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.	Case No. 82794

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APPEAL
from a decision in favor of Respondent
entered by the Eighth Judicial District Court, Clark County, Nevada
The Honorable Mark R. Denton, District Court Judge
District Court Case No. A-20-822273-C

APPELLANTS' OPENING BRIEF

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NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a), and must be disclosed. These representations are made so the judges of this court may evaluate possible disqualification or recusal. 1st One Hundred Holdings, LLC is the single member of and parent company to First 100, LLC. As of this date, 1st One Hundred Holdings, LLC does not have a parent corporation and no publicly held corporation owns more than 10 percent of stock in 1st One Hundred Holdings, LLC. At all times, Appellants have been represented by Jason R, Maier, Esq., Joseph A. Gutierrez, Esq. and Danielle J. Barraza, Esq. of Maier Gutierrez & Associates.

JURISDICTIONAL STATEMENT

This is an appeal from the district court's post-judgment Findings of Fact, Conclusions of Law, and Order ("FFCL") entered on April 7, 2021, with notice of entry thereof also filed on April 7, 2021. On April 15, 2021, Appellants filed their notice of appeal. AA1386-1429.[1] Thus, this appeal is timely pursuant to NRAP 4(a) and is an appeal from a special order entered after final judgment pursuant to NRAP 3A(b)(1).

[1] "AA" refers to Appellants' Appendix.

ROUTING STATEMENT

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

Respondent has indicated that it believes this matter should be retained by the Nevada Supreme Court because it "originated in business court." *See* 6/1/2021 Motion to Dismiss Appeal at fn. 1. To the contrary, this matter did not originate in business court, as shown by the case number (A-20-822273-C) ending in "C" and not "B," which notes this is a "civil" case and not a "business" case. No party filed a motion for a business court setting, and while the matter was heard before the Honorable Mark Denton, who has a separate business court docket, it was not placed in the business court docket, and has remained a "C" case from its inception.

STATEMENT OF ISSUES PRESENTED FOR REVIEW

Whether the district court erred in finding that non-party to the action Jay Bloom "is the alter ego" of First 100, which was not a cause of action brought against Jay Bloom or First 100, and which was not the subject of the limited evidentiary hearing underlying the district court's FFCL.

Whether the district court erred in ordering that First 100 and non-party to the action Jay Bloom are "jointly and severally responsible for the payment of all the

reasonable fees and costs incurred by [TGC/Farkas Funding LLC]."

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

STATEMENT OF THE CASE

This dispute involved a company books and records request, with respondent TGC/Farkas Funding, LLC demanding access to First 100, LLC and 1st One Hundred, LLC's (collectively "First 100") business records, arguing that its status as a purported member of First 100 substantiated the right to examine First 100's company records. The matter was initiated in arbitration through the American Arbitration Association, where the Arbitration Panel determined that First 100 is required to "make all the requested documents and information available from both companies to [Plaintiff] for inspection and copying." AA0010. The arbitration award was later confirmed by the district court, resulting in a judgment in favor of TGC/Farkas Funding, LLC in the amount of $23,975.00.[2] AA0053-59.

Thereafter, a dispute arose as to whether the parties had settled the matter, which resulted in various motions being filed, including a motion to enforce settlement filed by First 100, and a motion for an order to show cause filed by

[2] TGC/Farkas Funding, LLC was subsequently awarded another $9,060.20 in additional fees and costs related to the arbitration proceedings. AA0575-578.

TGC/Farkas Funding, LLC. AA0156-208; AA0330-574; AA0585-715. The district court conducted an evidentiary hearing as to the motions in March 2021, and issued its Findings of Fact, Conclusions of Law, and Order ("FFCL") on April 7, 2021, with notice of entry thereof also filed on April 7, 2021. AA1264-1341.

In the FFCL, the district court ordered that the motion to enforce settlement was denied, ordered immediate compliance of the books and records request which was the subject of the arbitration award confirmed by the district court, and ordered reimbursement of plaintiff TGC/Farkas Funding, LLC's fees and costs, with First 100 and non-party Jay Bloom being "jointly and severally responsible" for payment of such fees and costs. AA1298.

This appeal follows, with Appellants contending that the district court erred in (1) denying the motion to enforce settlement; and (2) holding that non-party Jay Bloom is "jointly and severally responsible" for the payment of fees and costs to TGC/Farkas Funding pursuant to an alter ego finding, despite the fact that no alter ego cause of action was alleged, and the evidence presented did not support an alter ego finding with respect to Mr. Bloom and First 100.

FACTUAL AND PROCEDURAL BACKGROUND

I. FACTUAL BACKGROUND

First 100 was in the business of purchasing the beneficial interest in delinquent HOA receivables and then buying the real properties at foreclosure sales. AA0918-

919. Jay Bloom served as the Director of First 100. AA0919.

The members of TGC/Farkas Funding, LLC are Matthew Farkas and TGC 100 Investor, LLC, who each share a 50% membership interest. Mtn. to Enforce Settlement at Ex. C. In the original "Limited Liability Company Agreement of TGC/Farkas Funding LLC," Section 4.1 identified Mr. Farkas as the "Administrative Member" of TGC/Farkas Funding, LLC, meaning that he served as a "manager" of the company and was responsible for making "all business and managerial decisions for the company." AA1013. Further, Section 4.4 of the original "Limited Liability Company Agreement of TGC/Farkas Funding LLC" states that persons dealing with TGC/Farkas Funding, LLC "are entitled to rely conclusively upon the power and authority of the Administrative Member." AA1004.

On or around 2013, TGC/Farkas Funding, LLC invested $1 million into First 100's business in exchange for a one percent membership interest, which was later parlayed into a three percent total interest. AA0007. In October 2013, signing as the CEO of TGC/Farkas Funding, LLC, Matthew Farkas executed the subscription booklet on behalf of TGC/Farkas Funding, LLC, which set forth the company's membership interest in First 100. AA00614-632.

