUDGMENT DISCOVERY PROCEEDINGS ON EX PARTE ORDER SHORTENING TIME shall be heard on the 28th day of January, 2021, at the hour of 9:00 a.m./~~p.m.~~, or as soon as the matter may be heard by the Court.

~~IT IS FURTHER ORDERED that any opposition to the foregoing motion must be filed and served by _____.~~

IT IS FURTHER ORDERED that post-judgment discovery proceedings in this matter are stayed until further order of the Court.

IT IS FURTHER ORDERED that the show cause hearing scheduled for January 21, 2021, is continued until further order of the Court.

DATED this 19th day of January, 2021.

DISTRICT JUDGE

Respectfully submitted,

MAIER GUTIERREZ & ASSOCIATES

/s/ Jason R. Maier

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This matter involved TGC/Farkas Funding, LLC (through its claimed counsel Garman Turner Gordon) demanding access to First 100 proprietary business records. First 100 previously refused to provide such records for numerous reasons, among them that First 100 had not received evidence that Matthew Farkas, a 50% member of TGC/Farkas Funding, LLC had actually approved of TGC/Farkas Funding, LLC retaining Garner Turner Gordon and making such a demand upon First 100.

Thereafter, TGC/Farkas Funding, LLC initiated arbitration against First 100 regarding the business records. In the arbitration proceedings, TGC/Farkas Funding, LLC produced the engagement letter, which purportedly proved that Matthew Farkas did approve of TGC/Farkas Funding, LLC retaining Garman Turner Gordon to resolve the dispute with First 100. That engagement letter indicates that Mr. Farkas signed under the condition that "the matter shall not include any litigation against First 100, LLC." Ex. B.

The arbitration panel ruled in favor of TGC/Farkas Funding, LLC, which was later confirmed by this Court, resulting in a judgment in favor of TGC/Farkas Funding, LLC in the amount of $23,975.00. This Court then granted TGC/Farkas Funding, LLC's subsequent motion for additional attorneys' fees on top of the fees already awarded by the Arbitrator.

TGC/Farkas Funding, LLC has since moved forward with post-judgment discovery, some of which is clearly inappropriate, such as the attempt to hold Jay Bloom personally liable for a debt of First 100, LLC, despite the fact that neither this Court nor the Arbitration Panel ever made any alter ego findings that would allow TGC/Farkas Funding, LLC to attempt to do so.

As of January 7, 2021, the parties settled this dispute on their own without counsel's involvement, resulting in a settlement agreement being executed by Matthew Farkas on behalf of TGC/Farkas Funding, LLC and Jay Bloom on behalf of First 100. Upon information and belief, Mr. Farkas has exercised his authority as 50% member and CEO of TGC/Farkas Funding, LLC to terminate Garner Turner Gordon and retain the Law Office of Raffi A. Nahabedian, based on correspondence that First 100's counsel was copied on from Mr. Nahabedian. *See* Afft. of Counsel, *supra*.

However, in light of Garman Turner Gordon subsequently claiming that there has been no settlement and no substitution of counsel, First 100 has no choice but to file this instant motion to enforce the settlement agreement executed by the parties and to vacate post-judgment discovery proceedings.

II. LEGAL ANALYSIS

It is well established that a district court can grant a party's motion to enforce a settlement agreement by entering judgment on the instrument if the agreement is either reduced to a signed writing or entered in the court minutes in the form of an order, *see Resnick v. Valente,* 97 Nev. 615, 616, 637 P.2d 1205, 1206 (1981); *see also* EDCR 7.50; DCR 16, so long as the settlement agreement's material terms are certain. *May v. Anderson,* 121 Nev. 668, 672, 119 P.3d 1254, 1257 (2005). *See also*, *Grisham v. Grisham,* 128 Nev. 679, 685, 289 P.3d 230, 234 (2012). ("When parties to pending litigation enter into a settlement, they enter into a contract.")

Public policy strongly favors the enforcement of settlement agreements upon motion by a party. *See Tracy-Collins Bank and Trust Co.,* 592 P.2d at 609 ("Quite obviously, so simple and speedy a remedy serves well the policy favoring compromise."). This general rule is in accordance with Nevada's stated public policy of favoring settlement. *See Muije v. North Las Vegas Cab Co., Inc.,* 106 Nev. 664, 667, 799 P.2d 559, 561 (1990) ("Early settlement saves time and money for the court system, the parties, and the taxpayers."); *see also Malfabon v. Garcia,* 111 Nev. 793, 797, 898 P.2d 107, 109 (1995) ("A longstanding principle of our courts has been to encourage settlements.").

Further, "[b]ecause a settlement agreement is a contract, its construction and enforcement are governed by principles of contract law." *May*, 121 Nev. at 670.

On January 7, 2021, First 100's counsel received a signed copy of the settlement agreement, executed by Matthew Farkas on behalf of plaintiff TGC/Farkas Funding, LLC and Jay Bloom on behalf of defendants First 100, LLC and 1st One Hundred Holdings, LLC. *See* Ex. A, Settlement Agreement; *see also*, Afft. of Counsel, supra. First 100's counsel did not have any involvement with the preparation or negotiation of the settlement agreement, which was prepared and negotiated by the parties without counsel pursuant to Cmt. 4 to Model Rule 4.2 ("Parties to a matter may communicate directly with each other.").

Upon receipt of the settlement agreement, First 100's counsel believed that the parties had resolved their differences themselves and that no further work would be necessary on post-judgment discovery and proceedings.

Upon information and belief, Matthew Farkas (who executed the settlement agreement on behalf of TGC/Farkas Funding, LLC) is a member and manager of TGC/Farkas Funding, LLC, with actual and/or apparent authority to bind TGC/Farkas Funding, LLC and settle these claims. This is based on the Garman Turner Gordon engagement letter that TGC/Farkas, Funding, LLC disclosed in the underlying dispute that went to arbitration, which Mr. Farkas executed as a member of TGC/Farkas Funding, LLC and also interlineated a restriction of no litigation against First 100. *See* Ex. B.

The TGC/Farkas Funding, LLC Operating Agreement, also disclosed by TGC/Farkas Funding, LLC in the underlying arbitration matter, states that Mr. Farkas is a 50% member of TGC/Farkas Funding, LLC, as well as the CEO of the company with full authority to appoint and terminate agents and consultants of TGC/Farkas Funding, LLC. *See* Ex. C, Operating Agreement at Sections 3.1 and 4.5.

On January 14, 2021, counsel for First 100 received a copy of a letter from Raffi A. Nahabedian, Esq. to Garman Turner Gordon, indicating that he had been retained as counsel for TGC/Farkas Funding, LLC and that Garman Turner Gordon had been terminated as counsel, following Mr. Farkas' growing concerns about Garman Turner Gordon exceeding the scope of its authority set forth in the engagement letter that Mr. Farkas had signed on behalf of TGC/Farkas Funding, LLC which indicated that litigation against First 100 was prohibited.

On January 15, 2021, counsel for First 100 received correspondence from Dylan Ciciliano, Esq. of Garman Turner Gordon indicating that there was no settlement and no substitution of counsel regarding representation of TGC/Farkas Funding, LLC, which conflicts with the settlement agreement that First 100's counsel previously received.

This motion is now filed to enforce the settlement agreement that was executed by Matthew Farkas on behalf of TGC/Farkas Funding, LLC and Jay Bloom on behalf of First 100 and 1st One Hundred Holdings, in light of Garman Turner Gordon's subsequent representations that there has been

no settlement, which conflicts with the plain language of the settlement agreement.

Moreover, until this dispute is resolved, it does not make sense for First 100 to be responding to post-judgment discovery, as one of the underlying purposes of settlement agreements is providing assurances to the parties that the underlying matter will no longer be pursued, and forcing First 100 to further engage in post-judgment discovery would directly conflict with the terms of the settlement agreement.

III. CONCLUSION

Based on the foregoing, First 100 respectfully requests that the Court enforce the settlement agreement executed by the parties and vacate post-judgment discovery proceedings.

