

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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Sep 15 2021 04:32 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

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' APPENDIX VOLUME VI

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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:

Erika P. Turner, Esq.
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7251 Amigo Street, Suite 210
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Attorneys for TGC Farkas Funding LLC

DATED this 15th day of September, 2021.

/s/ Natalie Vazquez

An Employee of MAIER GUTIERREZ & ASSOCITES

1 that it could be forwarded to Adam Flatto for consideration or counsel of
2 record for consideration. It was provided to a UPS store for him to sign
3 and return, and that coupled with the knowledge from the arbitration
4 award and the other communications from TGC/Farkas that Adam's
5 consent was required is just -- it's unreasonable.

6 In *In Re K Clubs* [phonetic], a Nevada Supreme Court
7 holding at 130 Nev 920, the Supreme Court said reasonable reliance on
8 apparent authority includes the performance of due diligence to learn the
9 veracity of representations of authority. In light of the arbitration award,
10 even if Mr. Farkas had said, I have authority to bind TGC/Farkas in a
11 settlement agreement, he denies ever saying that, but even if he did,
12 that's not enough under the *K Club* case. You have inconsistent
13 information at that point and you can't have reasonable reliance on Mr.
14 Farkas' authority until there's due diligence to determine the veracity of
15 his new representations.

16 Now, Mr. Farkas admits he signed the settlement agreement,
17 and he admits he signed the other documents that he received at the
18 UPS store and he admits he didn't read them, he didn't negotiate them.
19 And he says emphatically at the same time that he admits these things
20 that he did do. He doesn't deny that that's his signature. He says, I
21 never ever, ever told anybody I had the authority to bind TGC/Farkas in a
22 settlement agreement. He did not make that representation.

23 The very first time that the settlement agreement was
24 mentioned was in the January 14th, 2021 letter from Raffi Nahabedian.
25 He didn't attach it. The first time Matthew Farkas saw or reviewed, knew

1 that he signed a settlement agreement, was the same time Adam Flatto
2 found out when the agreement was attached to the motion to enforce
3 agreement.

4 That is not consistent with the story that we're hearing on the
5 other side that this was a voluntary agreement between TGC/Farkas and
6 First 100, that it was voluntary. Then why was it concealed? Why was it
7 not provided? Why was it not emailed so that there was an opportunity
8 for review?

9 Now, Mr. Farkas clearly feels duped by his brother-in-law.
10 There isn't evidence of ongoing discord between Mr. Flatto and Mr.
11 Farkas. To the contrary, the discord appears to be between Mr. Farkas
12 and Mr. Bloom. Mr. Farkas talked quite a bit about how he felt
13 pressured, economic pressure that he was -- that he needed to sign
14 documents provided by Mr. Bloom. At no point did he indicate that he
15 would be reviewing those documents or signing them on behalf of
16 TGC/Farkas.

17 Exhibit P is the Jay Bloom declaration and at paragraphs 18
18 through 20, he described a conversation -- Jay Bloom describes a
19 conversation on or about January 10th with the subject matter of Mr.
20 Farkas' authority is discussed. It is unbelievable that that would just
21 come out of thin air, particularly when we have, at Exhibit 28, the Raffi
22 Nahabedian emails at Plaintiff 281, 284, 288, where Raffi Nahabedian
23 starts asking questions about Farkas' authority with respect to his
24 assignment to dismiss the case and terminate counsel of record.

25 It was actually right at the same time that you had Mr.

1 Nahabedian asking for confirmation of authority that you then have Mr.
2 Bloom acknowledge that there was a group discussion and his authority
3 did come up.

4 According to Mr. Bloom's declaration on or about January
5 11th, he knew about the amendment to the TGC/Farkas Funding
6 operating agreement. That was nine days before the motion to enforce
7 settlement agreement was filed.

8 You can't cherry pick the information that's being provided to
9 you. That's what's clear from the Nevada Supreme Court case holdings.

10 Now, if we go to point number 3, the third reason that you
11 cannot enforce this settlement agreement is the inadequacy of
12 consideration. This is not something that has been addressed by First
13 100, but the inadequacy of consideration is a badge of fraud that justifies
14 denial of any requested specific performance of the settlement
15 agreement.

16 In OOH v. Wilson [phonetic], 112 Nev 38, that point is
17 established and by itself, a death nail to the enforceability of this
18 settlement agreement is that it was executed at the very same time as a
19 form of release where Mr. Farkas signed the release. And if it was to be
20 given effect at the same time as the settlement agreement, it actually
21 provides for a corresponding release of any payment obligation or any
22 other obligation from First 100. Mr. Farkas signed that release at the
23 same time as the settlement agreement and it can't be ignored. And
24 once it's been given its effect, it renders the consideration of nothing.
25 It's released.

1 Then point number 4, the consideration is otherwise illusory,
2 counsel argued, well this is a million dollars. We agreed to return the
3 investment. A million dollars. There is no million dollars. The
4 consideration under the settlement agreement just within the four
5 corners is illusory. It provides for the immediate dismissal of this action
6 and the underlying arbitration award and the contempt proceedings
7 upon execution, but any performance obligation on behalf of First 100
8 has a big "if" before it. If there's a sale of the judgment, if there's enough
9 money collected from the sale of the judgment exceeding a million
10 dollars, plus six percent, then you'll be paid. There is no payment date.
11 There is no tender that's been provided. There's no sale agreement
12 that's been disclosed. No identification of any actual purchasing party.
13 No proof of funds, no nothing to indicate that that's real.

14 We have a 2017 judgment in favor of First 100 where there
15 has not been collection of a penny, despite diligent efforts of Maier
16 Gutierrez and perhaps others. There's been no collection, and there's no
17 evidence of any likelihood or actuality that a million dollars would be
18 paid as set forth in the settlement agreement.

19 Number 5, the agreement was repudiated on January 15th
20 via email when the subject of settlement was disclosed. There was no
21 copy of the settlement agreement provided until the motion to enforce
22 settlement four days later, but certainly by that point, January 14th, it
23 was emphatic.

24 There is no substitution and there is no settlement
25 agreement. That was communicated January 15th to Mr. Gutierrez, as

1 well as Mr. Nahabedian, and it's Exhibit 28 at Bates Number Plaintiff 372.
2 At no point, once that settlement agreement was disclosed, was there
3 anything other than consistent repudiation. And not before and not
4 since that repudiation has there been any evidence of detrimental
5 reliance on the settlement agreement on the other side.

6 Under *Kalo v. Costiner* [phonetic], 85 Nev 355, repudiation
7 without evidence of detrimental reliance completely excuses any further
8 performance obligation under a settlement agreement by either party.

9 Number 6. The agreement was actively concealed, and that
10 is a fraud. That's fraudulent concealment. And Exhibit 28, Plaintiff 362,
11 Plaintiff 386, and 390, and 403, you have the emails going back and forth
12 with my office saying, please provide the settlement agreement, counsel.
13 Please provide the settlement agreement. It wasn't attached to Mr.
14 Nahabedian's January 14th letter and it wasn't provided thereafter.
15 There was silence on the other side until Maier Gutierrez filed their
16 motion to enforce settlement on the 19th, and they filed that motion on
17 an order shortening time for leaving TGC/Farkas to scramble with what
18 this was and how it got there.

19 The concealment of the terms of the agreement are -- that by
20 itself would be enough to avoid the agreement. Rescission is a remedy
21 for fraud, whether concealment or intentional misrepresentation.

22 Number 7, the settlement agreement was involuntary. It was
23 never reviewed. No counsel. Mr. Farkas clearly didn't understand the
24 terms and there has to be a voluntary agreement into any voluntary
25 entry into the agreement on behalf of TGC/Farkas.

1 The circumstances of how Mr. Farkas received this document
2 is established in Exhibit 28 where you have Mr. Bloom sending the
3 documents to a UPS store, directing that there be one copy printed, and
4 for that original to be mailed to him. Then he wanted a scanned copy
5 emailed just to him. Those were the directions that went to the UPS
6 store, and within minutes of the documents being sent, less than an hour
7 of them being sent, you have the signed documents returned. And
8 within minutes of receiving those documents, Jay Bloom did not send
9 them to TGC/Farkas. There's no email or forwarding of those documents
10 to Matthew Farkas. Instead, they went to Joe Gutierrez, Jason Maier,
11 and Raffi Nahabedian.

12 The first time Mr. Farkas knew he had signed the settlement
13 agreement was weeks later. January 19th was the first time that he
14 knew it was a settlement agreement that he signed.

15 Now, we have number 8. There was no meeting of the
16 minds. When you don't have a negotiation, you can't have a meeting of
17 the minds, and that was what we had here.

18 Mr. Gutierrez argued that there was this communication from
19 Adam Flatto to Jay Bloom in 2017 and it was never rescinded, where Mr.
20 Flatto said he just wanted his money back. And whether Adam wanted
21 his money back, when he talked to Matthew Farkas or to Jay Bloom in
22 2017 cannot be reasonably construed as providing his authority to settle
23 now, particularly on the terms that are set forth in the settlement
24 agreement where you have a big "if" before there is any payment
25 obligation.

1 We're three years later after that communication -- actually,
2 almost four -- and in the meantime, there's been a significant fight to go
3 enforce the membership rights at significant costs with the arbitrators,
4 and that was a cost, both in fees and effort. You have at the arbitration
5 awarded description of a long and bad faith history in denying the rights,
6 the very rights, of TGC/Farkas to demand records, and that bad faith
7 continues through these proceedings where there is an effort to deny the
8 investment, the membership interest, and the rights that go along with
9 that.

10 Number 9, duress. In *Cower v. Sing* [phonetic], which is at
11 136 Nev Advanced Opinion 77, it's a 2020 case, and *Levy v. Levy*
12 [phonetic], 96 Nev 902, they're very clear. The case holdings are clear
13 that coercion address applies when one side involuntary accepts the
14 terms of another, and circumstances permitted no other alternative as a
15 result of the coerce of acts of the opposite party. There doesn't need to
16 be a gun to Mr. Farkas' head, there doesn't need to be a threat of
17 violence. Circumstances of emotional pressure, emotional
18 consequences are enough.

19 We have in the January 14th letter from Raffi Nahabedian
20 actually corroborating what Matthew Farkas testified to, and that is that
21 his brother-in-law, when he wants something from him, threatens to sue
22 him from First 100 for alleged breaches of fiduciary duty. And Raffi
23 Nahabedian actually acknowledges that in his letter, where he says that
24 Matthew Farkas is feeling pressure from threats of liability for alleged
25 breaches as a former officer of First 100. He doesn't have the money to

1 defend himself. Whether there was an actual claim or not, that was what
2 he described as the impedance for going and signing the documents at
3 his brother-in-law's request.

4 His brother-in-law said, we will take care of this, we'll release
5 you, we'll get you counsel, don't worry Matt, and created a belief -- an
6 unreasonable belief it may be -- but a belief that he was going to be
7 subject to adverse action if he didn't sign.

8 We also have in the documents where Jay Bloom actually
9 emailed Matthew Farkas. He knew how to find his email with the CC to
10 the UPS store and said, sign this declaration. Sign this declaration that
11 recants your prior declaration because any adverse action could result in
12 liability, could result in you being on the line. It was a consistent
13 representation. If you take action adverse to me, you're going to pay
14 Matthew Farkas, and that is the kind of emotional distress that can
15 provide duress.

16 Under the restatement of contract and the *Schmitt v.*
17 *Maryweather* [phonetic] case at 82 Nev 372, a party's manifestation that
18 is induced by duress of the circumstances, those are subjective. We look
19 at those manifestations from a subjective standpoint. The Court should
20 consider the age, background, and relationship of the parties.

21 Also under the restatement, it says, duress as defense to an
22 enforcement of a contract is designed to protect persons who are weak
23 or cowardly in nature, like family, a brother-in-law who is at a
24 disadvantage standpoint with little assets, and who has his sister, his
25 parents living with his brother-in-law, and he's caught in the middle.

1 Caught in the middle. That's the best way to describe it.

2 Finally, number 10, it's bad faith to avoid the consequences
3 of contempt of noncompliance with a court order with this settlement
4 agreement. And Exhibit 2, the arbitration award, is really the best
5 summary of this long, arduous fight that brings us here. This is not
6 something that started a day ago. This is something that started four
7 years ago, and there's been bad faith at every step.

8 Mr. Bloom ignored the arbitration award and he ignored the
9 arbitrator's statement that Matthew Farkas cannot bind TGC/Farkas, and
10 that was before the amendment to the TGC/Farkas operating agreement.