Thereafter, in April 2017, First 100 circulated to its members a Membership Interest Redemption Agreement which provided for the redemption or buy back of the member's interest at $1.5 million per percentage of ownership interest, or a

fraction thereof on a pro rata basis. On or around April 15, 2017, Matthew Farkas executed a redemption agreement, once again on behalf of TGC/Farkas Funding, LLC. AA0634-639. *See also*, AA0008 ("It was not clear from the initial briefs and exhibits whether Matthew Farkas signed a Redemption Agreement for [TGC/Farkas Funding, LLC]. However, the additional evidence clarified that he actually did sign such an agreement.").

Thereafter, on July 13, 2017, TGC/Farkas Funding, LLC's counsel sent correspondence to First 100's counsel claiming that Mr. Farkas "is not the manager of TGC/Farkas Funding, LLC" and "does not have authority to bind TGC/Farkas Funding, LLC." AA1068. Adam Flatto of TGC/Farkas Funding, LLC would later refute that contention in a declaration dated August 13, 2020, in which he admitted that as of that point (August 2020), Mr. Farkas "was, and still is, the 'Administrative Member' of TGC/Farkas Funding, LLC," who does in fact have the power to bind TGC/Farkas Funding, LLC after consulting with all members. AA1064.

In any event, also within the July 13, 2017 correspondence, TGC/Farkas Funding, LLC's counsel made a request for the inspection and copying of First 100's books and records, ostensibly pursuant to NRS 86.241. AA1069.

First 100 initially refused to provide its business records to TGC/Farkas Funding, LLC for numerous reasons, among them that First 100 had not received evidence that Matthew Farkas, who is Mr. Bloom's brother-in-law and 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. AA0161. The demand was particularly odd, as First 100 has not been operational since about 2017, has no office, no employees, no cash, and only a single asset in the form of a substantial judgment against an individual that breached a funding commitment to the company. AA0920.

Thereafter, in January 2020, TGC/Farkas Funding, LLC initiated arbitration proceedings against First 100 regarding the inspection of First 100's business records. In the arbitration proceedings, TGC/Farkas Funding, LLC produced an 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 has a handwritten condition that "the matter shall not include any litigation against First 100, LLC." AA0171-172.

The arbitration panel ruled in favor of TGC/Farkas Funding, LLC, which was later confirmed by the district court, resulting in a ruling that First 100 "make all the requested documents and information available . . . for inspection and copying," and a judgment against First 100 and in favor of TGC/Farkas Funding, LLC in the amount of $23,975.00 for fees and costs. AA0055. The district court then granted TGC/Farkas Funding, LLC's subsequent motion for additional attorneys' fees on top of the fees already awarded by the Arbitrator. AA0575-578.

TGC/Farkas Funding, LLC thereafter moved forward with post-judgment discovery. AA0131-150.

Appellants contend that in January 2021, Mr. Bloom and Mr. Farkas engaged in discussions about the counterproductive nature of TGC/Farkas Funding, LLC continuing with litigation against First 100 in light of the fact that there is currently no cash in the company. AA0924. Mr. Bloom had also previously discussed with Adam Flatto (CEO of TGC 100 Investor, LLC, a member of TGC/Farkas Funding, LLC) the fact that TGC/Farkas Funding, LLC wanted its money back, plus six percent. AA0924. Mr. Farkas particularly "did not want to sue" either Mr. Bloom or [First 100] because of his familial relationship with Mr. Bloom, and admittedly wanted to "be away from it." AA0849.

Based on those conversations, Mr. Bloom on behalf of First 100 and Mr. Farkas on behalf of TGC/Farkas Funding, LLC came to a settlement, and Mr. Bloom drafted a settlement agreement. AA0925. The terms involved TGC/Farkas Funding, LLC receiving its million dollar investment back, plus six percent, in exchange for TGC/Farkas Funding, LLC ending its litigation against First 100. AA0926; AA0167-169.

At the evidentiary hearing, Mr. Farkas testified that he "mistakenly" signed the Settlement Agreement too quickly and thought he was signing documents to retain a lawyer. AA0859. Despite that, it is undisputed that Matthew Farkas did in

fact execute the Settlement Agreement on behalf of TGC/Farkas Funding, LLC on January 7, 2021. AA0858. Further, in Section 14 of the Settlement Agreement, Mr. Farkas represented and warranted that he had "full power and authority to enter into this Agreement." AA0168.

Mr. Farkas also testified that he signed the Settlement Agreement on his own at a UPS store, not in the presence of Mr. Bloom, and that nobody was threatening him to sign the Settlement Agreement. AA0859. Mr. Farkas his decision not to read the Settlement Agreement before signing it was his own choice, not something that Jay Bloom told him to do. AA0859. Mr. Farkas also testified that he could have contacted Adam Flatto of TGC/Farkas Funding, LLC and consulted with him before signing the Settlement Agreement – he just chose not to. AA0861. Mr. Farkas also testified that he could have crossed out terms in the Settlement Agreement if he so desired. AA0861. Put simply, Mr. Farkas admitted "[i]t's my fault" that he did not read the Settlement Agreement before signing it. AA0860.

In conjunction with executing the Settlement, Mr. Farkas also retained counsel for TGC/Farkas Funding, LLC, Raffi A. Nahabedian, Esq., who on January 14, 2021 sent correspondence to Garman Turner Gordon indicating that he had been retained and that pursuant to the TGC/Farkas Funding, LLC Operating Agreement, Mr. Farkas has full authority to retain and terminate legal representation for TGC/Farkas Funding, LLC in his manager capacity. A0413-414. Mr. Nahabedian

enclosed a substitution of counsel for Garman Turner Gordon to execute, as well as a signed letter from Mr. Farkas which stated that he no longer consented to Garman Turner Gordon taking any further legal actions on behalf of TGC/Farkas Funding, LLC. AA0415-418.

At some point after the parties had executed the Settlement Agreement, Mr. Bloom learned that Mr. Farkas had executed a document on September 17, 2020 purporting to amend the Limited Liability Company Agreement of TGC/Farkas Funding, LLC in which TGC Investor (acting solely through Adam Flatto) was replaced as the Administrative Member of TGC/Farkas Funding, LLC. AA0448-454; AA00932.