DATED this 19th day of January, 2021.

Respectfully submitted,

MAIER GUTIERREZ & ASSOCIATES

/s/ Jason R. Maier

JASON R. MAIER, ESQ.
Nevada Bar No. 8557
JOSEPH A. GUTIERREZ, ESQ.
Nevada Bar No. 9046
DANIELLE J. BARRAZA, ESQ.
Nevada Bar No. 13822
8816 Spanish Ridge Avenue
Las Vegas, Nevada 89148
Attorneys for First 100, LLC and 1st One Hundred Holdings, LLC

CERTIFICATE OF SERVICE

Pursuant to Administrative Order 14-2, a copy of the **DEFENDANTS' MOTION TO ENFORCE SETTLEMENT AGREEMENT AND VACATE POST-JUDGMENT DISCOVERY PROCEEDINGS ON *EX PARTE* ORDER SHORTENING TIME** was electronically filed on the _____ day of January, 2021, and served through the Notice of Electronic Filing automatically generated by the Court's facilities to those parties listed on the Court's Master Service List as follows:

Erika P. Turner, Esq.
GARMAN TURNER GORDON, LLP
650 White Drive, Suite 100
Las Vegas, Nevada 89119
Attorneys for TGC Farkas Funding LLC

/s/ Natalie Vazquez
An Employee of MAIER GUTIERREZ & ASSOCIATES

EXHIBIT “A”

SETTLEMENT AGREEMENT

This Settlement Agreement is entered into as of this 6th day of January 2021, by and between 1st One Hundred Holdings, LLC (hereinafter "1st 100"), First 100, LLC (hereinafter "F100") and the TCG Farkas Funding, LLC (hereinafter "TCG"), by and through its Member and Manager, Matthew Farkas (collectively referred to as "the Parties"):

An arbitration award reduced to judgment in favor of the TCG exists (the "Judgment");

1st 100 and F100 have been awarded a judgment in the amount of $2,211,039,718.46 against judgment debtors Raymond Ngan, Relativity Capital Group, LTD, Relativity Capital, LLC and Relativity Enterprises, Inc. (the "Award")

The Parties wish to resolve the dispute without further litigation;

TCG wishes to obtain assurances of the recovery of its investment and secure a method of obtaining payment;

1st 100 and F100 wish to pay the amount owed as a single lump sum payment upon recovery from the Award;

NOW, THEREFORE, 1st 100 and the TCG hereby represent, warrant and agree as follows:

1. 1st 100 agrees the TCG is currently owed $1,000,000.00 plus 6% per annum since the date of investment, and this amount is secured by the Judgment;

2. 1st 100 will pay the amount owed to the TCG as follows:

    a. Concurrent with its collection of proceeds from the sale of its Award, 1st 100 and/or F100 will cause to pay $1,000,000 plus 6% interest accrued from the date of investment to TCG/Farkas;

3. Interest will continue to accrue on the balance until such time of payment;

5. Upon execution of the Agreement, TCG will file a dismissal with prejudice of the current actions related to this matter, including the arbitration award and all relation motions and actions pending in the District Court;

6. The Parties agree that each shall bear its own costs and attorney's fees;

7. The Parties agree to waive the right to receive written findings of fact, conclusions of law and with regard to this Agreement;

8. The Parties each warrant that no promise or inducement has been offered except as herein set forth, that this Agreement is executed without reliance upon any statement or representation except as contained herein, that the terms and conditions of this Agreement are fair and reasonable, and that all of the Parties are of legal age, and/or are legally competent to execute this Agreement, and have done so after a full opportunity to consult with competent, independent counsel;

9. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which shall together constitute one and the same agreement. Copies of signatures, including fax copies and pdfs, shall be deemed originals;

10. This Agreement shall be governed by and construed in accordance with the laws of the State of Nevada, without regard to the conflicts of laws and principles thereof;

11. This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto, their successors and assigns;

12. No provision of this Agreement shall be waived or modified except in writing signed by all Parties hereto;

13. This Agreement represents the entire understanding of the Parties and there are no other agreements or representations other than those contained herein;

14. The parties hereto represent and warrant that the person executing this Agreement on behalf of each party has full power and authority to enter into this Agreement;

SIGNATURE PAGE TO FOLLOW

DATED: January 6, 2021.

MATTHEW FARKAS
50% Member and Manager
TCG Farkas Funding, LLC

By: _____
Matthew Farkas
3345 Birchwood Park Place
Las Vegas, NV 89141

1st One Hundred Holdings, LLC

By: _____

Its: ____Manager_____

Print

Name: ____Jay Bloom_____

First 100, LLC

By: _____

Its: ____Manager_____

Print

Name: ____Jay Bloom_____

EXHIBIT “B”

GARMAN TURNER GORDON

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

April 21, 2017

GERALD M. GORDON, ESQ.
ggordon@gtg.legal
Telephone: (725) 777-3000

VIA U.S. Mail and Email; aflatto@georgetownco.com

TGC/Farkas Funding LLC
c/o The Georgetown Company
667 Madison Avenue
New York, New York 10065
ATTN; Adam Flatto

Re: Engagement of Garman Turner Gordon LLP

Dear Mr. Flatto:

Thank you for selecting Garman Turner Gordon ("we," "us," "our," or the "Firm") to provide legal services regarding the Matter described below. The terms in this letter ("Engagement Letter") together with the Standard Terms of Representation attached hereto as **Exhibit "A"** will describe the basis on which the Firm will provide the legal services. As we have discussed, the Firm's clients in this Matter will be TGC/Farkas Funding LLC ("you," "your," or the "Client") whose address is provided above.

Subject to the Firm's approval of engagement on the Matter and the receipt of any retainer required hereby, the Firm will be engaged to advise and represent you in connection with your investment with First 100 LLC, a Nevada limited liability company (the "Matter"). Prior to commencement, we will require that you provide us with a $2,500.00 retainer.

You have agreed that the Firm's representation is limited to the performance of services related to this Matter only. We may agree with you to further limit or expand the scope of the Firm's representation from time-to-time, but only if a change is confirmed in a writing signed by a partner of the Firm that expressly refers to this letter (a "Supplement").

You have agreed that our representation of the Client in this Matter does not give rise to a lawyer-client relationship between the Firm and any of the Client's affiliates; the representation being provided pursuant to this Engagement Letter is solely for you and we assume and will rely upon the assumption that all affiliates or other persons or entities will seek their own legal representation with regard to the Matter. Accordingly, representation of the Client in this Matter will not give rise to any conflict of interest in the event other clients of the Firm are adverse to any of the Client's affiliates.

You have agreed to pay a security retainer of Two Thousand Five Hundred Dollars ($2,500.00) as an advance against fees, costs and expenses of the Client related to the Matter.

The retainer will be applied to pay the Firm's billing statements related to the Matter when they come due. We reserve the right to require one or more further retainers at any time to protect our right to payment.

In the event that you fail to timely pay a Firm billing statement, we may apply any retainer to monthly invoices or hold as security for the payment of our final bill. The existence of a retainer does not affect your obligation to pay us promptly as provided below. At the conclusion of representation, any remaining retainer balance shall be promptly refunded to you, after payment of our final invoice. Additionally, once a trial or determinative hearing date is set, we will require you to pay all amounts then owing to us and to deposit with us the fees we estimate will be incurred in preparing for and completing the trial or arbitration, as well as jury fees and arbitration fees likely to be assessed. If you fail to timely pay any additional deposit requested, we have the right to withdraw from the representation and to cease performing further work. If permission of the court or arbitration panel is required, you agree not to oppose any motion to withdraw.

It is expressly understood that the Client's obligation to pay the Firm's fees, costs and expenses is in no way contingent on the ultimate outcome of the Matter. Unless otherwise agreed with you in writing, we reserve the right to deliver all billing statements to you via email.