11 Now the second defense or argument in defense to being
12 found in contempt of court is this argument that the judgment should be
13 modified to require payment of demanded expenses as a condition of
14 production of documents. There was a motion to modify the arbitration
15 award in October of 2020, and between October 2020 and February 12th,
16 there was nothing indicating any purported detailed expenses being
17 claimed by the First 100.

18 In the motion to modify, you had the declaration of Jay
19 Bloom saying, we will provide the documents if the other side is forced
20 to pay. There was no detailed number, but that was the declaration.
21 That was the argument is if they pay, we will provide. And that was
22 denied by this Court. Res judicata applies here and there is issue
23 preclusion. When there is a motion to modify in February of two-
24 thousand -- pardon me, October of 2020 and the very same argument is
25 brought in response to an order to show cause why they should not be

1 found in contempt. And if we go backwards, at the arbitration, the
2 arbitration award was based on the May 2017 demand. Initial demand
3 for the production of documents. There was a further demand in
4 September of 2017, both those are in the record. Both of them saying
5 this demand is pursuant to operating agreements and pursuant to
6 Nevada law. And in the arbitration, the documents were ordered to be
7 produced within 10 days without expenses having to be paid by the
8 Plaintiff and for the avoidance of doubt, Plaintiff was awarded fees and
9 costs. And on the last page, there is the line, and to the extent there's
10 any other relief requested. All claims not expressly granted in here and
11 are hereby denied.

12 So when we went to enforce the arbitration agreement or
13 arbitration award, and you had a counter-motion to modify that award,
14 so that expenses would be required to be paid by Plaintiff as a condition
15 of production, this Court denied the counter-motion. You considered it.
16 That consideration was in the award itself, in the order, and the counter-
17 motion was denied.

18 Under *University of Nevada v. Tarkanian* at 110 Nev 581, and
19 the later *Kirsch v. Travor* [phonetic], 134 Nev 163, it provides a final non-
20 appeal judgment similar to what we have here. It must be given
21 preclusive effects so as to prevent multiple litigation causing vexation
22 and expenses to the parties by precluding parties from relitigating
23 issues, yet here we are. We're relitigating two issues. Matthew Farkas'
24 authority to act on and bind TGC/Farkas, as well as whether or not the
25 production obligation to be conditioned on Plaintiff first paying the

1 demanded expenses.

2 It can't be that we go back now at this late day and amend
3 the judgment. It wasn't awarded to them in the arbitration. It wasn't
4 awarded to them as part of the judgment and it shouldn't be awarded to
5 them now.

6 Any request for expenses associated with the production of
7 documents were required to be arbitrated, and to the extent that they
8 weren't awarded, that's precluded.

9 Now, with respect to whether or not it's impossible to get the
10 documents for production without payment from TGC/Farkas, well it's
11 not impossible and we've shown that. Jay Bloom was going to loan
12 money to pay Raffi Nahabedian to dismiss the case, but he's not going to
13 do anything to lift a finger to produce a document. He did nothing. He
14 did nothing to produce a document to direct his counsel to produce
15 documents, to direct his former officers to produce documents, and he
16 didn't make a capital call. He didn't make a capital call, as permitted
17 under the operating agreement.

18 In fact, the operating agreement says the manager shall
19 make a capital call to make the obligations and liabilities of the company
20 if the company can't get a loan. He didn't look for a loan, he didn't make
21 a capital call, he didn't do anything. And why not? Because he's going
22 to be responsible for the lion's share of the amount to be called as the
23 member with the most interest.

24 And Your Honor, the law provides that the custodian of
25 records, the manager here under the operating agreement, has the

1 obligation to maintain the books and records of the companies. There is
2 no certificate of dissolution here, and Jay Bloom as the sole person, the
3 sole person left associated -- legally associated with these companies --
4 had an obligation to maintain the books and records, and to the extent
5 that he failed to comply with his duties, that's on him. He had the legal
6 obligation to maintain those books and records, and he has the
7 obligation to marshal them and produce them to us.

8 Subsequent to closing down the act of operations, Mr. Bloom
9 still made filings with the secretary of state designating where the
10 principal office of the companies was, as well as the registered agent and
11 the registered office. If those books and records aren't in those offices,
12 then he has an obligation to go get them and bring them there.

13 Now, Your Honor, the degree of disobedience and resistance
14 is certainly unlike anything I've ever seen. The Court has brought
15 authority under NRS Chapter 22 to compel compliance with its order
16 under the contempt statutes and otherwise, and we're asking that the
17 Court deny the motion to enforce settlement agreement, compel the
18 Defendants, and Jay Bloom -- the only person, natural person -- that is
19 legally associated with the companies, as well as all officers, agents, and
20 representatives, including counsel, who receive a copy of the compelling
21 order to comply with the order and underlying judgment and provide
22 within five days all documents listed in Exhibit 6 or Exhibit QQ to this
23 proceeding. That list is incorporated in the judgment.

24 And Your Honor, in addition to compelling compliance, we
25 have to go and address the extreme costs that has brought us here. The

1 costs, fees and costs, to compel compliance with the Court's order are
2 awardable against the persons responsible for the disobedience or
3 resistance. It's awardable against the persons responsible for
4 disobedience or resistance. I repeated that because it is not limited to
5 the parties to be ordered. It's those people who received notice and had
6 a legal obligation and they still disobeyed or resisted the order.

7 Who should be responsible for compliance and payment of
8 the fees and costs? The persons who violated the rules. Defendants, no
9 question, but Mr. Bloom and counsel admit there's no further operations,
10 no money to pay, and so an award of fees and costs against the
11 Defendants is really elusory. It's not going to help anybody. It's not
12 going to right the wrong.

13 Jay Bloom, the only person legally associated with the
14 companies, should be responsible for the fees and costs. NRCP 69
15 provides that discovery in aid of execution on a judgment could be had
16 from any person regarding the subject of the judgment. There was
17 pending discovery with Jay Bloom when he came to the Court and said
18 he wasn't going to provide any information because of the settlement
19 agreement. It wasn't just the judgment that he was refusing to provide
20 information and compliance, but also other discovery, post-judgment
21 discovery.

22 NRCP 71 provides whenever an order grants relief to be
23 enforced against a non-party, the procedure is the same for enforcement
24 of the order against the party. And NRCP 37, also relevant here as set
25 forth in the motion to compel provides that orders compelling

1 compliance and sanctions will apply to any failure of a party, officers,
2 directors, or managing agents to comply with the Court's discovery
3 orders.

4 And we outline at length in our brief filed March 1st the
5 responsibility of the responsible person, the only person, a legally
6 responsible person like Jay Bloom, under the operating agreements and
7 as reflected in the secretary of state documents, as well as in the
8 communications where it's clear he's driving the ship here, not to
9 produce documents, but to avoid compliance, that there is a responsible
10 party rule.

11 And particularly on point is a 2019 Nevada federal case, *Love*
12 *& Care* [phonetic] that we cite to, that collects cases on the responsible
13 party rule and in that case, there was a finding that the managing
14 member was jointly and severely liable for contempt in payment of fees
15 and costs because that managing member of the LLC was legally
16 identified with the named Defendant. He was apprised of the order,
17 directed to the entity, and officially responsible for the conduct of its
18 affairs, and he prevented compliance or failed to take appropriate action
19 within his power for the performance of his managerial duties. And so
20 he, that managing member, is guilty of disobedience and should be
21 punished for contempt. Bloom is responsible for the contempt.

22 Evidence also shows under the applicable NRS 86.376 in the
23 LLC statutes of Nevada and as discussed in the *Gardener v. Eighth*
24 *Judicial District Court Holding* [phonetic] at 133 Nev 730, a responsible
25 person cannot hide behind an LLC and avoid consequences for his

1 conduct when that person is the alter ego, there is illegality or
2 unlawfulness. It's right on point. That Gardener case is right on point.
3 And NRS 86.376, right on point.

4 The bases for holding Bloom individually responsible for
5 contempt is undisputed evidence of alter ego. The LLC is influenced and
6 governed only by Jay Bloom. There is no corporate formalities. They're
7 in and out of compliance. You have to be reinstated multiple times since
8 even 2017.

9 Such unity of interest and ownership that the LLC and Mr.
10 Bloomer are inseparable from each other, that's certainly the case. You
11 have First 100 taking direction from Bloom and his associated entity, SJC
12 Ventures, and payment directives. We showed that today with the
13 testimony of Mr. Bloom, and there's been other evidence that he, alone,
14 is making the decisions and appointing counsel and directing counsel on
15 behalf of the entities. And directing counsel to further avoid contempt
16 consequences, I should say.

17 And finally, the adherence to the notion of the LLC being an
18 entity separate from Mr. Bloom would sanction fraud and promote
19 manifest injustice. If Mr. Bloom were able to do the things that you see
20 in Exhibit 28, 29, and 30 to avoid the consequences of contempt, because
21 he is not the LLC, not the party to the judgment, that would be manifest
22 injustice. And we now know that he directed Raffi Nahabedian to claim a
23 privilege where there was none and avoid disclosure of relevant facts
24 that showed there was an ongoing concerted effort, not to comply with
25 the judgment, but to avoid it.

1 And Your Honor, the responsibility for the payment of fees
2 and costs doesn't stop with Mr. Bloom. It, in this case, must extend to
3 Raffi Nahabedian and Maier Gutierrez & Associates. They actively
4 concealed the settlement agreement and corresponding release. The
5 very first time the release was discovered was pursuant to your order
6 compelling production on March 1st. You made the order on March 1st.
7 It was produced the next day.

8 The circumstances regarding the execution of the settlement
9 agreement were unknown prior to Your Honor granting that motion to
10 compel. There's nothing more relevant to whether or not there was an
11 enforceable settlement agreement than its circumstances regarding its
12 execution.

13 The email showing how the document went to Mr. Farkas,
14 how long he was there, and how he had inadequate time or the means to
15 provide that to Mr. Flatto or counsel, all highly relevant to this case. You
16 have this concerted action, again, for the purpose of avoiding
17 consequences of contempt and the complex machinations that are
18 outlined in Exhibit 28 really beg the question, what are you hiding. What
19 is being hidden here? It really reinforces why the documents need to be
20 produced pursuant to the judgment.

21 And Your Honor, under grander scale, counsel or officers of
22 the Court, if we walk through the motion to enforce settlement
23 agreement and we walk through the opposition to the motion to compel,
24 there were active concealments of material facts. The motion to enforce
25 settlement was actually filed with the declaration of Jason Maier. We

1 counter-moved to strike it and that was denied, but the sanctions portion
2 of our counter-motion remains outstanding.

3 And when the motion to enforcement settlement agreement
4 was filed subsequent to those communications that you have set forth at
5 Exhibit 28, 29, 30, and the fact that they knew about the amendment to
6 the operating agreement for TGC/Farkas and didn't disclose it to this
7 Court is really not the way we're supposed to be acting. It's not having
8 candor with the Court. Mr. Maier pointed to the operating agreement of
9 TGC/Farkas as having authority for the settlement agreement, and he did
10 not disclose the amendment.

11 The January 15th communication disclosing the amendment
12 to Raffi Nahabedian, Exhibit 30 shows that Raffi was on the phone with
13 Maier Gutierrez within 12 minutes of receiving the amendment, 12
14 minutes later. He was on the call with Jay Bloom later that same day.
15 There was -- Mr. Maier did not disclose the arbitration award. The
16 communications to his office from 2017 clearly provided by Adam Flatto
17 and counsel saying that Matthew Farkas did not have authority to act
18 without the consent of Adam Flatto, and the circumstances surrounding
19 the execution of the settlement agreement, and that it was in conjunction
20 with a release, those were not disclosed. Not to TGC/Farkas, not to this
21 Court.

22 So Your Honor, you know, it doesn't give me any glory to ask
23 for sanctions against counsel, but here, the circumstances require it. At
24 the end of the day, we ask the Court to right the wrongs that bring us
25 here and have had us provide two days of evidence, and that -- in order

1 to right the wrong, not only do we have to coerce compliance, but there
2 has to be the payment of fees and costs incurred to address the
3 disobedience and resistance to the Court's order by those who are
4 responsible, by the responsible parties.

5 Your Honor, with that, if you have any questions, let me
6 know.

7 THE COURT: No, thank you.

8 Mr. Gutierrez, last word?

9 MR. GUTIERREZ: Thank you, Your Honor.

10 Your Honor, I just want to express my shock and surprise
11 that counsel would attack me and my law firm, but it doesn't surprise me
12 given counsel's involvement and all this becoming a personal attack in
13 the case, and we can start with her questioning Mr. Bloom. Whether he
14 cheats on his wife, whether he's going to sue my law firm, you know?