On January 15, 2021, Garman Turner Gordon submitted correspondence to Mr. Nahabedian advising him of this amendment. AA0445-447. Following that correspondence, Mr. Nahabedian terminated his legal services, as it was his understanding that Mr. Farkas was actually the "manager" of TGC/Farkas Funding, LLC. AA0430-431.

However, at the evidentiary hearing, Mr. Bloom testified that prior to entering into the Settlement Agreement, Mr. Farkas "insisted that he was still the manager" of TGC/Farkas Funding, LLC. AA0922. Mr. Bloom also testified that the last he had heard from Mr. Flatto was in the August 2020 declaration in which he reiterated that Mr. Farkas remained the Administrative Member and manager of TGC/Farkas

Funding, LLC. AA0922.

Mr. Bloom also testified that the primary way he communicated to TGC/Farkas Funding, LLC was through Mr. Farkas. AA0923. This is corroborated by emails between Mr. Bloom and Mr. Farkas over the years. AA0988-991. Finally, Mr. Bloom testified that the reason he attempted to resolve the dispute directly with Mr. Farkas instead of through counsel was because he had prior bad experiences with law firms wanting to continue litigation for economic reasons. AA0927.

As such, Appellants contend that Mr. Farkas exercised his apparent authority as 50% member and Administrative Manager of TGC/Farkas Funding, LLC to settle the case. In light of Garman Turner Gordon subsequently claiming that there was no settlement and no substitution of counsel, First 100 filed a motion to enforce the settlement agreement executed by the parties and to vacate post-judgment discovery proceedings. AA0156-208. That motion was fully briefed by the parties. AA0156-208; AA0330-574; AA0585-715.

Around that same time, following an *ex parte* motion from TGC/Farkas Funding, LLC, the district court issued an order to show cause as to why First 100 and non-party Jay Bloom should not be held in contempt for failing to abide by the order confirming the Arbitration Award. AA0151-155. The parties also fully submitted briefing on that order to show cause. AA0123-130; AA0209-214; AA0215-322.

At a hearing on January 28, 2021, the district court determined that "there are material questions of fact that prevent the Court from granting the Motion to Enforce," and elected to set an evidentiary hearing on both the Order to Show Cause and the Motion to Enforce and Countermotion for Sanctions. AA0737.

Notably, not included in the district court's order setting the evidentiary hearing was any indication that the parties would need to put on evidence with respect to an analysis as to whether non-party Jay Bloom is the alter ego of First 100. At no point, either in the arbitration proceedings or in the district court proceedings, did TGC/Farkas Funding, LLC bring a cause of action for alter ego against non-party Jay Bloom or First 100.

In an effort to fully comply with the district court's order confirming the Arbitration Award, First 100's counsel submitted correspondence to TGC/Farkas Funding, LLC's counsel on February 12, 2021, reiterating that First 100 would need to hire an accountant (Michael Henriksen, the former controller of First 100) in order to obtain the books and records requested, including financial statements, general ledgers, and accounts payable incurred by First 100. AA1092-1093. Mr. Henriksen set forth his understanding of the documents requested and indicated the challenges associated with obtaining documents from years ago when First 100 was an active company. *Id.*

Accordingly, it has always been clear and undisputed that Mr. Bloom had no

control over the First 100 company books and records sought, as such records needed to be obtained by Mr. Henriksen. *Id.* At no point was evidence submitted indicating that Mr. Bloom obtained and withheld potentially responsive documents related to First 100's books and records that should have been disclosed to TGC/Farkas Funding. No evidence could have been submitted, as that never happened.

II. PROCEDURAL BACKGROUND

On October 1, 2020, TGC/Farkas Funding, LLC filed its motion to confirm the arbitration award, which had previously (1) compelled the production of First 100's company records; and (2) ordered the reimbursement of TGC/Farkas Funding, LLC's fees and costs. AA0001-40. The arbitration award made it clear that only the "Respondents," meaning First 100 and 1st One Hundred Holdings, were responsible for paying the arbitration fees. AA0010. No ruling was issued against Jay Bloom personally by the arbitration panel. AA010.

The motion to confirm the arbitration award was fully briefed, with First 100 setting forth a limited opposition and seeking clarification that pursuant to the plain language of First 100's Operating Agreement, TGC/Farkas Funding, LLC would have to pay the reasonable cost of obtaining and furnishing First 100's records. AA0041-46.

On November 17, 2020, the district court granted TGC/Farkas Funding, LLC's motion to confirm the arbitration award, and denied First 100's

countermotion to modify the award with respect to requiring TGC/Farkas Funding, LLC to pay for the books and records production pursuant to both NRS 86.243(3) and First 100's Operating Agreement. AA0053-59. The district court's order specifically entered a judgment against only First 100 and 1st One Hundred Holdings (not non-party Jay Bloom) in the amount of $23,975.00 for the fees and costs. *Id.*

On November 17, 2020, TGC/Farkas Funding, LLC filed a motion for attorneys' fees and costs, seeking additional fees and costs on top of what the arbitration panel already awarded. AA0069-110. That motion was fully briefed, and on January 27, 2021, the district court issued its order granting TGC/Farkas Funding, LLC's motion for additional attorneys' fees and costs. AA0579-584. That order imposed a judgment against only First 100 and 1st One Hundred Holdings (not non-party Jay Bloom) in the amount of $9,060.20. *Id.*

At no point did TGC/Farkas Funding seek to amend either judgment in order to add non-party Jay Bloom as a judgment debtor. Despite that, on December 18, 2021, TGC/Farkas Funding, LLC filed an *ex parte* application for an order to show cause why First 100 and non-party Jay Bloom should not be held in contempt of court for failure to comply with the order confirming the Arbitration Award. AA0123-130. The district court granted the *ex parte* application that same day. AA0151-155.