The principal basis for computing our fees will be the amount of time spent on the Matter by various lawyers and legal assistants multiplied by their hourly billing rates. Gerald Gordon will be the attorney in charge of the relationship and while his standard rate is $775.00. Erika Pike Turner will be assisting with the representation and her standard rate is $495.00. Our current rates for attorneys range from $200 per hour to $775 per hour. Time devoted by law clerks, paralegals, project assistants and investigators that are employees of the Firm are charged at billing rates ranging from $55 to $190 per hour. These billing rates are subject to change annually and the Client will be notified of any changes to those billing rates whether directly or by invoice. These applicable hourly rates are the Firm's prevailing rates for attorneys, law clerks and other professional and non-professional assistants. Notwithstanding the above, the Firm agrees that its fee in this Matter shall in no case exceed $25,000, provided that the Matter shall not include any litigation against First 100, LLC.

Additional information regarding fees and other important matters appear in the attached Standard Terms of Representation, which is incorporated as part of this Engagement Letter and which you should review carefully before agreeing to our engagement on the Matter. This Engagement Letter is a binding legal document with significant consequences. The Client is encouraged to have it reviewed by other counsel of the Client's choice prior to execution by the Client. Please indicate your acceptance of the terms of this representation letter and the Standard Terms of Representation by signing and returning a copy of this Engagement Letter to me. Please call me if you have any questions. We look forward to working with you.

Sincerely,

GARMAN TURNER GORDON

GERALD M. GORDON, ESQ.

AGREED TO AND ACCEPTED:

TGC/FARKAS FUNDING LLC

By; TGC 100 INVESTOR, LLC

By: _____

Title: ~~Manager~~ Member

Date: _____

By: _____
Matthew Farkas

Title: Member

Date: _____

Sincerely,

GARMAN TURNER GORDON

GERALD M. GORDON, ESQ.

AGREED TO AND ACCEPTED:

TGC/FARKAS FUNDING LLC

By; TGC 100 INVESTOR, LLC

By:

Title: ~~Manager~~ Member

Date:

By: Matthew Farkas

Title: Member

Date: 4/27/2017

Exhibit "A"

STANDARD TERMS OF REPRESENTATION

This document sets forth the standard terms of our engagement as your lawyers. Except where expressly stated below, unless modified by a writing that expressly refers hereto signed by a partner of the Firm[1], these terms will be an integral part of our agreement with you. Therefore, we ask that you review this document carefully and contact us promptly if you have any questions. You should retain this document in your file.

The Scope of Our Work

The legal services that the Firm will provide to you are described in our Engagement Letter or any Supplement thereto, which together with these Standard Terms of Representation constitute our legal contract with you. Our representation is limited to performance of the services described as the "Matter" in that Engagement Letter and any Supplement thereto and does not include representation of you or your interests in any other matter.

The only person or entity that we represent is the person or entity that is identified in our Engagement Letter as the "Client" and does not include any affiliates of such person or entity (*i.e.*, if you are a corporation or partnership, any parents, subsidiaries, employees, officers, directors, shareholders or partners of the corporation or partnership, or commonly owned corporations or partnership; or, if you are a trade association, any members of the trade association). Accordingly, for conflict of interest purposes, we may currently or at a later time agree to represent another client with interests adverse to any such affiliate without obtaining your consent.

Because we are not your general counsel, our acceptance of a Matter does not involve an undertaking to represent you or your interests in any other matter. In particular, the Firm's engagement on the Matter does not include responsibility for review of your insurance policies to determine the possibility of coverage for the claim asserted in the Matter, for notification of your insurance carriers about the Matter, or for advice to you about your disclosure obligations concerning the matter under the federal securities laws or any other applicable law. If you decide at any point that you wish to engage the Firm for other work, such engagement must be confirmed in a Supplement.

[1] Capitalized Terms not defined in these Standard Terms of Representation shall have the meanings ascribed in the Engagement Letter and any Supplement thereto.

Either at the commencement or during the course of our representation, we may express opinions or beliefs concerning the litigation or various courses of action and the results that might be anticipated. Any such statement made by any lawyer of our Firm is intended to be an expression of our best professional judgment only, based on information available to us at the time, and should not be construed by you as a promise or guarantee.

Who Will Provide the Legal Services

Customarily, each Client of the Firm is served by a principal lawyer contact. Subject to the supervisory role of the principal lawyer, your work or parts of it may be performed by other lawyers and legal assistants in the Firm. Such delegation may be for the purpose of involving lawyers or legal assistants with special expertise in a given area or for the purpose of providing services on the most cost efficient and timely basis.

Client Responsibilities

You agree to pay our billing statements for services and expenses as provided below. In addition, you agree to be candid and cooperative with us and will keep us informed with complete and accurate factual information, documents and other communications relevant to the subject matter of our representations of otherwise reasonably requested by us. You agree to make Client's officers and employees available to attend trial, hearings, depositions and discovery conferences, and other proceedings, and to commit the appropriate personnel and sufficient resources to meet the Client's discovery obligations. In the event you perceive any actual or possible disagreement with the Firm or the Firm's handling of the Matter, you agree to promptly and candidly discuss the problem with the Firm. Because it is important that we be able to contact you at all times to consult with you regarding your representation, you will inform us, in writing, of any changes in the name, address, telephone number, contact person, e-mail address, state of incorporation or other relevant changes regarding you or your business. Whenever we need your instructions or authorization in order to proceed with legal work on your behalf, we will contact you at the latest business address we have received from you. If you affiliate with, acquire, are acquired by, or merge with another company, you will provide us with sufficient notice to permit us to withdraw as your lawyer if we determine that such affiliation, acquisition, or merger creates a conflict of interest between any of our clients and the other party to such affiliation, acquisition, or merger, or if we determine that it is not in the best interests of the Firm to represent the new entity.

The Firm agrees to keep you informed as to the status of the Matter and as to the course of action which is being followed or is being recommended by the Firm. The Firm encourages you to participate in all major decisions involving the Matter. Unless otherwise directed by you,

the Firm will provide you with copies at your cost, of all significant documents sent or received by the Firm in connection with the Matter. If, in the Firm's sole discretion, it appears that a conflict of interest has or may arise between two or more clients, then the Firm shall have the right to withdraw from representation of one of more of the clients and to continue the representation of any of the other clients.

All of the Firm's work product will be owned by the Firm and may be utilized in whole or in part by the Firm in other projects, subject to issues related to our duty of confidentiality. We agree to make reasonably available to you all written materials we send or receive pertaining to these matters so long as all of our billing statements have been timely paid.

Confidentiality of Communications

All communications between the Firm and you – whether written, oral or electronic – are confidential, and you agree to take all reasonable precautions to ensure that the confidentiality of these communications is preserved. This includes, at a minimum, ensuring that (i) written communications are not read by other persons, (ii) oral conversations are not overheard by other persons, (iii) electronic communications are not accessible by other persons, and (iv) the communications among you and any other clients the Firm is representing on the same Matter and the Firm are not disclosed by you to other persons.

Insurance Coverage/Indemnification Agreements

You agree to advise the Firm as promptly as possible of any insurance policies or other agreements which may provide for insurance coverage, indemnification and/or payment of attorney's fees, costs and expenses, in whole or in part, with respect to the Matter.

How Fees Will Be Set

The hourly rates of our lawyers and legal assistants are adjusted from time to time to reflect current levels of legal experience, changes in overhead costs, and other factors. We will keep records of the time we devote to your work, including conferences (both in person and over the telephone), negotiations, factual and legal research and analysis, document preparation and revision, travel on your behalf, and other related matters. We record our time in units of tenths of an hour.

Costs and Expenses

We will charge the Client not only for legal services rendered, but also for other ancillary services provided. The Client agrees to reimburse the Firm for all out of pocket expenses paid by the Firm. Examples include application fees, investigative costs, title insurance premiums,

travel expenses, witness fees, charges for serving and filing papers, costs for depositions, transcripts and filing fees, recording fees and fees for certifying documents. The Client also agrees to pay when billed for certain specified costs including for messenger services, computerized research services, postage, scanning and photocopying, notarial attestations and overtime clerical assistance. We do not charge for long-distance telephone toll charges or for sending or receiving faxes.