15 The intent was never to gather documents in this case. The
16 intent by counsel and Mr. Flatto was to harass First 100, perhaps Mr.
17 Bloom, perhaps harass all their attorneys at First 100, and that's been
18 clear through counsel's argument and their actions and it's actually
19 insulting that that would be the case, but you know, I'll address each
20 thing she said in turn. If you look at the timeline,

21 Your Honor, there's been so many trials I've had and of
22 courses cases that have settled while the jury is out. It happens all the
23 time. Parties to a case assess risks and they pull it and they render that
24 moot. And it's not some conspiracy or some type of big fraud. What it
25 is, is they're -- Mr. Farkas and Mr. Bloom accept the risks, settle the case.

1 They're brothers. They're family. Counsel effectuated the settlement.
2 That's what happened.

3 Mr. Bloom testified about his experience specifically with Ms.
4 Turner's firm in a case that was heavily litigated, and her partner said,
5 we can't fill the case because his firm wasn't getting paid. And that's
6 what Mr. Bloom's involvement was. That was his intent when he came
7 into this and settled it with his brother-in-law. He recommended an
8 attorney who he knew that would have the ministerial task of
9 effectuating a settlement agreement and that's what happened. And
10 what happened? This whole case has blown up into hours and hours of
11 discovery when we've requested and told several times, hey, just pay for
12 these books and records, you can have them. No, that wasn't enough for
13 them. They wanted to inflict pain, they wanted to cause harm, they
14 wanted to attack my firm, they wanted to attack Mr. Bloom.

15 Their true intent couldn't be more clear than counsel's last
16 statement. So the consequences of contempt is that parties are allowed
17 to settle cases, Your Honor. And in fact, the one thing I didn't hear from
18 counsel is where's the notice of the amendment of the TGC/Farkas
19 operating agreement. That was never sent. Not once did she mention
20 that once. She talked about an inference of authority, who chairs the
21 decisions, but what she failed to mention is that Mr. Flatto's declaration
22 in support of that clearly said that Mr. Farkas was the administrative
23 member of the company, and he cited to the operating agreement and
24 attached it, so we have the TGC/Farkas initial operating agreement.
25 Never got the amendment, but we got the initial one.

1 What did it say in Section 4.1? Matthew Farkas is the
2 administrative member. The member shall be the manager responsible
3 for the data, for all business and managerial decisions for the company.

4 Section B, that same section, says neither this agreement nor
5 any term or provision hereof may be amended, waived, modified or
6 supplemented orally, but only by a written instrument signed by all the
7 members hereto. Even the arbitrator couldn't amend this. This
8 agreement had to be amended through the members, which is TGC
9 Investors, which is Mr. Flatto's company, and Mr. Farkas. That was
10 eventually done, but never sent to First 100.

11 So what are we left with? Section 4.4. Reliance on third-
12 party. This is their own agreement. Persons dealing with the company
13 are entitled to rely conclusively on the power and authority of the
14 administrative member, which First 100 in the evidence is unequivocally
15 clear that that was Matthew Farkas at the time he signed the settlement
16 agreement.

17 So Your Honor, and the other evidence when it comes to
18 consent is that Mr. Flatto and Mr. Farkas both said their consent could be
19 verbal or in writing. So how would First 100 know whether he gave his
20 consent or not, other than Mr. Farkas making the representation that he
21 had the authority to bind the company and that nowhere is that more
22 clear than Section 14 of the settlement agreement which clearly states,
23 "The parties hereto represent and warrant that the person who executed
24 this agreement on behalf of each party has full power and authority to
25 enter into this agreement."

1 Mr. Farkas signed this on behalf of the company. He analysis
2 is in there, Your Honor. There's no concealment. There's no issues with
3 Mr. Farkas' capacity. There was a meeting of the mind because the
4 settlement accomplished two things. One, any litigation; two, ensuring
5 Mr. Farkas or Mr. Flatto got his money back from this investment.

6 Your Honor, there's been so many allegations, but the
7 evidence is very clear in this case as to what happened. Mr. Nahabedian
8 came in for the administerial task to effectuate a settlement. That's what
9 he did. He withdrew the minute he found out that there was any type of
10 conflict and that there was this potential amended operative agreement
11 that had never been disclosed to anyone else.

12 Your Honor, the evidence is clear that you have -- there's
13 apparent authority that Mr. Farkas had the ability to bind the company
14 and that authority could end this case right then and there, that the
15 settlement agreement should be enforced and that this case should be
16 dismissed, Your Honor.

17 And as far as the arguments on the alter ego, there was no
18 evidence of a single shred of that. You have operating agreements, and
19 significant company documents, and for them to put a backdoor
20 argument alter ego against Mr. Bloom when there was never raised in
21 any prior proceeding this should be stricken.

22 So Your Honor, unless you have any questions, I think we've
23 covered this and beat this to death, but if you have any questions. I want
24 to thank you for your time.

25 THE COURT: I guess I have one question. I know that they're

1 -- it's like they had a fiduciary relationship between Mrs. Bloom and
2 Farkas, but as you know in Nevada, we have a special confidence that is
3 somewhat similar. Do you believe that there was a special confidence
4 relationship between Mr. Farkas and Bloom, given their relationship?

5 MR. GUTIERREZ: Their relationship as family members,
6 Your Honor, or as Mr. Farkas' relationship as a vice president of First
7 100?

8 THE COURT: Family members.

9 MR. GUTIERREZ: I don't -- honestly, Your Honor, I don't
10 know the answer to that question. That gives rights to a special
11 relationship like it would be with the insurance company and insured, or
12 some type of fiduciary relationship such as a member of an LLC. I don't
13 know if that -- I would have to supplement, Your Honor, with some type
14 of briefing on it. I don't know if that relationship itself would give rise to
15 that. I would have to look at that, Your Honor.

16 THE COURT: All right. Okay, thank you.

17 Here's what I would like to do. I don't need any further
18 briefing, but it would be helpful to me if each side would submit your
19 proposed of fact and conclusions of law. Okay?

20 MS. TURNER: Okay.

21 MR. GUTIERREZ: Your Honor, how much time do you want
22 for us to get that to you?

23 THE COURT: Well, that's what I was going to ask next.
24 How much do you think you need to do that?

25 MS. TURNER: I would say by Friday.

1 THE COURT: Friday? The day after tomorrow?

2 MR. GUTIERREZ: I'd like more time.

3 THE COURT: I see a sign in my chambers. You want it
4 when?

5 MS. TURNER: I said that in hush tones, Your Honor. If we
6 need longer time, I'll take it.

7 THE COURT: Well, you mentioned during your argument
8 that you were seeking to compel within five days or production within
9 five days or whatever.

10 MS. TURNER: Right.

11 THE COURT: I understand that, but it's helpful to me when I
12 receive these things because I can take a look at the nuances that each
13 side is advancing relative to their contentions.

14 How about if we -- I could either do it Monday. There goes
15 your weekend, right? Or Tuesday, Wednesday.

16 MS. TURNER: Mr. Gutierrez, I'll refer to you.

17 MR. GUTIERREZ: Your Honor, if I could have until the 19th,
18 which is next Friday. I just have -- I'm out of town the next two days and
19 I have a trial starting on Monday that should only be a day or two, but I
20 want to make sure we have enough time to go through it. I don't know if
21 it'll take that long, but definitely the 19th would be helpful for us.

22 THE COURT: Your response to that, Ms. Turner?

23 MS. TURNER: That's fine, Your Honor.

24 THE COURT: So it's a week from Friday? A week from a day
25 after tomorrow?

1 MS. TURNER: Yes. Then we can get the transcript. Yeah.

2 THE COURT: Okay. That will be the order. You'll submit
3 them to each other. Okay. What you should do, just to be clear, for the
4 record, you should serve and file your proposed findings of fact,
5 conclusions of law and order so that they're in the record as to what was
6 submitted by each side. Okay?

7 MS. TURNER: Okay.

8 THE COURT: And then after I receive those, I'll go through
9 them and use one or the other and then mingle or whatever, okay?

10 MS. TURNER: Thank you.

11 MR. GUTIERREZ: Your Honor, do you want us to send you
12 the proposed findings of fact also in a Word document?

13 THE COURT: Yes, I think that would be helpful.

14 MS. TURNER: It --

15 THE COURT: Yes.

16 MS. TURNER: Okay.

17 THE COURT: You can do that, as well.

18 MS. TURNER: All right.

19 THE COURT: Okay.

20 MS. TURNER: Thank you.

21 THE COURT: That makes it easier, particularly under these
22 remote circumstances, for me to communicate with my -- coordinate
23 with my JA, I should say, and what I'm going to do, okay?

24 MS. TURNER: Okay, thank you.

25 MR. GUTIERREZ: Thank you, Your Honor.

1 THE COURT: Everybody stay safe and have a great rest of
2 the week, and that will end the proceedings. We'll adjourn, okay?

3 MS. TURNER: Thank you.

4 MR. GUTIERREZ: Thank you, Your Honor. Have a good
5 weekend.

6 THE COURT: Okay, thank you. Yeah.

7 [Proceedings adjourned at 2:46 p.m.]

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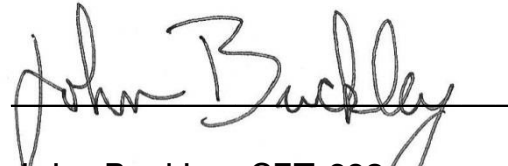
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1 ATTEST: I do hereby certify that I have truly and correctly
2 transcribed the audio/video proceedings in the above-entitled case to the
3 best of my ability.

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6 _____
7 John Buckley, CET-623
8 Court Reporter/Transcriber
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Heather S. Smith
CLERK OF THE COURT

FFCL

DISTRICT COURT

CLARK COUNTY, NEVADA

TGC/FARKAS FUNDING, LLC,

Plaintiff/Judgment Creditor,

vs.

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

Defendants/ Judgment Debtors.

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

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

Hearing Date: March 3 and 10, 2021

FINDINGS OF FACT, CONCLUSIONS OF LAW & ORDER

INTRODUCTION

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

MARK R. DENTON
DISTRICT JUDGE

DEPARTMENT THIRTEEN
LAS VEGAS, NV 89155

AA1264

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

6 FINDINGS OF FACT

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

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

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

22 ¹ Exhibit 20, PLTF_154, 170.

23 ² Exhibit 2, PLTF_006.

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

25 ⁴ 3/3 Trans., 160:3-7.

26 ⁵ Exhibits 25-26.

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

28 ⁷ 3/3 Trans., 159:23-160:2.

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

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

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

22 ⁸ Exhibit 1.

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

25 ¹⁰ Exhibits 2 and II.

26 ¹¹ Exhibit 2, PLTF_006.

27 ¹² 3/3 Trans., 123:2-13.

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

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

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

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

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

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

24 ¹⁶ Exhibit 22.

25 ¹⁷ Exhibit 2, PLTF_007.

26 ¹⁸ *Id.*

27 ¹⁹ *See* Exhibit 1, PLTF_002.

28 ²⁰ Exhibit 2, PLTF_009.

²¹ *Id.*

1 denied.”²²

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

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

22 ²² *Id.*

23 ²³ Exhibit 3.

24 ²⁴ Exhibits 7 and 8, § 13.9.

25 ²⁵ Exhibit 4, PLTF_019, ll. 15-27.

26 ²⁶ Exhibit 5.

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

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

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

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

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

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

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

27 ³⁰ Exhibit 13, PLTF_106.

28 ³¹ *Id.*

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

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

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

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

22 ³² Exhibit 11, PLTF_097.

23 ³³ Exhibit 25.

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

25 ³⁵ Exhibits FF and J.

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

27 ³⁷ See, e.g., Exhibit 28.

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

³⁹ Exhibit 20, §§ 3.4(a), 4.1(c).

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

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

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

21
22 ⁴⁰ 3/3 Trans., 108:5-17.

23 ⁴¹ Exhibit 21.

24 ⁴² Exhibit 22, PLTF_, 179, 190.

25 ⁴³ Exhibit 2, PLTF_007

26 ⁴⁴ Exhibit 23.

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

28 ⁴⁶ Id., 193:25-194:2.

⁴⁷ Exhibit 13, PLTF_108.

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

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

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

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

22 ⁵⁰ Exhibit 13, PLTF_107, § 14.

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

24 ⁵² *Id.*, 136:16-19.

25 ⁵³ 3/3 Trans., 137:1-8, 13-15.

26 ⁵⁴ *Id.*, 211:17-25; 213:15-23.