Thereafter, TGC/Farkas Funding, LLC moved forward with post-judgment

discovery. AA0131-150. Various objections were raised with respect to the discovery, including non-party Jay Bloom objecting to a subpoena issued to him and the unilateral setting of his deposition. AA0247-252. TGC/Farkas Funding, LLC was dissatisfied with the discovery responses received, and on January 20, 2021 filed a supplement to its *ex parte* application for an order to show cause. AA0215-0322.

On January 19, 2021, First 100 filed its motion to enforce the Settlement Agreement and vacate post-judgment proceedings. AA0156-208. That motion attached the settlement agreement that Jay Bloom executed on behalf of First 100, and that Matthew Farkas executed on behalf of TGC/Farkas Funding, LLC. AA0167-168. That motion was fully briefed, with TGC/Farkas Funding, LLC opposing and filing a countermotion for sanctions. AA0330-351.

On January 20, 2021, First 100 and non-party Jay Bloom filed a response to the order to show cause, which noted that, aside from First 100 taking the position that the show-cause hearing is moot because the case settled, (1) First 100 has no financial ability to comply with the arbitration order; and (2) non-party Jay Bloom has not violated the order confirming the Arbitration Award to which he was not personally subjected. AA0209-214. Mr. Bloom specifically cited to NRS 86.371, which states that "[u]nless otherwise provided in the articles of organization or an agreement signed by the member or manager to be charged, no member or manager of any limited-liability company formed under the laws of this State is individually

liable for the debts or liabilities of the company." AA0211. Mr. Bloom also noted that no alter ego findings were made, or even sought in the arbitration action nor before the district court. *Id.*

The district court vacated the original show-cause hearing set for January 21, 2021, and elected to hear both the motion to enforce the Settlement Agreement, the countermotion for sanctions, and the show-cause hearing together on January 28, 2021. AA0736-738. At that hearing, the district court found that there are "material questions of fact that prevent the Court from granting the motion to enforce," and set an evidentiary hearing for March 3, 2021 on both the show-cause order, the motion to enforce the Settlement Agreement, and the countermotion for sanctions. AA0737.

The evidentiary hearing took place on March 3, 2021 and March 10, 2021. AA0744-987. Following the evidentiary hearing, on April 7, 2021, the district court issued its Findings of Fact, Conclusions of Law, and Order. AA1264-1301. The district court adopted TGC/Farkas Funding, LLC's proposed FFCL in its entirety, and (1) denied the motion to enforce the Settlement Agreement; (2) found that First 100 and Mr. Bloom "disobeyed and resisted" the order confirming the Arbitration Award, and ordered First 100 to take all reasonable steps to comply with the order confirming the Arbitration Award; and (3) found that First 100 "and Bloom are jointly and severally responsible for the payment of all the reasonable fees and costs

incurred by [TGC/Farkas Funding, LLC] since entry of the [order confirming the Arbitration Award] for the purpose of coercing compliance with that order in order to make them whole . . . ." AA1298. Notice of entry of the FFCL was entered on April 7, 2021, and the notice of appeal followed on April 15, 2021. AA0739-743; AA1386-1429.

The district court has since issued a separate order on the exact amount of fees and costs awarded to TGC/Farkas Funding, LLC, which totaled $151,353.81 for less than four months' of attorney work. That order is the subject of a separate appeal with Supreme Court Case No. 83177.

SUMMARY OF ARGUMENT

Appellants are appealing the district court's ruling that non-party Jay Bloom is the "alter ego" of First 100, when no alter ego cause of action was ever brought against Mr. Bloom or First 100, and no trial was held on alter ego allegations. Moreover, even if an alter ego claim had been properly brought procedurally, there is not substantial evidence in the record supporting an alter ego finding, as set forth below.

The district court's alter ego conclusion served as the basis for its ruling that Mr. Bloom is "jointly and severally responsible for the payment of all the reasonable fees and costs incurred by [TGC/Farkas Funding LLC]" as a sanction for not abiding by an order confirming an Arbitration Award involving the production of First 100

company books and records. But again, Mr. Bloom was not a party to either the underlying arbitration action or the action before the district court, and the evidence indicates that although he was not the individual in possession of and with access to the First 100 books and records, Mr. Bloom made every effort to comply with the order confirming the Arbitration Award by seeking such documents from First 100's former Controller.

Finally, Appellants are challenging the district court's failure to enforce the Settlement Agreement executed by Mr. Bloom on behalf of First 100 and by Matthew Farkas on behalf of TGC/Farkas Funding, LLC. The district court disregarded evidence showing that Mr. Farkas did in fact have apparent authority to bind TGC/Farkas Funding, LLC as its Administrative Member, and erred in finding that the settlement agreement was not negotiated in good faith and was not supported by consideration.

These errors support reversal of the district court's FFCL.

ARGUMENT

I. STANDARD OF REVIEW

With respect to the alter ego ruling, a district court's determination with regard to the alter ego doctrine will only be upheld on appeal if substantial evidence exists to support the decision. *Mosa v. Wilson–Bates Furniture Co.,* 94 Nev. 521, 524, 583 P.2d 453, 455 (1978). This Court has held that "[t]he corporate cloak is

not lightly thrown aside." *Baer v. Amos J. Walker, Inc.*, 85 Nev. 219, 220, 452 P.2d 916, 916 (1969).

With respect to the ruling on Appellants' motion to enforce settlement, "contract interpretation is subject to a *de novo* standard of review. However, the question of whether a contract exists is one of fact, requiring this Court to defer to the district court's findings unless they are clearly erroneous or not based on substantial evidence." *May v. Anderson*, 121 Nev. 668, 672–73, 119 P.3d 1254, 1257 (2005).