We will use an electronic document management program for managing documents produced and received in the Matter. Conversion of those documents into the document management program will be billed as a cost for the Client. While our charges for these services are measured by use, they may not, in all instances, reflect our exact out-of packet costs. The precise cost of providing service is difficult to establish for many of these services. Such costs we charge at the rate representing reasonable charges in the community for such services. We would be pleased to discuss the specific schedule of charges for these additional services with you and to answer any questions that you may have. If you would prefer, in some situations we can arrange for these services to be provided by third parties with direct billing to you. Attached as **Exhibit "B"** is a list of typical cost items and their associated costs.

You authorize us to retain any other persons or entities in performing necessary services related to this Matter. Such other persons or entities may include, but are not limited to, Court reporters, escrow agents, appraisers, investigators, consultants, or experts necessary in our judgment to represent your interests in the representation. Their fees and expenses generally will not be paid by us, but will be billed directly to you. You agree to promptly pay the charges of every person or entity hired by the Firm to perform services related to the Matter.

Billing Arrangements and Terms of Payment

We will bill you on a regular basis, normally each month, for fees, costs and expenses. If you have any questions or objections concerning a billing statement, you agree to raise them promptly for discussion. Such questions or objections shall be timely only if made within twenty (20) days from the delivery of the applicable billing statement. In all events, unless otherwise agreed to in a writing signed by us, you agree to make payments within thirty (30) days of receiving our billing statement. We may give you notice if your account becomes delinquent, and in such event you agree to immediately bring the account or the retainer deposit current. Past-due bills will bear interest at the rate of one percent (1%) per month without notice. Should any bill become thirty (30) days past due, the Firm may choose to cease all work on the Client's behalf until all outstanding bills are paid in full. If the delinquency continues and you do not arrange satisfactory payment terms, we will withdraw from the representation and pursue collection of your account. You agree to pay the fees, costs and expenses related to preservation and pursuit

of the Firm's claims against you and collecting the debt, including court costs, filing fees, and reasonable attorney fees and costs. Client and the Firm acknowledge that in the event the Firm is retained as legal counsel for a debtor-in-possession under the Bankruptcy Code, the award of legal fees, costs and expenses is subject to award and review by the United States Bankruptcy Court.

Retainer and Trust Deposits

Clients of the Firm may be required to deposit a retainer with the Firm. At the conclusion of our legal representation or at such time as the retainer deposit is unnecessary or is appropriately reduced, the remaining balance or an appropriate part of it will be returned to you. If the retainer deposit proves insufficient to cover current expenses and fees at some point during the representation, it may have to be increased.

All trust deposits we receive from you, including retainers, will be placed in a trust account for your benefit. Normally, pursuant to court rule, your deposit will be placed in a pooled account, and the interest earned on the pooled account will be payable to a charitable foundation. Other trust deposits will also be placed in the pooled account unless you request a segregated account.

Retainers and Minimum Fees can be paid with cash, check, cashier check, credit card or by wire transfer. If you chose to wire the funds our bank information is Nevada State Bank, E. Warm Springs Road, Las Vegas, NV 89132, telephone # 1-702-855-4606; account information is GTG LLP, Acct. # 979892841, routing # 122400779, swift code # ZFNBUS55.

Conflicts

The Firm represents many other entities and individuals. It is possible that some of the Firm's present or future clients will have disputes with you during this engagement. Therefore, as a condition to the Firm's undertaking this engagement, you agree that the Firm may continue to represent, or may undertake in the future to represent, existing or new clients in any matter that is not substantially related to the Matter, even if the interests of such clients in those other matters are directly adverse to you. The Client's prospective consent to conflicting representation contained in the preceding sentence shall not apply in any instance where, as the result of the Firm's representation of you, the Firm has obtained sensitive, proprietary or other confidential information that, if known to any such other client of the Firm, could be used in any such other matter by such client to the material disadvantage of you. In other words, we agree not to accept, without prior approval from you, any engagement known to be in direct conflict with your interests in the Matter. If, in the course of representing multiple clients, we determine in our sole discretion that a conflict of interest exists, we will notify all affected clients of such

conflict and may withdraw from representing any one or more of the multiple clients, possibly including you, to the extent such a withdrawal would be permitted or required by applicable ethical rules.

Termination and File Retention

You may at any time terminate our services and representation upon written notice to us. Such termination shall not, however, relieve you of the obligation to pay for all services already rendered, including work in progress and remaining incomplete at the time of termination, and to pay for all expenses incurred on your behalf through the date of termination.

We reserve the right to withdraw from our representation (1) if you fail to honor the Engagement Letter, any Supplement thereto or these Standard Terms of Representation; (2) for any just reason as permitted or required under the Nevada Code of Professional Responsibility or by any appropriate court; (3) if you demand that we take action which we, in our discretion, determine would violate Rule 11 of the Federal Rules of Civil Procedure or any state or bankruptcy law derivative thereof; (4) if you fail to cooperate with us, make false statement or representations to us, or fail to pay us promptly as required by the terms hereof; or (5) as required or permitted by the applicable rules of professional conduct, all upon written notice to you. In the event that we terminate the engagement, we will take such steps as are reasonably practicable to protect your interests in the Matter, and you agree to take all steps necessary to free us of any obligation to perform further, including the execution of any documents necessary to perfect our withdrawal. We will be entitled to be paid for all services rendered and costs and expenses incurred on your behalf through the date of withdrawal. If permission for withdrawal is required by a court, we will promptly request such permission, and you agree not to oppose our request. In the event of termination, you agree to pay us promptly for all services rendered plus all other charges or expenses incurred prior to such termination.

Unless previously terminated, our representation of you in the Matter will terminate upon our sending you our final statement for services rendered in the Matter.

The Client is responsible for maintaining its own copies of documents forwarded to it by the Firm. Following termination of our services, at your request, your papers and property will be returned to you upon receipt of payment of outstanding fees, costs and expenses. Otherwise, we agree to make a diligent effort, subject to casualties beyond our control, to retain and maintain all major and significant components of your papers and property relative to the Matter for a period of four (4) years following the conclusion of the matter. Our own files pertaining to the Matter will be retained by the Firm. These Firm files include, for example, firm administrative records, time and expense reports, personnel and staffing materials, and credit and accounting records; and internal lawyers' work product such as drafts, notes, internal

memoranda, and legal and factual research, including investigative reports, prepared by or for the internal use of lawyers. All such documents retained by the Firm will be transferred to the person responsible for administering our records retention program. For various reasons, including the minimization of unnecessary storage expenses, we reserve the right to destroy or otherwise dispose of any such documents or other materials retained by us within a reasonable time after the termination of the engagement.

We shall be entitled to enforce our attorneys' retaining lien and attorneys' charging lien in accordance with Nevada law, so that, in the event you fail to pay the Firm as provided herein, the Firm may retain exclusive control of all your files as well as any property, monies, or original documents in the Firm's possession, until such fees, costs and expenses are paid in full. You hereby grant a power of attorney to counsel to execute any drafts or instruments payable to you, apply sums received to the Firm's outstanding billing statements, and remit any remaining funds to you.

After the conclusion of our representation, changes may occur in the applicable laws or regulations that could have an impact upon your future rights and liabilities. Unless you engage us after the conclusion of the Matter to provide additional advice on issues arising from the Matter, the Firm has no continuing obligation to advise you with respect to future legal developments.

Governing Law and Rules of Professional Conduct

The Engagement Letter shall be interpreted and enforced in accordance with the laws of the State of Nevada, as amended from time to time. The Firm's services shall be governed by the Rules of Professional Conduct as adopted by the Nevada Supreme Court, as amended from time to time, without regard to where the services are actually performed. Any lawsuit, action or proceeding arising out of or relating to this agreement shall only be instituted in a federal or state court located in Nevada.