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

28 ⁵⁶ Exhibit 11, PLTF_097.

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

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

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

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

14 It was revealed from Nahabedian's records:

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

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

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

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

27 ⁶² Exhibit 28, PLTF_240-244.

28 ⁶³ 3/3 Trans., 149:25-150:7.

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

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

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

24 ⁶⁵ 3/10 Trans., 35:5-16

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

26 ⁶⁷ Exhibit 28, PLTF_245.

27 ⁶⁸ See Exhibit 17, PLTF_123.

28 ⁶⁹ Exhibit 28, PLTF_245-261.

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

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

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

23 ⁷¹ *Id.* at PLTF_266.

24 ⁷² *Id.* at PLTF_278.

25 ⁷³ *Id.* at PLTF_281, 284, 288.

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

27 ⁷⁵ Exhibit 11.

28 ⁷⁶ *Id.* at PLTF-097.

⁷⁷ 3/3 Trans., 144:22-148:24.

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

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

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

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

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

23 ⁷⁹ 3/10 Trans., 51:17-20.

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

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

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

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

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

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

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

21 ⁸⁴ 3/10 Trans., 87:25-88:14.

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

23 ⁸⁶ Exhibit 2, PLTF_007.

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

26 ⁸⁸ Exhibit 22.

27 ⁸⁹ Motion to Enforce, 3:1-6.

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

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

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

23 ⁹⁰ Exhibit 28, PLTF_299-300.

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

25 ⁹² Motion to Enforce, 3:6-11.

26 ⁹³ Exhibit 20, PLTF_159.

27 ⁹⁴ *Id.* at Exhibit 20, PLTF_162.

28 ⁹⁵ *See* fn. 81 above.

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

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

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

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

24 ⁹⁶ Exhibit 13, PLTF_106.

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

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

28 ⁹⁹ Exhibits 7 and 8, Article V.

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

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

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

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

26 ¹⁰⁰ 3/3 Trans., 72:15- 73:5.

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

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

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

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

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

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

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

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

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

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

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

27 ¹⁰⁵ *Id.* at 102:17-20.

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

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

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

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

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

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

¹⁰⁷ Exhibit 4, p. 3.

¹⁰⁸ Exhibit 6.

¹⁰⁹ 3/3 Trans., 219:4-9.

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

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

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

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

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

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

25 ¹¹¹ 3/10 Trans., 14:9-18.

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

27 ¹¹³ Exhibits 26 and 27.

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

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

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

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

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

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

24 ¹¹⁶ Exhibit 7, p. 28.

25 ¹¹⁷ Exhibit 8, p. 29.

26 ¹¹⁸ Exhibits 7-8, 26-27.

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

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

CONCLUSIONS OF LAW

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

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

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

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

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

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

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

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

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

28 ¹²⁰ 3/3 Trans., 72:19-23.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 ¹²¹ Exhibit V.
28

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

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

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

25 ¹²² Exhibit 4.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 **ORDER**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Dated this 7th day of April, 2021

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Mark R. Denton
District Court Judge

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

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

CASE NO: A-20-822273-C

7 vs.

DEPT. NO. Department 13

8
9 First 100, LLC, Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

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

15 Service Date: 4/7/2021

16 Dylan Ciciliano dciciliano@gtg.legal

17 Erika Turner eturner@gtg.legal

18 MGA Docketing docket@mgalaw.com

19 Tonya Binns tbinns@gtg.legal

20 Bart Larsen blarsen@shea.law

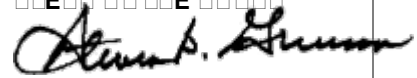
21 Max Erwin merwin@gtg.legal

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

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Joseph Gutierrez

Maier Gutierrez & Associates
Attn: Joseph A. Gutierrez
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Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

TGC/FARKAS FUNDING, LLC,
Plaintiff,

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

vs.

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

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

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

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

DATED this 7th day of April, 2021.

GARMAN TURNER GORDON LLP

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

CERTIFICATE OF SERVICE

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

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

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Attorneys for Matthew Farkas

/s/ Max Erwin

An Employee of
GARMAN TURNER GORDON LLP

Heather S. Smith
CLERK OF THE COURT

FFCL

DISTRICT COURT

CLARK COUNTY, NEVADA

TGC/FARKAS FUNDING, LLC,

Plaintiff/Judgment Creditor,

vs.

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

Defendants/ Judgment Debtors.

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

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

Hearing Date: March 3 and 10, 2021

FINDINGS OF FACT, CONCLUSIONS OF LAW & ORDER

INTRODUCTION

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

MARK R. DENTON
DISTRICT JUDGE

DEPARTMENT THIRTEEN
LAS VEGAS, NV 89155

AA1304

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

6 FINDINGS OF FACT

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

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

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

22 ¹ Exhibit 20, PLTF_154, 170.

23 ² Exhibit 2, PLTF_006.

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

25 ⁴ 3/3 Trans., 160:3-7.

26 ⁵ Exhibits 25-26.

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

28 ⁷ 3/3 Trans., 159:23-160:2.

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

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

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

22 ⁸ Exhibit 1.

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

25 ¹⁰ Exhibits 2 and II.

26 ¹¹ Exhibit 2, PLTF_006.

27 ¹² 3/3 Trans., 123:2-13.

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

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

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

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

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

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

24 ¹⁶ Exhibit 22.

25 ¹⁷ Exhibit 2, PLTF_007.

26 ¹⁸ *Id.*

27 ¹⁹ *See* Exhibit 1, PLTF_002.

28 ²⁰ Exhibit 2, PLTF_009.

²¹ *Id.*

1 denied.”²²

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

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

21
22 ²² *Id.*

23 ²³ Exhibit 3.

24 ²⁴ Exhibits 7 and 8, § 13.9.

25 ²⁵ Exhibit 4, PLTF_019, ll. 15-27.

26 ²⁶ Exhibit 5.

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

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

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

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

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

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

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

27 ³⁰ Exhibit 13, PLTF_106.

28 ³¹ *Id.*

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

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

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

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

22 ³² Exhibit 11, PLTF_097.

23 ³³ Exhibit 25.

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

25 ³⁵ Exhibits FF and J.

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

27 ³⁷ See, e.g., Exhibit 28.

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

³⁹ Exhibit 20, §§ 3.4(a), 4.1(c).

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

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

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

21
22 ⁴⁰ 3/3 Trans., 108:5-17.

23 ⁴¹ Exhibit 21.

24 ⁴² Exhibit 22, PLTF_, 179, 190.

25 ⁴³ Exhibit 2, PLTF_007

26 ⁴⁴ Exhibit 23.

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

28 ⁴⁶ Id., 193:25-194:2.

⁴⁷ Exhibit 13, PLTF_108.

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

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

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

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

22 ⁵⁰ Exhibit 13, PLTF_107, § 14.

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

24 ⁵² *Id.*, 136:16-19.

25 ⁵³ 3/3 Trans., 137:1-8, 13-15.

26 ⁵⁴ *Id.*, 211:17-25; 213:15-23.

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

28 ⁵⁶ Exhibit 11, PLTF_097.

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

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

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

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

14 It was revealed from Nahabedian's records:

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

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

24 ⁶⁰ See *Nevada Speedway v. Bloom, et al.*, Case No. A-20-809882-B of the Eighth Jud. Dist. Court (showing
25 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.

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

27 ⁶² Exhibit 28, PLTF_240-244.

28 ⁶³ 3/3 Trans., 149:25-150:7.

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

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

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

24 ⁶⁵ 3/10 Trans., 35:5-16

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

26 ⁶⁷ Exhibit 28, PLTF_245.

27 ⁶⁸ See Exhibit 17, PLTF_123.

28 ⁶⁹ Exhibit 28, PLTF_245-261.

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

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

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

23 ⁷¹ *Id.* at PLTF_266.

24 ⁷² *Id.* at PLTF_278.

25 ⁷³ *Id.* at PLTF_281, 284, 288.

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

27 ⁷⁵ Exhibit 11.

28 ⁷⁶ *Id.* at PLTF-097.

⁷⁷ 3/3 Trans., 144:22-148:24.

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

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

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

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

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

23 ⁷⁹ 3/10 Trans., 51:17-20.

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

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

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

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

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

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

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

21 ⁸⁴ 3/10 Trans., 87:25-88:14.

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

23 ⁸⁶ Exhibit 2, PLTF_007.

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

26 ⁸⁸ Exhibit 22.

27 ⁸⁹ Motion to Enforce, 3:1-6.

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

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

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

23 ⁹⁰ Exhibit 28, PLTF_299-300.

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

25 ⁹² Motion to Enforce, 3:6-11.

26 ⁹³ Exhibit 20, PLTF_159.

27 ⁹⁴ *Id.* at Exhibit 20, PLTF_162.

28 ⁹⁵ *See* fn. 81 above.

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

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

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

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

24 ⁹⁶ Exhibit 13, PLTF_106.

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

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

28 ⁹⁹ Exhibits 7 and 8, Article V.

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

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

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

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

26 ¹⁰⁰ 3/3 Trans., 72:15- 73:5.

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

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

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

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

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

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

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

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

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

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

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

27 ¹⁰⁵ *Id.* at 102:17-20.

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

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

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

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

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

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

¹⁰⁷ Exhibit 4, p. 3.

¹⁰⁸ Exhibit 6.

¹⁰⁹ 3/3 Trans., 219:4-9.

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

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

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

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

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

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

25 ¹¹¹ 3/10 Trans., 14:9-18.

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

27 ¹¹³ Exhibits 26 and 27.

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

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

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

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

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

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

24 ¹¹⁶ Exhibit 7, p. 28.

25 ¹¹⁷ Exhibit 8, p. 29.

26 ¹¹⁸ Exhibits 7-8, 26-27.

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

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

CONCLUSIONS OF LAW

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

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

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

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

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

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

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

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

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

28 ¹²⁰ 3/3 Trans., 72:19-23.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 ¹²¹ Exhibit V.
28

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

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

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

25 ¹²² Exhibit 4.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 **ORDER**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Dated this 7th day of April, 2021

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

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

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

CASE NO: A-20-822273-C

8 vs.

DEPT. NO. Department 13

9 First 100, LLC, Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

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

Service Date: 4/7/2021

16 Dylan Ciciliano dciciliano@gtg.legal

17 Erika Turner eturner@gtg.legal

18 MGA Docketing docket@mgalaw.com

19 Tonya Binns tbinns@gtg.legal

20 Bart Larsen blarsen@shea.law

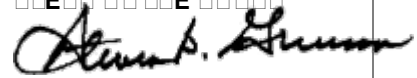
21 Max Erwin merwin@gtg.legal

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

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Joseph Gutierrez

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



DECL
GARMAN TURNER GORDON LLP
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Nevada Bar No. 6454
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DYLAN T. CICILIANO
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7251 Amigo Street, Suite 210
Las Vegas, Nevada 89119
Tel: (725) 777-3000
Fax: (725) 777-3112
Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

TGC/FARKAS FUNDING, LLC,
Plaintiff,

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

vs.

**DECLARATION OF ERIKA PIKE
TURNER, ESQ. IN SUPPORT OF
AWARD OF FEES AND COSTS**

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.

I, Erika Pike Turner, declare as follows:

1. I am over the age of eighteen (18) years and competent to testify on the matters set forth herein.

2. I am a founding partner of the law firm Garman Turner Gordon LLP (“GTG”), counsel of record for Plaintiff in the above-captioned case. In such capacity, I have developed personal knowledge regarding the facts set forth below.

3. I make this Declaration in support of the award of fees and costs expended relating to the Order to Show Cause Why Defendants and Jay Bloom Should Not Be Found in Contempt (the “OSC”), Plaintiff’s Motion to Compel, and Defendants’ Motion to Enforce Settlement Agreement (“Motion to Enforce”).

4. In the present action, Plaintiff was at all times represented by GTG.

1 5. Plaintiff was required to indemnify Matthew Farkas (former Administrative
2 Member and member of Plaintiff) pursuant to the terms of its Operating Agreement and pay those
3 fees and costs incurred by Mr. Farkas in connection with the Motion to Enforce. Matthew Farkas
4 was represented by Lt. Colonel (ret.) Kenneth Hogan, Esq. of the law firm of Hogan Hulet
5 (“Hogan”).