II. THE DISTRICT COURT ERRED IN FINDING THAT MR. BLOOM IS THE ALTER EGO OF FIRST 100

In its FFCL, the district court held that Mr. Bloom "is the alter ego of Defendants [First 100 and 1st One Hundred Holdings]." AA1295. The facts that the district court cited to in support of that conclusion of law are: (1) First 100 is in "default" status with the Nevada Secretary of State; (2) First 100 has no continued operations, no employees, no bank accounts, and is no longer maintaining records as it has no active governance of any kind; and (3) there are no writings to reflect that any director or office of First 100 has any authority to bind First 100 instead of Jay Bloom. AA1295. Accordingly, the district court concluded that "equity must be applied such that Bloom will not be immune from consequences for his intentional conduct for the purpose of disobeying and/or resisting the [order

confirming the Arbitration Award]." AA1295.

A. The Corporate Cloak is Not Lightly Thrown Aside

Nevada applies the following requirements for the application of the alter ego doctrine: (1) the limited liability company must be influenced and governed by the person asserted to be its alter ego; (2) there must be such unity of interest and ownership that one is inseparable from the other; and (3) the facts must be such that adherence to the fiction of separate entity would, under the circumstances, sanction a fraud or promote injustice." NRS 86.376; *N. Arlington Med. Bldg., Inc. v. Sanchez Const. Co.*, 86 Nev. 515, 520, 471 P.2d 240, 243 (1970). "Each of these requirements must be present before the alter ego doctrine can be applied." *Id.* at 520, 243. Whether each requirement is present is a matter of law to be determined by the court. *See* NRS 86.376 (stating "[t]he 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.").

Further, the following factors, though not conclusive, may indicate the existence of an alter ego relationship: (1) commingling of funds; (2) undercapitalization; (3) unauthorized diversion of funds; (4) treatment of corporate assets as the individual's own; and (5) failure to observe corporate formalities."). *LFC Marketing Group, Inc. v. Loomis*, 116 Nev. 896, 904, 8 P.3d 841, 846 (2000)

Although the alter ego doctrine is frequently asserted, its success is "rare," and the "corporate cloak is not [to be] lightly thrown aside." *N. Arlington Med.*

Bldg., Inc. v. Sanchez Const. Co., 86 Nev. 515, 471 P.2d 240 (1970); *see also In re Giampietro*, 317 B.R. 841, 846 (Bkrtcy. D. Nev. 2004).

Factual evidence is an essential part of obtaining relief under the alter ego doctrine in Nevada. *See, e.g., LFC Marketing Group, Inc. v. Loomis*, 116 Nev. 896, 904, 8 P.3d 841, 846 (2000) (". . . [W]e conclude that reverse piercing is appropriate in those limited instances where the particular facts and equities show the existence of an alter ego relationship and require that the corporate fiction be ignored so that justice may be promoted.") (emphasis added).

B. No Independent Alter Ego Action Was Ever Set Forth

A party who wishes to assert an alter ego claim must do so in an independent action against the alleged alter ego with the requisite notice, service of process, and other attributes of due process. *Callie v. Bowling*, 123 Nev. 181, 185, 160 P.3d 878, 881 (2007). In *Callie*, a judgment creditor attempted to amend the judgment to add a new defendant as an alter ego of the judgment defendant. The new defendant had not participated in the underlying proceedings and had never been served with the complaint. The Court held that a separate action would have to be asserted in order for the judgment creditor to pursue the alter ego claim. *Id.*

Here, there is no question that TGC/Farkas Funding, LLC never initiated an independent alter ego action against Jay Bloom. There is also no question that the evidentiary hearing was limited to two distinct issues: (1) the motion to enforce the

Settlement Agreement, and (2) the show-cause hearing. AA0737. As such, the alter ego ruling raises separate due process questions as Mr. Bloom was not entitled to put on evidence on behalf of himself during the evidentiary hearing, or to conduct discovery during the discovery period prior to the hearing, nor was he on notice that he would potentially be subjected to an alter ego finding and personally liable for a fees and costs. Mr. Bloom was not able to take depositions or file dispositive motions as to himself personally, and was therefore precluded from exercising his right to due process under Section 1 of the Fourteenth Amendment to the Constitution of the United States.

TGC/Farkas Funding, LLC's failure to initiate an alter ego claim should result in the reversal of the district court's alter ego findings and conclusions.

C. The Alter Ego Elements Were Never Met in This Case

Generally speaking, the Nevada Supreme Court has been extremely reluctant to recognize situations where a corporate veil may be pierced or determine that an alter ego situation exists. This has been so even when certain corporate formalities are not maintained. In *N. Arlington Med. Bldg., Inc. v. Sanchez Const. Co.*, 86 Nev. 515, 522, 471 P.2d 240, 244 (1970), this Court held that undercapitalization, where it is clearly shown, is an important factor in determining whether the doctrine of alter ego should be applied. "However, in the absence of fraud or injustice to the aggrieved party, it is not an absolute ground for disregarding a corporate entity. In

any event it is incumbent upon the one seeking to pierce the corporate veil, to show by a preponderance of the evidence, that the financial setup of the corporation is only a sham and caused an injustice." *Id.* at 522; 244 (1970).

In *N. Arlington Med. Bldg*, the Nevada Supreme Court held that although a corporation ultimately defaulted on its obligations, it cannot be inferred from that fact that it was initially inadequately financed, as there needs to be a showing of how the default sanctioned a fraud or promoted an injustice. *Id.* at 522; 244. The Court also held that although stock certificates were not delivered and formal meetings were not held, those are factors to be considered by the trial court, but the record still needs to reveal "in what manner they sanctioned a fraud or promoted an injustice towards the respondent." *Id.* at 522-523; 244-245. The Court also held that while ultimately the respondent's decision to sell real property to the corporation "resulted in a very unprofitable venture," the Court found "nothing in the record that would indicate that adherence to the fiction of the separate entity of North Arlington would sanction a fraud or promote injustice." *Id.* at 523; 245.