Disputes

JURY WAIVER. THE CLIENT AND THE FIRM VOLUNTARILY, IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY RIGHT TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE, WHETHER SOUNDING IN CONTRACT, TORT, OR OTHERWISE, ARISING OUT OF, IN CONNECTION WITH, RELATED TO, OR INCIDENTAL TO THE RELATIONSHIP ESTABLISHED BETWEEN THEM IN CONNECTION WITH THE MATTER, THIS AGREEMENT, OR ANY OTHER AGREEMENT OR DOCUMENT EXECUTED OR DELIVERED OR CREATED IN

CONNECTION HEREWITH OR THEREWITH OR ANY ACT OR TRANSACTION RELATED HERETO.

Effort and Outcome

The Firm agrees to competently and diligently represent the Client in the Matter. The Client acknowledges that the Firm has given no assurances regarding the outcome of the Matter. You acknowledge that, in the event of a loss, you may be liable for the opposing party's attorney's fees and will be liable for the opposing party's costs as required by law. You further acknowledge that a suit brought solely to harass or coerce a settlement may result in liability for malicious prosecution or abuse of process.

Commencement of Representation

If representation of the Client by the Firm in the Matter has commenced prior to the Firm receiving a copy of the Engagement Letter and any Supplement thereto signed by the Client and any required retainer, all such services rendered by the Firm are agreed to have been requested and provided pursuant to the terms of the Engagement Letter and any Supplement thereto.

Privacy Policy of Garman Turner Gordon

Lawyers, as providers of certain personal services, may be required by the Gramm-Leach-Bliley Act (the "Act") to inform their clients of their policies regarding privacy of you information. We understand your concerns as to privacy and the need to ensure the privacy of all your information. Your privacy is important to us, and maintaining your trust and confidence is a high priority. Lawyers have been and continue to be bound by professional standards of confidentiality that are even more stringent than those required by the Act. Therefore, we have always protected your right to privacy. The purpose of this notice is to explain our Privacy Policy with regard to personal information about you that we obtain and how we keep that information secure.

Nonpublic Personal Information. We collect nonpublic personal information about you that is provided to us by you or obtained by us with your authorization or consent.

We do not disclose any personal information about our clients or former clients to anyone, except as permitted by law and any applicable state ethics rules.

We do not disclose any nonpublic personal information about current or former clients obtained in the course of representation of those clients, except as expressly authorized by those clients to enable us to effectuate the purpose of our engagement or as required or permitted by

law or applicable provisions of codes of professional responsibility or ethical rules governing our conduct as lawyers.

Confidentiality and Security. We retain records relating to professional services that we provide so that we are better able to assist you with your professional needs and to comply with professional guidelines or requirements of law. In order to guard your nonpublic personal information, we maintain physical, electronic, and procedural safeguards that comply with our professional standards.

Integration

The Engagement Letter, any Supplement thereto and these Standard Terms of Representation contain the entire agreement between the Client and the Firm regarding the Matter and the fees, costs and expenses relative to the Matter. The Engagement Letter and any Supplement thereto shall be binding upon the Client and the Firm and their respective heirs, executors, legal representatives and successors. These Standard Terms of Representation may be revised periodically. Any revision shall be delivered to the Client and be effective thirty (30) days after such delivery unless we have received an objection to the revision from the Client within such thirty (30) day-period.

Authorization to Retain the Firm

The person signing the Engagement Letter on behalf of the Client acknowledges that he has the requisite power and authority to execute and deliver the Engagement Letter on behalf of the Client, and that the Client has duly authorized and approved all necessary action and consent to be taken by him with respect to the Matter.

Exhibit "B"

Chargeable Costs

1. Local Courier Messenger Services	$10.00
2. Indexing (per tab)	.50
3. Photocopying (per page)	.25
4. Telephone Charge (long distance)	actual charge
5. Equifax	actual charge
6. Federal Express	actual charge
7. UPS Delivery	actual charge
8. Computerized Research	actual charge
9. Scanning (per page)	.25
10. Electronic Filing and Retrieval Fees	actual charge

EXHIBIT “C”

LIMITED LIABILITY COMPANY AGREEMENT

OF

TGC/FARKAS FUNDING LLC

A Delaware Limited Liability Company

Dated as of October 21, 2013

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LIMITED LIABILITY COMPANY AGREEMENT OF TGC/FARKAS FUNDING LLC

AGREEMENT OF LIMITED LIABILITY COMPANY of TGC/FARKAS FUNDING LLC (the "Company"), dated as of October 21, 2013 (the "Effective Date"), among the persons listed on Schedule A attached hereto (individually, a "Member" and, collectively, the "Members").

RECITALS

WHEREAS, the Members have formed the Company in accordance with the provisions of the Delaware Limited Liability Company Act, as amended from time to time (the "Act"), and desire to enter into a written agreement pursuant to the Act governing the affairs of the Company and the conduct of its business;

WHEREAS, Matthew Farkas ("Farkas") has been granted a two percent (2%) membership interest (the "2% Interest") in First 100, LLC, a Nevada limited liability company (the "Investment Vehicle") 1.5% of which shall be subject to vesting over a period of three (3) years, as evidenced by the vesting letter attached as Exhibit A hereto;

WHEREAS, as of the date hereof, Farkas has contributed all of his right, title and interest in and to the 2% Interest to the Company in exchange for a fifty percent (50%) membership interest in the Company;

WHEREAS, TGC 100 Investor, LLC, a Delaware limited liability company ("TGC Investor"), has the right to purchase a one percent (1%) Class A Voting Membership Interest (the "1% Class A Interest") in the Investment Vehicle and has contributed this right to the Company, together with a capital contribution in the amount of the 1% Class A Interest purchase price, in exchange for a fifty percent (50%) membership interest in the Company; and

WHEREAS, the Members party hereto desire to enter into this Agreement in order to document their business and economic relationship.

NOW, THEREFORE, in consideration of the mutual covenants herein contained and other valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto hereby agree as follows:

ARTICLE I

DEFINITIONS

Section 1.1 Definitions. Capitalized terms used but not otherwise defined herein shall have the meanings assigned to them in the Act. For all purposes of this Agreement, except as otherwise expressly required or unless the context clearly indicates a contrary intent, the terms set forth below shall have the following meanings:

"1% Class A Interests" has the meaning set forth in the Recitals hereof.

"2% Interest" has the meaning set forth in the Recitals hereof.

"Act" has the meaning set forth in the Recitals hereof.

"Agreement" shall mean this Agreement of Limited Liability Company of TGC/Farkas Funding LLC.

"Administrative Member" has the meaning set forth in Section 4.1(c) hereof.

"Business Days" shall mean any day on which commercial banking institutions in the City of New York are not authorized or required to close.

"Capital Commitment" shall mean, for any Member, the amounts set forth opposite such Member's name on Schedule B hereto, as the same may be amended from time to time in accordance with this Agreement.

"Capital Contribution" shall mean, for any Member, at any time, the amount of capital actually contributed to the Company by such Member on or prior to such time which has not been paid back to such Member.

"Certificate of Formation" has the meaning set forth in Section 2.1 hereof.

"Code" has the meaning set forth in Section 6.44 hereof.

"Common Interests" has the meaning set forth in Section 5.1 hereof.

"Company" has the meaning set forth in the Introductory Paragraph hereof.

"Consent to Assignment" has the meaning set forth in Section 5.5 hereof.

"Covered Persons" has the meaning set forth in Section 4.3 hereof.

"Distributable Cash" shall mean, unless otherwise expressly stated herein, the cash proceeds from the operations of the Company, net of all related costs and expenses.

"Effective Date" has the meaning set forth in the Introductory Paragraph hereof.

"Event of Termination" has the meaning set forth in Section 9.1.

"Farkas" has the meaning set forth in the Recitals hereof.

"Fiscal Year" has the meaning set forth in Section 2.9.

"Initial Capital Contribution" has the meaning set forth in Section 5.2.

"Investment Vehicle" has the meaning set forth in the Recitals.

"Member" has the meaning set forth in the Introductory Paragraph.