6 6. Due to GTG’s large commercial bankruptcy practice, where hourly rates are
7 frequently scrutinized by the Bankruptcy Court in the District of Nevada and the United States
8 Department of Justice, GTG frequently evaluates its own attorneys’ rates for reasonableness in the
9 community. I am directly involved in the process, which involves sampling rates of other attorneys
10 from around the community who regularly practice in the business courts of this State Court. While
11 I am primarily a litigator, litigators at GTG appear semi-frequently in Bankruptcy Court,
12 particularly on commercial law disputes, and therefore it is essential that our rates are reasonable
13 and take special care to remain consistent with our rates charged to clients with the rates charged
14 by our colleagues with similar experience and skill. In sum, I have personal knowledge of fees
15 charged in Clark County, Nevada, and particularly relating to commercial law matters.

16 7. Attorney rates at GTG range from \$265/hour to \$850/hour, depending on their
17 experience and skill.

18 8. I am the primary attorney and partner in charge of the subject representation. I have
19 been licensed as a Nevada attorney since 1997, I was named an equity partner at the law firm of
20 Gordon Silver effective January 1, 2005, and I am a founding partner at GTG. I have represented
21 numerous clients in business litigation matters in the business courts of this State Court, as well as
22 the federal and bankruptcy courts located in Nevada as well as Delaware, Missouri, California,
23 Tennessee, and Idaho, including at numerous bench and jury trials and other evidentiary matters.
24 I have been AV-Preeminent rated by Martindale Hubbell and regularly selected for distinction by
25 my peers. My billing rate on this matter, which is commensurate with, or less than, what is
26 customary in the community for someone of similar qualification and expertise, is \$550.00 per
27 hour since January 1, 2021.

28 9. Plaintiff was also represented by Dylan T. Ciciliano, Esq., who provided valuable

1 assistance in the representation, and as a result of his lower hourly rate, Plaintiff received the
2 benefit of a lower blended rate. Mr. Ciciliano is a GTG attorney and has more than 10 years of
3 experience litigating commercial disputes in the business courts of this State Court, as well as the
4 federal and bankruptcy courts located in Nevada as well as California and Texas, including at
5 numerous bench and jury trials and other evidentiary hearings. Mr. Ciciliano has been consistently
6 recognized as an up and coming attorney by his peers. Mr. Ciciliano also holds a master's degree
7 in economics, which is particularly valuable in commercial disputes. Mr. Ciciliano's billing rate
8 on this matter, which is commensurate with, or less than, what is customary in the community for
9 someone of similar qualification and expertise, is \$385.00 per hour since January 1, 2021.

10 10. Michele Pori is an essential paralegal with extensive experience at Gordon Silver
11 and now at GTG with document management as well as preparation for and attendance at trials
12 and evidentiary hearings. Ms. Pori's hourly rate is \$215.00 per hour since January 1, 2021.
13 Utilizing Ms. Pori where appropriate resulted in lowering the fees incurred by Plaintiff.

14 11. Attached hereto as **Exhibit 1** is a true and correct copy of the transaction history
15 related to all GTG billing entries in this matter from January 1, 2021 through March 31, 2021,
16 except that they have been redacted for privilege. The fees reflected therein were actually and
17 necessarily incurred by Plaintiff since the entry of the judgment in favor of Plaintiff. It is notable
18 that there was voluntarily no-charged time for 3.6 hours of my time (\$1,980.00) and 3.7 hours of
19 Mr. Ciciliano's time (\$1,424.50) expended that is related to the OSC, Motion to Compel and
20 Motion to Enforce, as indicated in the transaction history. The total fees incurred by Plaintiff with
21 GTG through March 31, 2021 related to the OSC, Motion to Compel and Motion to Enforce is
22 \$144,134.00. In addition, since March 31, 2021, I spent .5 hour reviewing the Findings of Fact,
23 Conclusions of Law and Order, attending to notice of entry to all parties and affected non-parties
24 and Plaintiff, and 4.2 hours preparing this supplement, together with my declaration, reviewing
25 the transaction histories for privilege and relevancy to the subject matters, for a total of 4.7 hours
26 incurred in April 2021 related to the OSC, Motion to Compel and Motion to Enforce, totaling
27 \$2,585.00. The total fees incurred by Plaintiff with GTG related to the OSC, Motion to Compel
28 and Motion to Enforce is **\$146,719.00**.

12. Attached hereto as **Exhibit 2** is a true and correct copy of the transaction history related to all GTG cost entries in this matter from November 18, 2020 through March 31, 2021, redacted for costs not directly related to the OSC, Motion to Compel and Motion to Enforce. The costs reflected therein were actually and necessarily incurred by Plaintiff since the entry of the judgment in favor of Plaintiff. The total costs incurred by Plaintiff with GTG related to the OSC, Motion to Compel and Motion to Enforce is **\$4,816.81**, consisting of actual filing fees with Odyssey, transcript fees, service of process, messenger service, postage and a thumb drive. The costs are actually incurred with no up-charge by GTG.

13. Attached hereto as **Exhibit 3** is a true and correct copy of the Hogan invoices related to this matter through March 31, 2021, except that they have been redacted for privilege and matters not directly related to the OSC, Motion to Compel and Motion to Enforce. As reflected in the invoice, Col. Hogan's hourly rate is \$400.00 per hour since January 1, 2021, which I believe is low given his significant skill and experience in commercial litigation, including in the business courts of this State Court. Col. Hogan has been practicing since 2006 in Nevada, is AV-Pre-eminent rated by Martindale Hubbell and regularly recognized for distinction by his peers. The total fees incurred by Plaintiff with Hogan related to his representation of Mr. Farkas in connection with the Motion to Compel and Motion to Enforce is **\$10,120.00**.

14. The total amount of fees and costs that is requested as a sanction against Defendants and Jay Bloom, jointly and severally, is **\$161,655.81**. As this is a sanction for civil contempt, Plaintiff requests a date certain for payment to be made, which payment is required, in conjunction with the production of documents as ordered, to purge Defendants' and Jay Bloom's contempt.

I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

Executed this 9th of April, 2021.

/s/ Erika Pike Turner












ERIKA PIKE TURNER, Declarant

Exhibit 1

Activities Export

04/07/2021

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Date ▼	Type	Description	Matter	User	Qty	Rate (\$)	Non-billable (\$)	Billable (\$)
03/19/2021		Review proposed FFCL from opposing counsel  Billed invoice 531628	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Erika Turner	0.20h	550.00	-	110.00
03/19/2021		Review MBusch comments <input type="checkbox"/> revise and finalize FFCL  Billed invoice 531628	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Erika Turner	1.80h	550.00	-	990.00
03/18/2021		Attend to FFCL - No Charge  Billed invoice 531628	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Erika Turner	1.90h	0.00	-	0.00
03/17/2021		Review transcripts and exhibits and further drafting of FFCL  Billed invoice 531628	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Erika Turner	9.30h	550.00	-	5,115.00
03/15/2021		Attend to preparation of FFCL  Billed invoice 531628	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Erika Turner	8.70h	550.00	-	4,785.00
03/11/2021		Review order on motion to compel entered by court <input type="checkbox"/> attend to	01245-TGC/Farkas Funding LLC	Erika Turner	0.10h	550.00	-	55.00

Activities Export

04/07/2021

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Date	Type	Description	Matter	User	Qty	Rate (\$)	Non-billable (\$)	Billable (\$)
		preparation of NOE ● Billed invoice 531628	- re Investment with First 100, LLC					
03/10/2021	⌚	Review comments to order on motion to compel from opposing counsel JG and BLarsen ☐ incorporate and attend to finalizing same ● Billed invoice 531628	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Erika Turner	0.30h	550.00	-	165.00
03/10/2021	⌚	Preparation for and attend evidentiary hearing ● Billed invoice 531628	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Erika Turner	8.00h	550.00	-	4,400.00
03/10/2021	⌚	Attend continued evidentiary hearing. Assist in presentation of exhibits for witness examination of Jay Bloom, Raffi Nahabedian and Mathew Farkas as well as closing arguments. ● Billed invoice 531628	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Michele Pori	6.00h	215.00	-	1,290.00
03/09/2021	⌚	Email communications with KHogan re MFarkas expected testimony ● Billed invoice 531628	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Erika Turner	0.20h	550.00	-	110.00
03/09/2021	⌚	Email communications with BLarsen re hearing ● Billed invoice 531628	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Erika Turner	0.20h	550.00	-	110.00
03/09/2021	⌚	Preparation of order on motion to compel ☐ related email communication with opposing	01245-TGC/Farkas Funding LLC - re Investment with First	Erika Turner	0.80h	550.00	-	440.00

Activities Export











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Date	Type	Description	Matter	User	Qty	Rate (\$)	Non-billable (\$)	Billable (\$)
		counsel and BLarsen ● Billed invoice 531628	100, LLC					
03/09/2021	⌚	Preparation for hearing- closing arguments and witness examination ● Billed invoice 531628	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Erika Turner	9.50h	550.00	-	5,225.00
03/09/2021	⌚	Begin and complete the creation of Plaintiffs' Exhibits Volume 3. Transmit same to court and all noticed parties and counsel. ● Billed invoice 531628	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Michele Pori	0.90h	215.00	-	193.50
03/07/2021	⌚	Review deposition transcripts and identify citations for motion to strike arguments with no admissible evidence ● Billed invoice 531628	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Dylan Ciciliano	3.20h	385.00	-	1,232.00
03/05/2021	⌚	Email communication from MFarkas □ follow up with client regarding preparation of response ● Billed invoice 531628	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Erika Turner	0.50h	550.00	-	275.00
03/04/2021	⌚	Telephone conference with client reps - No Charge ● Billed invoice 531628	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Erika Turner	0.70h	0.00	-	0.00

Activities Export

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Date ▼	Type	Description	Matter	User	Qty	Rate (\$)	Non-billable (\$)	Billable (\$)
03/04/2021		Email communications with KHogan  Billed invoice 531628	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Erika Turner	0.20h	550.00	-	110.00
03/03/2021		Preparation for and attend evidentiary hearing □ follow up communications with KHogan and associate  Billed invoice 531628	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Erika Turner	11.50h	550.00	-	6,325.00
03/03/2021		Attend evidentiary hearing and coordinate trial exhibit presentation for opening and witness examination of Adam Flatto, Matthew Farkas and Jay Bloom.  Billed invoice 531628	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Michele Pori	7.00h	215.00	-	1,505.00
03/03/2021		Attend evidentiary hearing with assistance in cross-exam with notes on exhibits and depo trans. as neccessary  Billed invoice 531628	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Dylan Ciciliano	5.30h	385.00	-	2,040.50
03/02/2021		Preparation for hearing - opening statement and witnesses □ examination  Billed invoice 531628	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Erika Turner	7.80h	550.00	-	4,290.00
03/02/2021		Finalize objection to declarations offered by Defendants as evidence	01245-TGC/Farkas Funding LLC	Erika Turner	0.10h	550.00	-	55.00

Activities Export

04/07/2021

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Date	Type	Description	Matter	User	Qty	Rate (\$)	Non-billable (\$)	Billable (\$)
		● Billed invoice 531628	- re Investment with First 100, LLC					
03/02/2021	🕒	Email communication with BLarsen ● Billed invoice 531628	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Erika Turner	0.10h	550.00	-	55.00
03/02/2021	🕒	Email communication with opposing counsel JG re Raffi docs ● Billed invoice 531628	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Erika Turner	0.10h	550.00	-	55.00
03/02/2021	🕒	Review deposition transcript for JBloom in preparation for hearing ● Billed invoice 531628	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Erika Turner	0.60h	550.00	-	330.00
03/02/2021	🕒	Begin and complete exhibit presentation for Opening Statement and witness presentation and examination for Adam Flatto, Matthew Farkas, Jay Bloom. ● Billed invoice 531628	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Michele Pori	2.10h	215.00	-	451.50
03/02/2021	🕒	Receive new link to Defendants Trial Exhibits. Download same and preserve as evidence in Net Documents platform ● Billed invoice 531628	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Michele Pori	0.50h	215.00	-	107.50
03/02/2021	🕒	Compile additional identified exhibits to create Plaintiff's Volume 2. Transmit Plaintiffs' Volume 2 exhibit binders to court for	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Michele Pori	1.50h	215.00	-	322.50