Similarly, in this case, no evidence was presented indicating that First 100 was initially or thereafter inadequately financed. It should go without saying that First 100's business model of purchasing the beneficial interest in delinquent HOA receivables and then buying the real properties at foreclosure sales was profitable for a period of time following the 2008 recession and subsequent foreclosure boom,

and then business was not as active as the economy recovered and the Nevada legislature instituted various amendments to NRS 116 which limited HOA's ability to extinguish a lender's interest in a property resulting from a borrower's delinquency in HOA assessments, such as the right of redemption period codified in 2015 as NRS 116.31166(3)-(6). The mere fact that the business has not been operational since about 2017, and therefore has no office, no employees, no active bank accounts, no cash, does not in and of itself signal the sanctioning of a fraud or promotion of injustice. AA0919. *See also*, *Lipshie v. Tracy Inv. Co.*, 93 Nev. 370, 377, 566 P.2d 819, 823 (1977) ("It is not reasonable to conclude that [the parent organization] undercapitalized [the subsidiary organization] in order to frustrate the payment of its obligation.").

Finally, the district court's finding that there were "no writings to reflect that any director or officer had any authority to bind First 100 instead of Bloom" (AA1295) is misplaced, as that also does evidence the sanctioning of a fraud or promotion of injustice, especially where zero evidence was presented as to the commingling of funds and assets, or the unauthorized diversion and/or use of funds and assets. *See N. Arlington Med. Bldg*., 86 Nev. at 521; 471 P.2d at 244 (1970) ("Although John W. Isbell influenced and governed North Arlington, there is no such unity of interest and ownership between him and the corporation that their identities are inseparable."). At no point was evidence introduced indicating that

Jay Bloom treated First 100's corporate assets as his own.

In another analogous case, *Rowland v. Lepire*, 99 Nev. 308, 317, 662 P.2d 1332, 1338 (1983), the corporation did not ever hold a formal directors or shareholders meeting, did not have a minute book, and never provided evidence that minutes were even kept. Even still, the Nevada Supreme Court held that "Although the evidence does show that the corporation was undercapitalized and that there was little existence separate and apart from Martin and Glen Rowland, we conclude that the evidence was insufficient to support a finding that appellants were the alter ego of the Rowland Corporation." *Id.* at 318; 1338 (1983).

Similarly, here, Mr. Bloom testified that when it was operational, First 100 did have separate financial records, which were managed not by Mr. Bloom personally but by a controller, Michael Henriksen. AA0854. Emails were also introduced showing that financial statements and separate tax returns existed back when First 100 was operational. AA1104-1125. Further evidence indicated that Mr. Henriksen was the one who handled First 100's finances – not Mr. Bloom. AA1092-1093. Crucially, no evidence was presented showing that the financial setup of First 100 was only a sham and caused an injustice.

This is not a case where there is evidence of withdrawals of corporate funds for Mr. Bloom's personal use, nor would such evidence exist. And even if such evidence did exist, those actions would need to be the cause of TGC/Farkas Funding,

LLC's injury and must have sanctioned a fraud or promoted an injustice before the corporate veil can be pierced. *See Polaris Indus. Corp. v. Kaplan*, 103 Nev. 598, 602, 747 P.2d 884, 887 (1987). ("The record does not reflect how failure to issue stock or keep proper corporate minutes sanctioned a fraud or promoted an injustice to Polaris. It also does not establish that an injustice necessarily resulted from the corporation's payment of Kaplan's personal debts. Kaplan testified the payments were in lieu of salary. We also note the district court did not specifically find that the corporations were undercapitalized."). Similarly, here, the district court did not specifically find that First 100 was undercapitalized, and no causal link was presented showing how First 100 going into "default" status with the Nevada Secretary of State and no longer continuing operations specifically sanctioned a fraud or promoted an injustice to TGC/Farkas Funding, LLC.

Accordingly, there is not substantial evidence in the record to support the district court's determination that Mr. Bloom is the alter ego of First 100. As such, there is no basis to hold Mr. Bloom personally, along with First 100, "jointly and severally responsible for the payment of all the reasonable fees and costs incurred by [TGC/Farkas Funding, LLC] since entry of the [order confirming the Arbitration Award] for the purpose of coercing compliance with that order in order to make them whole . . . ." AA1298.

D. The District Court Erred in Finding Mr. Bloom in Contempt Under the Federal Common Law "Responsible Party" Rule

In addition to ruling that Mr. Bloom is the "alter ego" of First 100, the district court also held that the "responsible party" rule applies to contempt proceedings, and Mr. Bloom "could not delegate" the responsibility for performance of providing First 100's books and records, which makes him personally subject to contempt proceedings. AA1294. Respectfully, the common law cited in support of this "rule" is all from non-binding federal court cases which are not factually analogous to this case.

For example, in *Luv N' Care, Ltd. v. Laurain*, a subpoena was issued to a nonparty company, and the issuing party argued that the nonparty company's managing member should be held in contempt, because he allegedly communicated that he "possessed potentially responsive documents, but failed to review and produce them by the deadline." No. 218CV02224JADEJY, 2019 WL 4279028, at *2 (D. Nev. Sept. 10, 2019). The U.S. Magistrate Judge for the District of Nevada held that It is undisputed that the nonparty company's managing member "did not take any reasonable steps to comply with this Court's Order, and therefore, should be held jointly and severally liable with Blue Basin for contempt on this basis alone," as the evidence showed that he "looked for and found potentially responsive Blue Basin documents before the Court issued its Order, but did not turn them over for

review or seek a deadline extension." *Id.* at *5. The Court also cited to *United States v. Laurins*, 857 F.2d 529, 535 (9th Cir. 1988), in which the Ninth Circuit affirmed a managing director's conviction of obstruction of justice and aiding, abetting, and causing contempt of court, based on the fact that the managing director had "taken up the task of locating documents potentially responsive to the subpoena" and failed to do so.

Here, the facts are different, as Mr. Bloom explicitly testified that when First 100 wound up its operations in 2017, "Michael Henriksen, the [former First 100] financial controller . . . did take the . . . accounting computer to safeguard the information. And has that in his possession. The documents that they requested, would need to be reconstructed by Michael Henriksen." AA0941-942. Far from obstructing the district court's order confirming the Arbitration Award, Mr. Bloom testified that he conferred with Mr. Henriksen about compiling the business records, and Mr. Henriksen prepared an outline as to what would need to be collected and sought further clarification from TGC/Farkas Funding, LLC's counsel as to funding and the timeline for such production. AA0942; AA1092-1093.