"Membership Interest" shall mean each Member's ownership interest in the Company.

"Membership Interest Percentage" has the meaning set forth in Section 3.1(a) hereof.

"Person" means any individual, corporation, general or limited partnership, limited liability company, limited liability partnership, joint venture, estate, trust, joint stock company, unincorporated association, any other entity, any governmental authority and any fiduciary acting in such capacity on behalf of any of the foregoing.

"Preferred Rate" shall mean shall mean a sum equal to three percent (3.0%) per annum, determined on the basis of a year of 365 or 366 days, as the case may be, for the actual number of days in the period for which the Preferred Return is being determined.

"Preferred Return" shall mean, commencing on the date hereof and thereafter, an amount required for TGC Investor to receive a return on its Capital Account balance as of the first day of the relevant Fiscal Period equal to the Preferred Rate, compounded annually, which amount shall accumulate to the extent not paid pursuant to Section 6.1(b).

"Secretary of State" has the meaning set forth in Section 2.1 hereof.

"TGC Investor" has the meaning set forth in the Recitals hereof.

"Transfer" has the meaning set forth in Section 8.1.

ARTICLE II

GENERAL PROVISIONS

Section 2.1 Formation. The Members have formed the Company as a limited liability company pursuant to the Act. A Certificate of Formation described in Section 18-201 of the Act (the "Certificate of Formation") was filed with the Secretary of State of the State of Delaware (the "Secretary of State") on October 18, 2013 in conformity with the Act. Catherine Ledyard, as an authorized person within the meaning of the Act, was expressly authorized to execute and file the Certificate of Formation. The Administrative Member (as hereinafter defined), on behalf of the Company shall execute or cause to be executed from time to time all other instruments, certificates, notices and documents and shall do or cause to be done all such acts and things as may now or hereafter be required for the formation, valid existence and, when appropriate, termination of the Company as a limited liability company under the laws of the State of Delaware.

Section 2.2 Company Name. The name of the Company shall be "TGC/Farkas Funding LLC". The business of the Company may be conducted under such other names as the Members may from time to time determine, provided that the Company complies with all relevant state laws relating to the use of fictitious and assumed names.

Section 2.3 Place of Business; Principal Office. The principal and chief executive office of the Company shall be located at the offices of TGC Investor in New York, New York or such other place that the Members shall determine. The books and records of the Company shall be kept and maintained at the principal office of the Company.

Section 2.4 Purpose; Nature of Business Permitted; Powers. The Company is formed for the purpose of owning not less than a three percent (3.0%) membership interest in the Investment Vehicle, and to engage in any and all activities that may be necessary, incidental or advisable to the foregoing. The Company shall possess and may exercise all the powers and privileges granted by the Act or by any other law or by this Agreement, together with any powers incidental thereto, insofar as such powers and privileges are necessary or convenient to the conduct, promotion or attainment of the business purposes or activities of the Company.

Section 2.5 Business Transactions of a Member with the Company. In accordance with Section 18-107 of the Act, a Member may lend money to, borrow

money from, act as surety, guarantor or endorser for, guarantee or assume one or more obligations of, provide collateral for, and transact other business with, the Company and, subject to applicable law, shall have the same rights and obligations with respect to any such matter as a Person who is not a Member. The Company shall not lend money to, act as a surety, guarantor or endorser for, guarantee or assume on or more obligations of, or provide collateral for a Member.

Section 2.6 Company Property. No real or other property of the Company shall be deemed to be owned by a Member individually, but shall be owned by and title shall be vested solely in the Company. The Common Interests in the Company held by the Members shall constitute personal property of the Members.

Section 2.7 Term. The existence of the Company commenced on the date of the filing of the Certificate of Formation in the office of the Secretary of State of the State of Delaware in accordance with the Act, and, subject to the provisions of Article X hereof, the Company shall have perpetual life.

Section 2.8 No State Law Partnership. The Members intend that the Company not be a partnership (including a limited partnership) or joint venture and that no Member be a partner or joint venturer of any other Member for any purposes other than applicable tax laws. This Agreement may not be construed to suggest otherwise.

Section 2.9 Fiscal Year. The fiscal year of the Company (the "Fiscal Year") for financial statement and federal income tax purposes shall be the calendar year. The Company shall have the same fiscal year for tax and accounting purposes.

Section 2.10 Tax Treatment. The Company shall be treated as a partnership for U.S. federal income tax purposes (as well as for any analogous state or local tax purposes), and the Members and the Company shall timely make any and all necessary elections and filings for the Company to be treated as a partnership for U.S. federal income tax purposes (as well as for any analogous state or local tax purposes).

Section 2.11 Registered Office and Agency. The address of the registered office of the Company in the State of Delaware is Corporation Services Company, 2711 Centerville Road, in the City of Wilmington, County of New Castle, State of Delaware 19808. Such office and such agent may be changed from time to time by the Members.

ARTICLE III

MEMBERS

Section 3.1 Members. The name, address and Membership Interest Percentage (as hereinafter defined) of each of the Members are set forth on Schedule A hereto, which shall be amended from time to time to reflect the admission of new Members, additional capital contributions of Members or the Transfer of Common Interests, each, to the extent permitted by the terms of this Agreement. As of the date hereof, each Member's membership interest in the Company (its "Membership Interest Percentage") is as follows:

Member	Membership Interest Percentage
TGC Investor	50.00%
Farkas	50.00%
TOTAL:	100.00%

Section 3.2 Admission of New Members. A Person shall be admitted as a Member of the Company only upon (i) the prior unanimous written approval of the Members and (ii) receipt by the Company of a counterpart to this Agreement, executed by such Person, agreeing to be bound by the terms of this Agreement.

Section 3.3 No Liability of Members. All debts, obligations and liabilities of the Company, whether arising in contract, tort or otherwise, shall be solely the debts, obligations and liabilities of the Company and no Member shall be obligated personally for any such debt, obligation or liability of the Company solely by reason of being a Member.

Section 3.4 Actions by the Members; Meetings; Quorum.

(a) The Administrative Member may take any action without a meeting; however, the Administrative Member agrees that all actions shall be taken after consultation with, and upon the consent of, all Members and the Administrative Member agrees to file a copy of any action taken by the Administrative Member with the records of the Company.

(b) Meetings of the holders of the Common Interests may be called at any time by the Members. Decisions of the Members shall be made by the unanimous vote of the Members.

Section 3.5 Power to Bind the Company. No Member (acting in its capacity as such) other than the Administrative Member shall have any authority to bind the Company to any third party with respect to any matter except pursuant to a resolution expressly authorizing such matter and authorizing such Member to bind the Company with respect thereto, which resolution is duly adopted by the affirmative vote of all Members.

ARTICLE IV

MANAGEMENT

Section 4.1 Management of the Company.

(a) The Members hereto agree that Farkas shall be the administrative member of the Company (the "Administrative Member") and shall be responsible for the day-to-day management of the Company. The Administrative Member shall be a "manager" of the Company as such term is defined in the Act and shall be responsible for making all business and managerial decisions for the Company.

(b) Neither this Agreement nor any term or provision hereof may be amended, waived, modified or supplemented orally, but only by a written instrument signed by all of the Members hereto.

Section 4.2 Exculpation. Neither the Administrative Member nor the Members shall be liable to the Company or to any other Person for any action taken or omitted to be taken by such party or for any action taken or omitted to be taken by any other Person with respect to the Company, except to the extent that any such act or omission was attributable to such Person's willful misconduct, fraud or gross negligence. Without limiting the generality of the foregoing, neither the Administrative Member nor the Members shall be liable to the Company for honest mistakes of judgment or for losses or liabilities due to such mistakes or to the negligence, dishonesty or bad faith of any employee, broker or other agent of the Company.

Section 4.3 Indemnification.