Activities Export

04/07/2021

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Date	Type	Description	Matter	User	Qty	Rate (\$)	Non-billable (\$)	Billable (\$)
		evidentiary hearing on March 3, 2021. ● Billed invoice 531628						
03/02/2021	⌚	Prepare for evidentiary hearing and cross examination of ex-employee witnesses provided docs ● Billed invoice 531628	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Dylan Ciciliano	2.80h	385.00	-	1,078.00
03/02/2021	⌚	Review docs for examination of RaffiN ● Billed invoice 531628	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Erika Turner	0.40h	550.00	-	220.00
03/01/2021	⌚	Review correspondence from BLarsen and documents ● Billed invoice 531628	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Erika Turner	0.90h	550.00	-	495.00
03/01/2021	⌚	Follow up email communication with Bart Larsen ● Billed invoice 531628	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Erika Turner	0.30h	550.00	-	165.00
03/01/2021	⌚	Prepare for and attend hearing on motion to compel □ follow up communication with client rep ● Billed invoice 531628	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Erika Turner	4.50h	550.00	-	2,475.00
03/01/2021	⌚	Prepare objections to Defendants hearing exhibits. ● Billed invoice 531628	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Dylan Ciciliano	3.20h	385.00	-	1,232.00
03/01/2021	⌚	Review documents produced by Raffi Nahabedian - No Charge	01245-TGC/Farkas Funding LLC	Dylan Ciciliano	0.60h	0.00	-	0.00

Activities Export

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Date	Type	Description	Matter	User	Qty	Rate (\$)	Non-billable (\$)	Billable (\$)
		● Billed invoice 531628	- re Investment with First 100, LLC					
03/01/2021	🕒	Attend hearing on motion to compel Raffi Nahabedian - No Charge ● Billed invoice 531628	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Dylan Ciciliano	1.30h	0.00	-	0.00
02/28/2021	🕒	Research and preparation of trial brief and opening for hearing ● Billed invoice 530659	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Erika Turner	7.80h	550.00	-	4,290.00
02/26/2021	🕒	Attend to preparation of bench brief ● Billed invoice 531628	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Erika Turner	2.50h	550.00	-	1,375.00
02/26/2021	🕒	Attend deposition of MFarkas ● Billed invoice 530659	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Erika Turner	4.90h	550.00	-	2,695.00
02/26/2021	🕒	Review opposition to motion to compel and counter motion from First 100 ● Billed invoice 530659	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Erika Turner	0.20h	550.00	-	110.00
02/26/2021	🕒	Review opposition to motion to compel from Nahabedian ● Billed invoice 530659	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Erika Turner	0.20h	550.00	-	110.00
02/26/2021	🕒	Attend to bench brief ● Billed invoice 530659	01245-TGC/Farkas Funding LLC - re Investment with First	Erika Turner	3.50h	550.00	-	1,925.00

Activities Export

04/07/2021















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Date	Type	Description	Matter	User	Qty	Rate (\$)	Non-billable (\$)	Billable (\$)
100, LLC								
02/25/2021		Revise evidentiary exhibits and binders for upcoming hearing and delivery to court.  Billed invoice 530659	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Michele Pori	2.10h	215.00	-	451.50
02/25/2021		Telephone conference with BLarsen <input type="checkbox"/> follow up email communication  Billed invoice 530659	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Erika Turner	0.50h	550.00	-	275.00
02/25/2021		Preparation of reply on motion for OSC and in preparation for evidentiary hearing  Billed invoice 530659	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Erika Turner	4.30h	550.00	-	2,365.00
02/25/2021		Preparation for MFarkas deposition  Billed invoice 530659	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Erika Turner	1.00h	550.00	-	550.00
02/25/2021		Prepare supplement to motion to compel Raffi Nahabedian  Billed invoice 530659	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Dylan Ciciliano	2.60h	385.00	-	1,001.00
02/24/2021		Begin and complete preparation of evidentiary exhibit binders for court.  Billed invoice 530659	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Michele Pori	2.90h	215.00	-	623.50

Activities Export

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Date ▾	Type	Description	Matter	User	Qty	Rate (\$)	Non-billable (\$)	Billable (\$)
02/24/2021		Attend deposition of Jay Bloom ☐ follow up communications with MFarkas and KHogan re testimony and MFarkas☐response  Billed invoice 530659	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Erika Turner	9.30h	550.00	-	5,115.00
02/24/2021		Deposition preparation of Matthew Farkas  Billed invoice 530659	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Dylan Ciciliano	1.30h	385.00	-	500.50
02/24/2021		Prepare trial deposition for Bloom and SDT for Nahabedian  Billed invoice 530659	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Dylan Ciciliano	0.30h	385.00	-	115.50
02/24/2021		Bloom deposition and related preparations  Billed invoice 530659	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Dylan Ciciliano	1.20h	385.00	-	462.00
02/23/2021		Begin and complete compilation of identified evidentiary hearing exhibits and index same.  Billed invoice 530659	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Michele Pori	2.10h	215.00	-	451.50
02/23/2021		Attend deposition of AFlatto ☐ follow up with client and MBusch  Billed invoice 530659	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Erika Turner	2.40h	550.00	-	1,320.00
02/23/2021		Review documents received from opposing counsel ☐ follow up with KHogan re same  Billed invoice 530659	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Erika Turner	0.80h	550.00	-	440.00

Activities Export

04/07/2021















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Date ▼	Type	Description	Matter	User	Qty	Rate (\$)	Non-billable (\$)	Billable (\$)
02/23/2021		Preparations for Bloom deposition, assemble additional documents  Billed invoice 530659	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Dylan Ciciliano	1.30h	385.00	-	500.50
02/22/2021		Review communication from BLarsen re status of privilege log  Billed invoice 530659	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Erika Turner	0.10h	550.00	-	55.00
02/22/2021		Attend telephone conference in preparation for AFlatto deposition <input type="checkbox"/> related follow up  Billed invoice 530659	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Erika Turner	1.50h	550.00	-	825.00
02/22/2021		Preparation for JBloom examination <input type="checkbox"/> deposition and evidentiary hearing  Billed invoice 530659	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Erika Turner	3.40h	550.00	-	1,870.00
02/22/2021		Attend to evidentiary hearing preparations and exhibits.  Billed invoice 530659	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Dylan Ciciliano	1.20h	385.00	-	462.00
02/19/2021		Attend to preparation for evidentiary hearing, depositions and motion practice to address all outstanding issues  Billed invoice 530659	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Erika Turner	7.80h	550.00	-	4,290.00
02/19/2021		Review communications from M. Farkas, attend to Motion to compel and evidentiary hearing on contempts.  Billed invoice 530659	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Dylan Ciciliano	1.80h	385.00	-	693.00

Activities Export

04/07/2021















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Date ▼	Type	Description	Matter	User	Qty	Rate (\$)	Non-billable (\$)	Billable (\$)
02/18/2021		Attend to draft motion to compel  Billed invoice 530659	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Erika Turner	6.30h	550.00	-	3,465.00
02/17/2021		Attend meet and confer with Bart Larsen  Billed invoice 530659	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Erika Turner	0.20h	550.00	-	110.00
02/17/2021		Preparation for depositions and attend to motion to compel  Billed invoice 530659	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Erika Turner	2.00h	550.00	-	1,100.00
02/17/2021		Review email communication from KHogan re factual history and timeline  Billed invoice 530659	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Erika Turner	0.10h	550.00	-	55.00
02/17/2021		Telephone conference with opposing counsel re JBloom purported illness <input type="checkbox"/> response and preparation of amended notice of deposition  Billed invoice 530659	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Erika Turner	0.20h	550.00	-	110.00
02/17/2021		Email communication with Bart Larsen re privilege log  Billed invoice 530659	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Erika Turner	0.10h	550.00	-	55.00
02/16/2021		Preparation for deposition of JBloom  Billed invoice 530659	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Erika Turner	5.20h	550.00	-	2,860.00

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Date ▼	Type	Description	Matter	User	Qty	Rate (\$)	Non-billable (\$)	Billable (\$)
02/16/2021		Telephone conference with MFarkas, Khogan, DC and MBusch  Billed invoice 530659	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Erika Turner	0.80h	550.00	-	440.00
02/16/2021		Confer with Matt Farkas and counsel <input type="checkbox"/> assist with communications with BLarsen  Billed invoice 530659	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Dylan Ciciliano	1.30h	385.00	-	500.50
02/15/2021		Email from Bart Larsen  Billed invoice 530659	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Erika Turner	0.10h	550.00	-	55.00
02/15/2021		Preparation for and attend meet and confer  Billed invoice 530659	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Erika Turner	1.70h	550.00	-	935.00
02/14/2021		Email communication with client <input type="checkbox"/> follow up with KHogan  Billed invoice 530659	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Erika Turner	0.20h	550.00	-	110.00
02/14/2021		Review correspondence from opposing counsel JG re outstanding disputes <input type="checkbox"/> preparation of response  Billed invoice 530659	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Erika Turner	0.40h	550.00	-	220.00
02/14/2021		Preparation of correspondence to Bart Larsen re Nahabedian meet and confer and claim of privilege  Billed invoice 530659	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Erika Turner	1.00h	550.00	-	550.00

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Date ▼	Type	Description	Matter	User	Qty	Rate (\$)	Non-billable (\$)	Billable (\$)
02/14/2021		Review Nahabedian transcript  Billed invoice 530659	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Dylan Ciciliano	0.50h	385.00	-	192.50
02/13/2021		Email communication with KHogan re common interest privilege  Billed invoice 530659	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Erika Turner	0.10h	550.00	-	55.00
02/13/2021		Telephone conference with client representatives  Billed invoice 530659	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Erika Turner	0.50h	550.00	-	275.00
02/12/2021		Review demand letter <input type="checkbox"/> attend to response to same  Billed invoice 530659	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Erika Turner	0.50h	550.00	-	275.00
02/12/2021		Attend Raffi deposition <input type="checkbox"/> extensive follow up with KHogan re privilege issues and preparation of communications to establish meet and confer and detail of privileges being promoted for discussion during same  Billed invoice 530659	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Erika Turner	6.80h	550.00	-	3,740.00
02/12/2021		Communications with JGilmore re NRPC violations for Motion to Compel  Billed invoice 530659	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Dylan Ciciliano	0.60h	385.00	-	231.00
02/12/2021		Participate in and attend deposition of Raffi Nahabedian	01245-TGC/Farkas Funding LLC	Dylan Ciciliano	4.80h	385.00	-	1,848.00

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Date	Type	Description	Matter	User	Qty	Rate (\$)	Non-billable (\$)	Billable (\$)
		● Billed invoice 530659	- re Investment with First 100, LLC					
02/11/2021	🕒	Preparation for deposition of Raffi (and anticipated priv fight) ● Billed invoice 530659	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Erika Turner	5.80h	550.00	-	3,190.00
02/11/2021	🕒	Preparation of hearing subpoena to Raffi ● Billed invoice 530659	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Erika Turner	0.20h	550.00	-	110.00
02/11/2021	🕒	Research, analysis and otherwise attend to deposition preparation and identifying documents ● Billed invoice 530659	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Dylan Ciciliano	3.70h	385.00	-	1,424.50
02/10/2021	🕒	Review notice of deposition for TGC farkas ☐ preparation of outline of objections and cover letter to opposing counsel ● Billed invoice 530659	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Erika Turner	2.90h	550.00	-	1,595.00
02/10/2021	🕒	Attend to preparation of exhibits for Nahabedian deposition, research re conflict waiver ● Billed invoice 530659	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Dylan Ciciliano	2.10h	385.00	-	808.50
02/09/2021	🕒	Research First 100 cases, deponents ☐ emails and otherwise attend to deposition notices and service ● Billed invoice 530659	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Erika Turner	1.10h	550.00	-	605.00
02/09/2021	🕒	Multiple email communications	01245-TGC/Farkas	Erika Turner	0.30h	550.00	-	165.00

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Date	Type	Description	Matter	User	Qty	Rate (\$)	Non-billable (\$)	Billable (\$)
		with Raffi re deposition ● Billed invoice 530659	Funding LLC - re Investment with First 100, LLC					
02/08/2021	🕒	Prepare for depositions, multiple phone calls with M. Farkas and counsel. ● Billed invoice 530659	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Dylan Ciciliano	1.60h	385.00	-	616.00
02/05/2021	🕒	Email communications with kHogan ☐ attend to subpoena to MFarkas and acceptance of service ● Billed invoice 530659	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Erika Turner	0.80h	550.00	-	440.00
02/05/2021	🕒	Prepare notice of deposition for First 100 entities' 30(b)(6) witness(es) ● Billed invoice 530659	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Erika Turner	0.50h	550.00	-	275.00
02/05/2021	🕒	Multiple email communications going back and forth with opposing counsel re order dispute and depositions ☐ attend to submission of competing order to Dept 13 ● Billed invoice 530659	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Erika Turner	1.00h	550.00	-	550.00
02/05/2021	🕒	Review transcript and attend to preparation of order on OSC hearing in light of same ☐ email communication with opposing counsel ● Billed invoice 530659	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Erika Turner	0.40h	550.00	-	220.00
02/05/2021	🕒	Attend to service of subpoena on JBloom	01245-TGC/Farkas Funding LLC	Erika Turner	0.10h	550.00	-	55.00