Ultimately, TGC/Farkas Funding, LLC refused to make any payment despite the fact that no court order says TGC/Farkas Funding, LLC is absolved from having to pay for the production of books and records pursuant to First 100's Operating Agreement. AA0032-33. Mr. Bloom testified that First 100 "never denied

[TGC/Farkas Funding, LLC] access" to the books and records documents from the time of the arbitration award and forward, it simply clarified that the company does not have bank accounts, much less any capital to pay the third-party (Mr. Henriksen) to compile the records. AA0943. There were no records being withheld whatsoever, especially not by Mr. Bloom who has no access to such records anyway. *Id.*

Further, the federal court "responsible party" rule cannot be taken in a vacuum, it must be read in conjunction with NRS 86.371, which states that "[u]nless otherwise provided in the articles of organization or an agreement signed by the member or manager to be charged, no member or manager of any limited-liability company formed under the laws of this State is individually liable for the debts or liabilities of the company."

It is particularly inappropriate to disregard NRS 86.371, while at the same time relying on federal common law which does not apply because the evidence shows that the books and records are not in Mr. Bloom's possession, and Mr. Bloom made an effort to comply with the district court's order by conferring with First 100's former Controller regarding the records and seeking his assistance. As such, the district court's findings related to Mr. Bloom being the "responsible party" and personally subjecting himself to contempt sanctions were made in error.

III. THE DISTRICT COURT ERRED IN DENYING THE MOTION TO ENFORCE SETTLEMENT FOLLOWING THE EVIDENTIARY HEARING

For a motion to enforce a settlement agreement to be granted without an evidentiary hearing, it must abide by District Court Rule 16, which states:

> Stipulations to be in writing or to be entered in the court minutes. No agreement or stipulation between the parties in a cause or their attorneys, in respect to proceedings therein, will be regarded unless the same shall, by consent, be entered in the minutes in the form of an order, or unless the same shall be in writing subscribed by the party against whom the same shall be alleged, or by his attorney.

See also, *Resnick v. Valente,* 97 Nev. 615, 616, 637 P.2d 1205, 1206 (1981). Further, the settlement agreement's material terms must be 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 & Tr. Co. v. Travelstead*, 592 P.2d 605, 609 (Utah 1979) ("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," which consist of an offer and acceptance, meeting of the minds, and consideration. *May*, 121 Nev. at 670.

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).

In its FFCL, the district court determined that Matthew Farkas did not have actual or apparent authority to bind TGC/Farkas Funding, LLC under the Settlement Agreement. AA1289. Specifically, the district court referenced the order confirming the Arbitration Award in support of the conclusion that as a matter of law, Mr. Farkas did not have apparent authority to bind TGC/Farkas Funding, LLC without Adam Flatto's consent, and the failure to obtain Mr. Flatto's consent to the Settlement Agreement is "undisputed" according to the district court. AA1267. The Arbitration Award referenced that First 100 was on affirmative notice that Mr. Farkas did not have authority to bind TGC/Farkas Funding, LLC without Mr. Flatto's consent pursuant to a letter issued to First 100's counsel on July 13, 2017.

AA0008; AA1068-1084. That letter unequivocally states that "Matthew Farkas is not the manager of TGC/Farkas Funding, LLC," and he therefore does not have authority to bind TGC/Farkas Funding, LLC. AA1068.

However, in a supplemental declaration dated August 13, 2020 and attached to the arbitration briefing, Adam Flatto changed his tune, this time declaring that "Matthew Farkas was, and still is, the 'Administrative Member' of [TGC/Farkas Funding, LLC], as that term is defined in the Operating Agreement." AA1064. The TGC/Farkas Funding, LLC Operating Agreement defines the Administrative Member as a "manager" of the company who shall be "responsible for making all business and managerial decisions for the Company." AA1002. Further, pursuant to the TGC/Farkas Funding, LLC Operating Agreement, the Administrative Member can in fact bind the company after consulting with and obtaining the consent of the other members. AA1064.

Thus, while First 100 did not appeal the order confirming the Arbitration Award, it objectively understood Mr. Flatto's August 13, 2020 declaration to mean that going forward, Mr. Farkas was in fact an Administrative Member of TGC/Farkas Funding, LLC, and would be able to bind that company as long as he complied with his obligations under the TGC/Farkas Funding, LLC Operating Agreement.

Notably, although the August 13, 2020 Flatto declaration was introduced

during the evidentiary hearing and confirmed by Adam Flatto to be a genuine document (AA0793), the district court did not acknowledge it in its FFCL. The August 13, 2020 declaration is crucial to establishing Mr. Farkas' apparent authority to settle the matter on behalf of TGC/Farkas Funding, LLC, as Mr. Bloom testified that based on that declaration from the principal (which was never withdrawn or amended), along with Mr. Farkas' representations as the agent that the settlement agreement was what Adam Flatto wanted, First 100 objectively accepted both of those representations in believing that Mr. Farkas had authority to act for TGC/Farkas Funding, LLC. AA09064. As Mr. Bloom testified, "Up to and through the signing of the settlement agreement . . . Matthew [Farkas] represented he had authority . . . As of the time the settlement agreement was signed, we understood Matthew [Farkas] to be the manager [of TGC/Farkas Funding, LLC, and Matthew [Farkas] continued to represent he was the manager, both in conversations and in a series of documents. AA0931-932.

Here, there were no inferences against the existence of apparent authority. See *Ellis v. Nelson,* 68 Nev. 410, 419, 233 P.2d 1072, 1076 (1951) (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). While the district court cited to Matthew Farkas' testimony that once he left employment with First 100, he "effectively stepped out of a management role with [TGC/Farkas Funding,

LLC and left everything to Flatto and counsel," that is expressly disputed by Adam Flatto's August 2020 declaration insisting that Mr. Farkas was still the Administrative Member of TGC/Farkas Funding, LLC. AA1270.