(a) The Company shall indemnify to the fullest extent permitted by law each of Administrative Member and each Member and each of their respective employees or agents of each of them (each, a "Covered Person") from and against all costs and expenses (including attorneys' fees and disbursements), judgments, fines, settlements, claims and other liabilities incurred by or imposed upon such Covered Person in connection with, or resulting from, investigating,

preparing or defending any action, suit or proceeding, whether civil, criminal, administrative, investigative, legislative or otherwise (or any appeal therein), to which such Covered Person may be made a party or become otherwise involved or with which such Covered Person may be threatened, in each case by reason of, or in connection with, such Covered Person's being or having been associated with the Company, or having acted at the direction of the Company as a director, officer, employee, partner or agent of an entity in which the Company has invested, directly or indirectly, or by reason of any action or alleged action, omission or alleged omission by such Covered Person in any such capacity, provided that such Covered Person is not ultimately adjudged to have engaged in willful misconduct, fraud or gross negligence.

(b) The Company may purchase and maintain liability insurance on behalf of any Covered Person against any liability asserted against a Covered Person and incurred by him, her or it arising out of the Company, whether or not the Company could indemnify such Covered Person against the liability under the provisions of this Section 4.3.

(c) The Company shall pay the expenses incurred by any such Covered Person in investigating, preparing or defending a civil or criminal action, suit or proceeding, in advance of the final disposition thereof, upon receipt of an undertaking by or on behalf of such Covered Person to repay such amount if there is a final adjudication or determination that he, she or it is not entitled to indemnification as provided herein.

(d) None of the provisions of this Section 4.3 shall be deemed to create or grant any rights in favor of any third party, including, without limitation, any right of subrogation in favor of any insurer or surety. The rights of indemnification granted hereunder shall survive the dissolution, winding up and termination of the Company.

(e) The right of any Covered Person to the indemnification provided herein shall be cumulative of, and in addition to, any and all rights to which such Covered Person may otherwise be entitled by contract or as a matter of law or equity and shall extend to such Covered Person's successors, assigns and legal representatives.

(f) All judgments against the Company or a Covered Person, in respect of which such Covered Person is entitled to indemnification, shall first be satisfied from Company assets before the Covered Person is responsible therefor.

Section 4.4 Reliance by Third Parties. Persons dealing with the Company are entitled to rely conclusively upon the power and authority of the Administrative Member.

Section 4.5 Officers and Related Persons. By resolution of the Members, Farkas is hereby appointed Chief Executive Officer of the Company (the "CEO"). The CEO shall have the authority to appoint and terminate officers of the Company, retain and terminate employees, agents and consultants of the Company and to delegate such duties to any such officers, employees, agents and consultants as the CEO deems appropriate in each case to operate in accordance with the Approved Budget or as otherwise agreed by the Members.

ARTICLE V

CAPITAL STRUCTURE AND CONTRIBUTIONS

Section 5.1 Capital Structure. The capital structure of the Company shall consist of one class of common interests ("Common Interests"). Each of the Common Interests shall be as set forth on Schedule A hereto, and shall have identical rights unless otherwise set forth herein.

Section 5.2 Capital Contributions. TGC Investor has contributed, as an initial capital contribution to the Company, all of its right to purchase the 1% Class A Interests and all of its right, title and interest in and to the amount of cash listed on Schedule A hereto (each, an "Initial Capital Contribution"). Farkas has contributed, as an initial contribution to the Company, his right to purchase the 2% Interest in the Investment Vehicle, which, for the purpose of this Agreement has the value set forth on Schedule A hereto. In exchange for the Initial Capital Contribution each Member is herewith receiving Common Interests in the Company in the amount set forth opposite the name of such Member on Schedule A hereto. Upon the satisfaction of the condition to effectiveness set forth in Section 5.5 hereof, the Administrative Members shall cause the Company to purchase the 1% Class A Interest with the cash contributed to the Company.

Section 5.3 Additional Capital Contributions. Other than as may be agreed by the Members, there shall be no additional contributions to the Company's capital.

Section 5.4 No Withdrawal Of Capital Contributions. Except upon the dissolution and liquidation of the Company as set forth in Article IX hereof, the Members shall not have the right to withdraw capital contributions.

Section 5.5 Condition to Effectiveness; Exclusive Investment Vehicle.

a. As a condition to the effectiveness of this Agreement, Farkas shall and shall cause the managing member of the Investment Vehicle to deliver to the Administrative Member that certain Consent to Admission of New Member in the form attached hereto as Exhibit B (the "Consent to Assignment"), pursuant to which the Company consents to the admission of the Company as a member as more particularly set forth therein.

b. The Members acknowledge and agree that 1.5% of the interest in the Investment Vehicle which is subject to vesting shall be allocable to Farkas and 1.5% of the interest in the Investment Vehicle which is not subject to vesting shall be allocable to TGC Investor. The Administrative Member shall cause the Investment Vehicle to properly identify the interests allocable to Farkas and TGC Investor on Schedule A to the Investment Vehicle operating agreement.

c. The Members acknowledge and agree that the Company shall be Farkas' exclusive vehicle for investments in the Investment Vehicle during the term of this Agreement.

Section 5.6 Maintenance of Capital Accounts. The Company shall establish and maintain capital accounts for the Common Interest Members in accordance Treasury Regulations Section 1.704-(b). The balance in each Member's capital account shall be increased by (x) the amount of each contribution made by such Member and (y) the distributive share of net profits of the Member and shall be decreased by (x) the amount of each distribution made to the Member and (y) the distributive share of net losses allocated to the Member.

ARTICLE VI

ALLOCATIONS AND DISTRIBUTIONS

Section 6.1 Distributions. The Administrative Member shall determine the amount of Distributable Cash in compliance with the Act and the timing of all distributions to be made hereunder. All distributions of Distributable Cash prior to the liquidation of the Company shall be made in the following order and priority:

(a) first, one hundred percent (100%) to TGC Investor until TGC Investor shall have received a cumulative amount equal to the Preferred Return; and

(b) second, one hundred percent (100%) to TGC Investor until such time as TGC Investor shall have received a cumulative amount equal to the total amount of its unpaid Capital Contributions, from time to time; and

(c) third, one hundred percent (100%) to the Members on a pro rata basis in accordance with their respective Membership Interest Percentage.

Section 6.2 Allocations of Net Profits and Net Losses from Operations. For financial accounting and tax purposes, the Company's net profits or net losses shall be determined on an annual basis in accordance with the manner determined by the Administrative Member upon consultation with the Members, provided, however allocation of net profits and net losses shall comply with the provisions of Section 704 and the Treasury Regulations promulgated thereunder. In each year, the Company's net profits and net losses shall be allocated to the Members, pro rata, in accordance with their Membership Interest Percentage.

Section 6.3 No Right to Distributions. The Members shall not have the right to demand or receive distributions of any amount, except as expressly provided in this Article VI.

Section 6.4 Withholding. The Company is authorized to withhold from distributions to the Members, or with respect to allocations to the Members, and to pay over to a Federal, foreign, state or local government, any amounts required to be withheld pursuant to the Internal Revenue Code of 1986 (the "Code"), or any provisions of any other Federal, foreign, state or local law. Any amounts so withheld shall be treated as having been distributed to the Members pursuant to this Article VI for all purposes of this Agreement, and shall be offset against the current or next amounts otherwise distributable to the Members.

ARTICLE VII

BOOKS AND REPORTS

Section 7.1 Books and Records. The Company shall keep or cause to be kept at the office of the Company (or at such other place as the Board in its discretion shall determine) full and accurate books and records regarding the status of the business and financial condition of the Company and shall make the same available to the Member upon request, subject to the provisions of the Act.

Section 7.2 Form K-1. After the end of each Fiscal Year, the Administrative Member shall cause to be prepared and transmitted, as promptly as possible, and in any event within 90 days of the close of the Fiscal Year, a Federal income tax Form K-1 and any required similar state income tax form for the Member.