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Date	Type	Description	Matter	User	Qty	Rate (\$)	Non-billable (\$)	Billable (\$)
		● Billed invoice 530659	- re Investment with First 100, LLC					
02/05/2021	🕒	Review dockets and investigate Nahabedian and MGA for use in depos ● Billed invoice 530659	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Dylan Ciciliano	3.50h	385.00	-	1,347.50
02/03/2021	🕒	Multiple communications with Raffi re his insistence to continue communicating with MFarkas and refusal to produce docs ● Billed invoice 530659	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Erika Turner	0.90h	550.00	-	495.00
02/02/2021	🕒	Communications with MFarkas ● Billed invoice 530659	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Erika Turner	0.60h	550.00	-	330.00
02/02/2021	🕒	Communications w Raffi, reach out to Josh Gilmore, re: violations of NRPC. Assemble documents and	01245-TGC/Farkas Funding LLC - re Investment with First	Dylan Ciciliano	2.50h	385.00	-	962.50

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Date	Type	Description	Matter	User	Qty	Rate (\$)	Non-billable (\$)	Billable (\$)
		emails relevant to evidentiary hearing. ● Billed invoice 530659	100, LLC					
02/01/2021	🕒	Review email from MFarkas ● Billed invoice 530659	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Erika Turner	0.10h	550.00	-	55.00
02/01/2021	🕒	Finalize Bloom subpoena for service ● Billed invoice 530659	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Erika Turner	0.10h	550.00	-	55.00
01/29/2021	🕒	TC with Matthew Farkas ● Billed invoice 530042	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Dylan Ciciliano	0.20h	385.00	-	77.00
01/29/2021	🕒	Attend to service on Raffi Nahabedian ● Billed invoice 530042	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Dylan Ciciliano	0.10h	385.00	-	38.50
01/29/2021	🕒	Email communications with opposing counsel re order and depositions ● Billed invoice 530042	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Erika Turner	0.30h	550.00	-	165.00
01/28/2021	🕒	Attend to preparation of subpoenas to JBloom and RaffiN ● Billed invoice 530042	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Erika Turner	0.50h	550.00	-	275.00

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Date	Type	Description	Matter	User	Qty	Rate (\$)	Non-billable (\$)	Billable (\$)
		conditions ● Billed invoice 530042	- re Investment with First 100, LLC					
01/28/2021	⌚	Review operating agreement □ preparation of correspondence to MFarkas re indemnification ● Billed invoice 530042	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Erika Turner	1.00h	550.00	-	550.00
01/28/2021	⌚	Preparation for and attend hearing □ follow up communications with MMBusch and MFarkas ● Billed invoice 530042	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Erika Turner	3.90h	550.00	-	2,145.00
01/28/2021	⌚	Confer with Farkas' counsel post hearing. Attend to subpoenas and order from hearing. ● Billed invoice 530042	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Dylan Ciciliano	1.40h	385.00	-	539.00
01/28/2021	⌚	Attend hearing on motion to enforce settlement - No Charge ● Billed invoice 530042	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Dylan Ciciliano	1.80h	0.00	-	0.00
01/27/2021	⌚	Review voluminous Reply in support of Motion to Enforce ● Billed invoice 530042	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Erika Turner	0.50h	550.00	-	275.00
01/27/2021	⌚	Prepare for hearing ● Billed invoice 530042	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Erika Turner	1.10h	550.00	-	605.00
01/27/2021	⌚	Multiple communications with MFarkas ● Billed invoice 530042	01245-TGC/Farkas Funding LLC - re Investment with First	Erika Turner	0.50h	550.00	-	275.00

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Date ▼	Type	Description	Matter	User	Qty	Rate (\$)	Non-billable (\$)	Billable (\$)
			100, LLC					
01/27/2021		Multiple conversations with M. Farkas. Review and analyze late filed reply.  Billed invoice 530042	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Dylan Ciciliano	1.90h	385.00	-	731.50
01/26/2021		Communications with JMaier and Raffi  Billed invoice 530042	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Erika Turner	0.60h	550.00	-	330.00
01/26/2021		Further attention to opposition to motion to enforce with addition of countermotion and other revisions  Billed invoice 530042	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Erika Turner	3.00h	550.00	-	1,650.00
01/26/2021		Attend to preparation of appendix and finalize motion for filing. Continue to revise.  Billed invoice 530042	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Dylan Ciciliano	2.70h	385.00	-	1,039.50
01/25/2021		Attend to opposition to motion to enforce with additional research, analysis and drafting  Billed invoice 530042	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Erika Turner	6.80h	550.00	-	3,740.00
01/25/2021		Multiple communications with MFarkas and Raffi re outstanding disputes  Billed invoice 530042	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Erika Turner	1.00h	550.00	-	550.00
01/25/2021		Further attention to opposition to motion for enforce settlement agreement. Draft declaration of DC.	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Dylan Ciciliano	4.70h	385.00	-	1,809.50

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Date	Type	Description	Matter	User	Qty	Rate (\$)	Non-billable (\$)	Billable (\$)
		● Billed invoice 530042						
01/25/2021	⌚	Communication with Matthew Farkas ● Billed invoice 530042	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Dylan Ciciliano	0.60h	385.00	-	231.00
01/24/2021	⌚	Draft Opposition to Motion to Enforce settlement agreement. Multiple communications with EPT, Joe G and JMaier, opposing counsel and Matthew Farkas. ● Billed invoice 530042	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Dylan Ciciliano	9.30h	385.00	-	3,580.50
01/24/2021	⌚	Review communication from MFarkas ☐ Telephone conference and email communications with opposing counsel ● Billed invoice 530042	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Erika Turner	1.20h	550.00	-	660.00
01/23/2021	⌚	Confer with Matthew Farkas re: facts. Travel to his home and obtain declaration. Review declaration in detail with him. ● Billed invoice 530042	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Dylan Ciciliano	2.80h	385.00	-	1,078.00
01/23/2021	⌚	Work on Opposition to motion to enforce settlement agreement. ● Billed invoice 530042	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Dylan Ciciliano	5.20h	385.00	-	2,002.00
01/23/2021	⌚	Multiple communications with client reps and associate counsel No Charge ● Billed invoice 530042	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Erika Turner	0.50h	0.00	-	0.00

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Date ▼	Type	Description	Matter	User	Qty	Rate (\$)	Non-billable (\$)	Billable (\$)
01/22/2021		Attend to MFarkas declaration ● Billed invoice 530042	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Erika Turner	0.90h	550.00	-	495.00
01/22/2021		Finalize and transmit declaration to Matthew Farkas. Research issues of law surrounding opposition, including duress and other defenses to contract. ● Billed invoice 530042	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Dylan Ciciliano	2.80h	385.00	-	1,078.00
01/21/2021		Preparation for and attend hearing on OSC ● Billed invoice 530042	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Erika Turner	2.00h	550.00	-	1,100.00
01/21/2021		Attend hearing on order to show cause. Follow up with EPT thereafter and prepare additional documentation and declaration of Matthew Farkas re Motion to Enforce ● Billed invoice 530042	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Dylan Ciciliano	4.20h	385.00	-	1,617.00
01/20/2021		Preparation for hearing on OSC ● Billed invoice 530042	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Erika Turner	2.80h	550.00	-	1,540.00
01/20/2021		Review response to motion for contempt □ attend to finalizing supp □ related communications ● Billed invoice 530042	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Erika Turner	0.50h	550.00	-	275.00
01/19/2021		Email communication with Raffi N	01245-TGC/Farkas	Erika Turner	0.10h	550.00	-	55.00

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Date	Type	Description	Matter	User	Qty	Rate (\$)	Non-billable (\$)	Billable (\$)
		● Billed invoice 530042	Funding LLC - re Investment with First 100, LLC					
01/19/2021	⌚	Review Motion to Enforce on OST and dec of JMaier in support <input type="checkbox"/> follow up with MFarkas and client reps re addressing same ● Billed invoice 530042	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Erika Turner	1.40h	550.00	-	770.00
01/19/2021	⌚	Attend to preparation of supplement to OSC ● Billed invoice 530042	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Erika Turner	0.40h	550.00	-	220.00
01/19/2021	⌚	Follow up demand for documents to Raffi ● Billed invoice 530042	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Dylan Ciciliano	0.20h	385.00	-	77.00
01/19/2021	⌚	Review motion to enforce settlement agreement. Speak with Matthew Farkas. Work on opposition ● Billed invoice 530042	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Dylan Ciciliano	1.80h	385.00	-	693.00
01/18/2021	⌚	Prepare supplement to Ex Parte Application to OSC re discovery stonewall and Raffi attempted substitution ● Billed invoice 530042	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Dylan Ciciliano	3.40h	385.00	-	1,309.00
01/15/2021	⌚	Email communications with opposing counsel and Raffi <input type="checkbox"/> follow up with client representatives	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Erika Turner	1.00h	550.00	-	550.00

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Date	Type	Description	Matter	User	Qty	Rate (\$)	Non-billable (\$)	Billable (\$)
		● Billed invoice 530042						
01/15/2021	🕒	Review and revise response to opposing counsel ☐ telephone conference with client rep MBusch and follow up in light of same ● Billed invoice 530042	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Erika Turner	1.80h	550.00	-	990.00
01/14/2021	🕒	Review substitution of counsel and related communication from Raffi ☐ attend to response ● Billed invoice 530042	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Erika Turner	1.00h	550.00	-	550.00
01/14/2021	🕒	Analysis/Research ☐ Prepare draft response letter from Raffi Nahabedian ● Billed invoice 530042	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Dylan Ciciliano	3.40h	385.00	-	1,309.00

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Date	Type	Description	Matter	User	Qty	Rate (\$)	Non-billable (\$)	Billable (\$)
01/05/2021		Multiple communications with MGA re: discovery  Billed invoice 530042	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Dylan Ciciliano	0.30h	385.00	-	115.50
01/04/2021		Review MGA response to subpoena and draft request to meet and confer  Billed invoice 530042	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Dylan Ciciliano	0.40h	385.00	-	154.00
12/30/2020		Follow up on status of service of process  Billed invoice 529522	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Erika Turner	0.10h	535.00	-	53.50
12/28/2020		Start order granting fees/costs  Billed invoice 529522	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Erika Turner	0.10h	535.00	-	53.50
12/28/2020		Email communications with client rep re deposition strategy - No Charge  Billed invoice 529522	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Erika Turner	0.20h	0.00	-	0.00
12/28/2020		Attend to finalizing collection docs  Billed invoice 529522	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Erika Turner	0.50h	535.00	-	267.50
12/28/2020		Begin and complete drafting of Writs of execution, Writs of Garnishment, Notice of Execution	01245-TGC/Farkas Funding LLC - re Investment with First	Michele Pori	0.60h	195.00	-	117.00

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Date	Type	Description	Matter	User	Qty	Rate (\$)	Non-billable (\$)	Billable (\$)
		and Instructions to Constable for service upon Maier & Gutierrez & Assoc. ● Billed invoice 529522	100, LLC					
12/23/2020	🕒	Email communications with client rep MBusch re status and strategy on how to proceed re PMK depo ● Billed invoice 529522	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Erika Turner	0.30h	535.00	-	160.50
12/21/2020	🕒	Locate service address for Jay Bloom ● Billed invoice 529522	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Dylan Ciciliano	0.50h	345.00	-	172.50
12/18/2020	🕒	Draft writs of execution to Maier Gutierrez & Associates ● Billed invoice 529522	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Dylan Ciciliano	0.30h	345.00	-	103.50
12/17/2020	🕒	Review minute order ● Billed invoice 529522	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Erika Turner	0.10h	535.00	-	53.50
12/17/2020	🕒	Finalize drafts of post judgment discovery requests ● Billed invoice 529522	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Dylan Ciciliano	0.50h	345.00	-	172.50
12/16/2020	🕒	Work on post judgment discovery ● Billed invoice 529522	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Dylan Ciciliano	4.20h	345.00	-	1,449.00
12/14/2020	🕒	Review and revise reply on motion	01245-TGC/Farkas	Erika Turner	0.70h	535.00	-	374.50

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Date ▼	Type	Description	Matter	User	Qty	Rate (\$)	Non-billable (\$)	Billable (\$)
		for fees ● Billed invoice 529522	Funding LLC - re Investment with First 100, LLC					
12/14/2020	🕒	Prepare draft reply in Support of Motion for Attorneys fees and costs ● Billed invoice 529522	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Dylan Ciciliano	2.30h	345.00	-	793.50
11/25/2020	🕒	Review opposition to motion for fees and costs ● Billed invoice 528487	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Erika Turner	0.10h	535.00	-	53.50