The district court also cited to a September 17, 2020 written consent that Mr. Farkas delivered to an amended operating agreement governing TGC/Farkas Funding, LLC, which provided 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 [TGC/Farkas Funding, LLC]." AA1271. However, it is undisputed that at no point before the Settlement Agreement was executed did either Mr. Flatto or Mr. Farkas provide that amendment to Jay Bloom or anyone else at First 100. Indeed, it was not until later in January 2020 (after the Settlement Agreement was signed) that Mr. Bloom saw that amendment for the first time. AA0933.

Additionally, at no point did Adam Flatto amend his August 13, 2020 declaration to inform of the September 2020 amendment. There was simply no evidence after Mr. Flatto's August 2020 declaration creating an inference that Mr. Farkas no longer had the powers to bind TGC/Farkas Funding, LLC in his capacity as Administrative Manager of that company. The text messages between Mr. Bloom and Mr. Farkas during the time the Settlement Agreement was being executed also substantiate that Mr. Bloom was not aware of the September 2020 amendment.

AA1094-1099.

Accordingly, the district court erred in determining that Mr. Farkas did not have apparent authority to settle the case on behalf of TGC/Farkas Funding, LLC. First 100 and Mr. Bloom subjectively believed that Mr. Farkas still had authority to act for the principal, as corroborated by both Mr. Flatto's August 2020 declaration and the Settlement Agreement itself, in which Mr. Farkas represented that he had "full power and authority to enter into this Agreement." AA0168. Further, that subjective belief, which came from representations from both Mr. Flatto and Mr. Farkas, was reasonable. Numerous emails from over the course of the parties' relationship establish that it was Mr. Farkas acting as the point-person for TGC/Farkas Funding, LLC with respect to First 100 matters. AA1100-1101; AA1102-1103; AA1104-1125.

There was also adequate consideration for the Settlement Agreement. The Settlement Agreement specifically states that $1,000,000 will be paid to TGC/Farkas Funding, LLC, plus 6% interest. AA0167-169. Such payment will be made upon the sale of the Ngan Judgment. *Id.* The district court found that the consideration as inadequate because it does not go "beyond what [TGC/Farkas Funding, LLC] could ostensibly already be entitled to recover from First 100 following a sale of the Ngan Judgment." AA1279. But contrary to the district court's findings, First 100's Operating Agreement does not TGC/Farkas Funding, LLC to pro rata distributions.

Members of First 100 are not entitled to a specific percentage of revenues; they are potentially entitled to profits or distributions of the company. AA0022.

Finally, there were findings from the district court related to the "lack of good faith" in Mr. Bloom's dealings with Mr. Farkas. AA1278. But the following facts are undisputed:

- Mr. Farkas also executed the Settlement Agreement on his own at a UPS store, not in the presence of Mr. Bloom, and that nobody was threatening him to sign the Settlement Agreement. AA0859;
- Mr. Bloom did not tell Mr. Farkas not to read the Settlement Agreement. AA0859;
- Mr. Farkas waited 45 minutes to execute the Settlement Agreement, during which time he admittedly could have contacted Adam Flatto of TGC/Farkas Funding, LLC and consulted with him before signing the Settlement Agreement – he just chose not to. AA0861; and
- Mr. Farkas could have crossed out terms in the Settlement Agreement if he so desired, he again just chose not to. AA0861.

The district court also found that Mr. Farkas' failure to read the Settlement Agreement was evidence of a "lack of good faith" in dealings, but Mr. Farkas admitted "[i]t's my fault" that he did not read the Settlement Agreement before signing it. AA0860. No evidence was submitted indicating that Mr. Bloom knew

that Mr. Farkas had chosen not to read the Settlement Agreement before executing it. No evidence was submitted indicating that Mr. Bloom prevented Mr. Farkas from consulting with Adam Flatto regarding the Settlement Agreement. Mr. Farkas' failure to make any edits to the Settlement Agreement in and of itself is not a sign that the negotiations were conducted in bad faith. The evidentiary hearing revealed that MR. Farkas is well aware of his rights to make edits to documents before signing them, as evidenced by his decision to cross off language in a January 2021 declaration and make handwritten changes before signing it. AA0861-862.

Accordingly, the district court's failure to make any findings whatsoever with respect to the role that the August 2020 Flatto declaration had in creating apparent authority for Matthew Farkas to act as the Administrative Member of TGC/Farkas Funding, LLC, along with the balance of the evidence indicating that apparent authority existed and the Settlement Agreement was negotiated in good faith with adequate consideration, all support a finding of error by the district court with respect to the motion to enforce the Settlement Agreement.

CONCLUSION

Based on the foregoing, this Court should find that the district court erred in (1) holding Jay Bloom to be the alter ego of First 100; (2) holding Jay Bloom to be jointly and severally liable for the six-figure attorneys' fees and costs award issued to TGC/Farkas Funding, LLC as a contempt sanction when he was never a party to

the case who was subjected to the order confirming the Arbitration Award; and (3) denying the motion to enforce the Settlement Agreement. This Court should reverse the district court's FFCL accordingly.

DATED this 15th day of September, 2021.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE PURSUANT TO NRAP 28.2

I hereby certify that I have read this opening brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Rules of Appellate Procedure, and in particular NRAP 28(e), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page of the transcript or appendix where the matter relied on is to be found. I further certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word 2016 in 14-point Times New Roman. I further certify that this brief complies with the page limitations of NRAP 32(a)(7) because it does not exceed 14,000 words, as this brief contains 9,023 words.

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I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 15th day of September, 2021.

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CERTIFICATE OF SERVICE

I certify that on the 15th day of September, 2021, this document was electronically filed with the Nevada Supreme Court. Electronic service of the foregoing: **APPELLANTS' OPENING BRIEF** and **VOLUMES I – VI** of the **APPENDIX** shall be made in accordance with the Master Service List as follows:

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