Section 7.3 Tax Matters Partner. The Administrative Member is hereby designated as the Company's "Tax Matters Partner" under Section 6231(a) (7) of the

Code, and shall have all the powers and responsibilities of such position as provided in the Code. The Tax Matters Partner is specifically directed and authorized to take whatever steps are necessary or desirable to perfect such designation, including filing any forms or documents with the Internal Revenue Service and taking such other action as may from time to time be required under the Regulations issued under the Code. The Tax Matters Partner shall cause to be prepared and shall sign all tax returns of the Company, make any tax elections for the Company allowed under the Code or the tax laws of any state or other jurisdiction having taxing jurisdiction over the Company and monitor any governmental tax authority in any audit that such authority may conduct of the company's books and records or other documents.

Section 7.4 Reports. The Administrative Member shall provide the Members with reports as follows:

(a) A quarterly report for each calendar quarter (other than the last calendar quarter of the Fiscal Year), certified by Administrative Member, to its actual knowledge, to be true, accurate and complete in all material respects, and submitted to the Members within twenty (20) days of the end of each such calendar quarter, which shall include an operating statement and report of financial condition of the Company for such quarter; and

(b) Annual financial statements in a format acceptable to the Members within ninety (90) days of the end of the Fiscal Year. The Members hereby agree to act reasonably in approving a Company accountant to provide auditing and tax services.

ARTICLE VIII

TRANSFERS OF COMMON INTERESTS; PARTIAL REDEMPTION

Section 8.1 Restriction on Transfer. No Member shall sell, convey, assign, transfer, pledge, grant a security interest in or otherwise dispose of (each a "Transfer") all or any part of its Common Interest, other than upon the prior unanimous written consent of the Members; provided, however, such Person to whom such Common Interests are Transferred shall be an assignee and shall have no right to participate in the Company's business and affairs unless and until such Person shall be admitted as a member of the Company upon (i) the prior unanimous written consent of the Members and (ii) receipt by the Company of a written agreement executed by the Person to whom such Common Interests are Transferred agreeing to be bound by the terms of this Agreement. All Transfers in violation of this Article VIII are null and void ab initio and of no force or effect.

Section 8.2 Permitted Transfers. Notwithstanding the foregoing, the consent of the Members shall not be required in connection with a transfer, in one or a series of transactions, of not more than forty-nine percent (49%) of a Member's membership interests in the Company provided that (i) any such Transfers are made by the ultimate beneficial owner of the membership interests to his spouse or a trust or other entity for estate planning purposes for the benefit of his spouse and (ii) any such transfer shall be permitted under the organizational documents of the Investment Vehicle.

ARTICLE IX

DISSOLUTION OF THE COMPANY

Section 9.1 Dissolution. The Company shall be dissolved upon the occurrence of either of the following events (an "Event of Termination"):

(a) TGC Investor and Farkas vote for dissolution; or

(b) the entry of a decree of judicial dissolution under the Act.

No other event, including the retirement, insolvency, liquidation, dissolution, insanity, expulsion, bankruptcy, death, incapacity or adjudication of incompetency of a Member, shall cause the Company to be dissolved; provided, however, that in the event of any occurrence resulting in the termination of the continued membership of the last remaining member of the Company, the Company shall be dissolved unless, within 90 days following such event, the personal representative of the last remaining member agrees in writing to continue the Company and to the admission of such personal representative (or any other Person designed by such personal representative) as a member of the Company, effective upon the event resulting in the termination of the continued membership of the last remaining member of the Company.

Section 9.2 Winding Up.

(a) In the event that an Event of Termination shall occur, then the Company shall be liquidated and its affairs shall be wound up by the Administrative Member(s) in accordance with the Act. All proceeds from such liquidation shall be distributed in accordance with the provisions of Law, and all Common Interests in the Company shall be cancelled.

(b) Upon the completion of the distribution of the winding up of the Company's affairs and Company's assets, the Company shall be terminated and

the Administrative Member shall cause the Company to execute and file a Certificate of Cancellation in accordance with the Act.

ARTICLE X

MISCELLANEOUS

Section 10.1 Amendment to the Agreement. Amendment to this Agreement and to the Certificate of Formation shall be effective only if approved in writing by TGC Investor and Farkas. An amendment shall become effective as of the date specified in the approval of such Members or as of the date of such approval.

Section 10.2 Successors; Counterparts. Subject to Article VIII, this Agreement (a) shall be binding as to the executors, administrators, estates, heirs and legal successors, or nominees or representatives, of the Members and (b) may be executed in several counterparts with the same effect as if the parties executing the several counterparts had all executed one counterpart.

Section 10.3 Governing Law; Severability.

(a) This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware without giving effect to the principles of conflicts of law. In particular, this Agreement shall be construed to the maximum extent possible to comply with all the terms and conditions of the Act. If it shall be determined by a court of competent jurisdiction that any provisions or wording of this Agreement shall be invalid or unenforceable under the Act or other applicable law, such invalidity or unenforceability shall not invalidate the entire Agreement. In that case, this Agreement shall be construed so as to limit any term or provision so as to make it enforceable or valid within the requirements of applicable law, and, in the event such term or provisions cannot be so limited, this Agreement shall be construed to omit such invalid or unenforceable terms or provisions. If it shall be determined by a court of competent jurisdiction that any provision relating to the distributions and allocations of the Company or to any expenses payable by the Company is invalid or unenforceable, this Agreement shall be construed or interpreted so as (a) to make it enforceable or valid and (b) to make the distributions and allocations as closely equivalent to those set forth in this Agreement as is permissible under applicable law.

(b) The Members agree that any action, suit or proceeding based upon any matter, claim or controversy arising hereunder or relating hereto shall be brought solely in the courts of the County of New York in the State of New York or the United States federal courts sitting in the Southern District of New York. The

parties hereto irrevocably waive any objection to the venue of the above-mentioned courts, including any claim that such action, suit or proceeding has been brought in an inconvenient forum.

Section 10.4 Headings. Section and other headings contained in this Agreement are for reference purposes only and are not intended to describe, interpret, define or limit the scope or intent of this Agreement or any provision hereof.

Section 10.5 Notices. All notices, requests and other communications to any Member shall be in writing (including electronic mail, facsimile or similar writing) and shall be given to the Members (and any other Person designated by such Members) at its address or electronic mail, facsimile number set forth in Schedule A hereto or such other address or electronic mail, facsimile number as the Member may hereafter specify for the purpose by notice. Each such notice, request or other communication shall be effective (a) if given by telecopier, when transmitted to the number specified pursuant to this Section 10.5 and the appropriate confirmation is received, (b) if given by mail, 72 hours after such communication is received by the other party, or (c) if given) by electronic or any other means, when delivered to the address specified pursuant to this Section 10.5.

Section 10.6 Interpretation. Wherever from the context it appears appropriate, each term stated in either the singular or the plural shall include the singular and the plural, and pronouns stated in either the masculine, the feminine, or the neuter gender shall include the masculine, feminine and neuter.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the undersigned has duly executed this Agreement as of the date first above written.

TGC 100 Investor, LLC

By: _____
Name: Adam Flatto
Title: Manager

_____
Matthew Farkas

IN WITNESS WHEREOF, the undersigned has duly executed this Agreement as of the date first above written.

TGC 100 Investor, LLC

By: _____
Name: Adam Flatto
Title: Manager

_____
Matthew Farkas

Schedule A

TGC/Farkas Funding LLC
Membership Percentage Interest and Initial Capital Balance of Member

Name and Address of Member	Membership Percentage Interest	Initial Capital Balance
TGC 100 Investor, LLC c/o The Georgetown Company, LLC 677 Madison Avenue New York, New York 10021 Attention: Adam Flatto Telephone: 212-755-2323 Facsimile: 212-755-3679 Email: aflatto@georgetownco.com	50.0%	$1,000,000.00
Matthew Farkas 3345 Birchwood Park Circle Las Vegas, Nevada, 89141 Telephone: 646-226-0674 Facsimile:702.724.9781 Email: mfarkas@f100llc.com	50.0%	$0.00
Total	100.0%	$1,000,000.00

Schedule B

Capital Commitments

TGC 100 Investor, LLC	$1,000,000.00
Farkas	$0.00