Exhibit 2

Activities Export

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Date ▼	Type	Description	Matter	User	Qty	Rate (\$)	Non-billable (\$)	Billable (\$)
03/19/2021	\$	Odyssey File & Serve - Proposed Findings of Fact, Conclusions of Law & Order ● Billed invoice 531628	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Jennifer Johns	1.00	3.50	-	3.50
03/15/2021	\$	District Court Clerk - March 3, 2021 & March 10, 2021 Evidentiary Hearing Recording ● Billed invoice 531628	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Jennifer Johns	1.00	220.00	-	220.00
03/11/2021	\$	Postage ● Billed invoice 531628	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Jennifer Johns	1.00	1.40	-	1.40
03/11/2021	\$	Odyssey File & Serve - Notice of Entry of Order Granting Plaintiff's Motion to Compel and Denying Countermotion for Protective Order and Sanctions pursuant to NRS 18.010(2)(b) ● Billed invoice 531628	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Jennifer Johns	1.00	3.50	-	3.50
03/11/2021	\$	The Record Xchange - Transcript of Evidentiary Hearing ● Billed invoice 531628	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Jennifer Johns	1.00	1,321.32	-	1,321.32
03/04/2021	\$	District Court - Thumb Drive ● Billed invoice 531628	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Jennifer Johns	1.00	5.00	-	5.00
03/02/2021	\$	Oasis Reporting Services - Invoice #51966 - Original and Certified Copy of Matthew Farkas Transcript	01245-TGC/Farkas Funding LLC - re Investment with First	Jennifer Johns	1.00	2,030.60	-	2,030.60

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Date ▼	Type	Description	Matter	User	Qty	Rate (\$)	Non-billable (\$)	Billable (\$)
		● Billed invoice 531628	100, LLC					
03/02/2021	\$	Messenger Service - Deliver Trial Binders to Eighth Judicial Court, Dept. 13 ● Billed invoice 531628	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Jennifer Johns	1.00	10.00	-	10.00
03/02/2021	\$	Odyssey File & Serve - TGC/ Farkas Funding, LLC's Objections to Judgment Debtors' Evidentiary Hearing Exhibits Q, R, S and T ● Billed invoice 531628	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Jennifer Johns	1.00	3.50	-	3.50
03/01/2021	\$	Odyssey File & Serve - Errata to Supplemental to Motion to Compel and for Sanctions; Application for Ex-Parte Order Shortening ● Billed invoice 531628	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Jennifer Johns	1.00	3.50	-	3.50
03/01/2021	\$	Odyssey File & Serve - Pre-Hearing Memorandum of Points & Authorities re: Order to Show Cause why Defendants and Jay Bloom should not be held in Contempt of Court ● Billed invoice 531628	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Jennifer Johns	1.00	3.50	-	3.50
02/25/2021	\$	Odyssey File & Serve - Supplement to Motion to Compel and for Sanctions; Application for Ex-Parte Order Shortening Time ● Billed invoice 530659	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Jennifer Johns	1.00	3.50	-	3.50
02/23/2021	\$	American Legal Investigation Services Nevada, Inc. - Invoice	01245-TGC/Farkas Funding LLC	Jennifer Johns	1.00	100.67	-	100.67

Activities Export

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Date	Type	Description	Matter	User	Qty	Rate (\$)	Non-billable (\$)	Billable (\$)
		#37035545 - Witness Advance Fee and Service on Raffi Nahabedian ● Billed invoice 530659	- re Investment with First 100, LLC					
02/23/2021	\$	Nevada Secretary of State - Job: W2021022300222 - Business Entity filed Documents ● Billed invoice 530659	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Jennifer Johns	1.00	22.00	-	22.00
02/23/2021	\$	Nevada Secretary of State - Job: W2021022300221 - Business Entity filed Documents ● Billed invoice 530659	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Jennifer Johns	1.00	34.00	-	34.00
02/23/2021	\$	J&L Process Service - Invoice #21-13395 - Witness Fee and Service on Jay Bloom ● Billed invoice 530659	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Jennifer Johns	1.00	100.00	-	100.00
02/22/2021	\$	Postage ● Billed invoice 530659	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Jennifer Johns	1.00	17.10	-	17.10
02/22/2021	\$	Odyssey File & Serve - Notice of Entry of Motion to Compel and for Sanctions; Application for Ex-Parte Order Shortening Time ● Billed invoice 530659	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Jennifer Johns	1.00	3.50	-	3.50
02/18/2021	\$	Odyssey File & Serve - Declaration of Service for Subpoena - Raffi Nahabedian ● Billed invoice 530659	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Jennifer Johns	1.00	3.50	-	3.50

Activities Export

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Date ▼	Type	Description	Matter	User	Qty	Rate (\$)	Non-billable (\$)	Billable (\$)
02/11/2021	\$	Odyssey File & Serve - Notice of Subpoena ● Billed invoice 530659	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Jennifer Johns	1.00	3.50	-	3.50
02/11/2021	\$	Odyssey File & Serve - Declaration of Service for Subpoena (Jay Bloom) ● Billed invoice 530659	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Jennifer Johns	1.00	3.50	-	3.50
02/10/2021	\$	J&L Process Service - Invoice #21-13392 - Witness Fee and Service on Raffi Nahabedian ● Billed invoice 530659	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Jennifer Johns	1.00	107.50	-	107.50
02/09/2021	\$	Odyssey File & Serve - Notice of Entry of Order ● Billed invoice 530659	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Jennifer Johns	1.00	3.50	-	3.50
02/05/2021	\$	Odyssey File & Serve - Acceptance of Service ● Billed invoice 530659	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Jennifer Johns	1.00	3.50	-	3.50
02/05/2021	\$	Odyssey File & Serve - Notice of Subpoena ● Billed invoice 530659	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Jennifer Johns	1.00	3.50	-	3.50
02/01/2021	\$	District Court - CD of January 28,	01245-TGC/Farkas	Jennifer	1.00	40.00	-	40.00

Activities Export

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Date	Type	Description	Matter	User	Qty	Rate (\$)	Non-billable (\$)	Billable (\$)
		2021 Hearing ● Billed invoice 530659	Funding LLC - re Investment with First 100, LLC	Johns				
01/29/2021	\$	Shawna Ortega - Invoice #000125 - Transcript of audio/video for TGK Farkas Funding, LLC's v. First 100, LLC - Show Cause Hearing ● Billed invoice 530042	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Jennifer Johns	1.00	166.22	-	166.22
01/26/2021	\$	Odyssey File & Serve - Opposition to Defendants' Motion to Enforce Settlement and Vacate Post-Judgment Discovery proceedings; Countermotion to Strike the Affidavit of Jason Maier and for Sanctions; Appendix of Exhibits to Opposition to Defendants' Motion to Enforce Settlement and Vacate Post-Judgment Discovery proceedings; Countermotion to Strike the Affidavit of Jason Maier and for Sanctions ● Billed invoice 530042	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Jennifer Johns	1.00	3.50	-	3.50
01/22/2021	\$							

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Date ▼	Type	Description	Matter	User	Qty	Rate (\$)	Non-billable (\$)	Billable (\$)
01/20/2021	\$	Odyssey File & Serve - Supplement to Plaintiff's Ex Parte Application for Order to Show Cause why Defendants and Jay Bloom should not be held in Contempt of Court ● Billed invoice 530042	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Jennifer Johns	1.00	3.50	-	3.50
01/20/2021	\$	Organized, Inc. dba Realtime Trials Reporting - Invoice #0001310 - Audio Transcription between Dylan Ciciliano and Matthew Farkas ● Billed invoice 530042	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Jennifer Johns	1.00	243.00	-	243.00
01/19/2021	\$	J&L Process Service - Invoice #20-12975 - Witness Fee and Service on Jay Bloom ● Billed invoice 530042	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Jennifer Johns	1.00	100.00	-	100.00
01/19/2021	\$	J&L Process Service - Invoice #20-12982 - Service on Jay Bloom ● Billed invoice 530042	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Jennifer Johns	1.00	75.00	-	75.00
01/19/2021	\$	J&L Process Service - Invoice #20-12974 - Witness Fee and Service on Maier Gutierrez & Assoc. ● Billed invoice 530042	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Jennifer Johns	1.00	100.00	-	100.00
01/05/2021	\$	Odyssey File & Serve - Amended Declaration of Service - Subpoena (Jay Bloom); Declaration of Diana Brown - Subpoena (Jay Bloom); Declaration of Service - Subpoena	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Jennifer Johns	1.00	3.50	-	3.50

Activities Export

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Date	Type	Description	Matter	User	Qty	Rate (\$)	Non-billable (\$)	Billable (\$)
		(Jay Bloom) ● Billed invoice 530042						
12/30/2020	\$	Odyssey File & Serve - Declaration of Service on Jay Bloom ● Billed invoice 529522	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Jennifer Johns	1.00	3.50	-	3.50
12/30/2020	\$	J&L Process Service - Invoice #20-12914 - Service on Jay Bloom ● Billed invoice 529522	01245-TGC/Farkas Funding LLC - re Investment with First 100, LLC	Jennifer Johns	1.00	60.00	-	60.00
12/18/2020	\$	Odyssey File & Serve - Plaintiff's Ex Parte Application for Order to	01245-TGC/Farkas Funding LLC	Jennifer Johns	1.00	3.50	-	3.50

Activities Export

04/07/2021
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Date	Type	Description	Matter	User	Qty	Rate (\$)	Non-billable (\$)	Billable (\$)
		Show Cause why Defendants and Jay Bloom should not be held in Contempt of Court; Plaintiff's Ex Parte Application for Judgment Debtor Exam of First 100, LLC; Plaintiff's Ex Parte Application for Judgment Debtor First One Hundred Holdings, LLC aka 1st One Hundred Holdings, LLC	- re Investment with First 100, LLC					
		● Billed invoice 529522						

Exhibit 3



Hogan Hulet PLLC

1140 N. Town Center Dr. Suite 300
Las Vegas, Nevada 89144
Phone: 702-800-5482
Fax: 702-508-9554
Email: jeff@h2legal.com

Matthew Farkas

00380-Farkas

Defendant client in personal depositions and potential testimony at evidentiary hearing in action to which he is not a party

INVOICE

Invoice # 2154
Date: 03/01/2021
Due On: 03/16/2021

Type	Date	Attorney	Description	Quantity	Rate	Total
Service	02/05/2021	KH	Receipt and review of subpoena for Evidentiary Hearing; coord w TG and client concerning acceptance of service; confirm same with client and GTG; respond to Raffi comms re Farkas substantive legal position (none that would interfere with his testimony); receipt/review and calendaring of subpoenas to Bloom and Raffi	0.40	\$400.00	\$160.00
Service	02/05/2021	KH	Phone confr w client, returning his call and answering his inquiries	1.00	\$400.00	\$400.00
Service	02/08/2021	KH	Phone confr w DC at GTG; phone confr w client; phone confr w DC and client	1.50	\$400.00	\$600.00
Service	02/12/2021	KH	Deposition of Raffi and post-depo discussion	4.40	\$400.00	\$1,760.00

Service	02/15/2021	KH	Comms w client; obtain order authorizing depositions and subpoena, review same; coordinate discussion among TGC counsel and us	0.90	\$400.00	\$360.00
Service	02/16/2021	KH	Phone conference w client	0.60	\$400.00	\$240.00
Service	02/16/2021	KH	Receipt and review of emails and documents from client	0.30	\$400.00	\$120.00
Service	02/16/2021	KH	Phone conference w GTG counsel concerning status, duress, and discussions w opposing counsel; draft and send email to client	0.90	\$400.00	\$360.00
Service	02/17/2021	KH	Comms w client, including phone call; prepare and send timeline to GTG	0.70	\$400.00	\$280.00
Service	02/18/2021	KH	Notification that deposition continued; notify client re same; resulting phone conference w client	0.30	\$400.00	\$120.00
Service	02/19/2021	KH	Exchange of documents w DC	0.30	\$400.00	\$120.00
Service	02/22/2021	KH	Receipt and review of Motion for Sanctions, and follow-up phone conference w client re same	1.00	\$400.00	\$400.00
Service	02/23/2021	KH	Phone conference w client	0.60	\$400.00	\$240.00
Service	02/23/2021	KH	Receipt and review of four declarations, forward to client for review and comment; phone conference follow-up	0.60	\$400.00	\$240.00
Service	02/24/2021	KH	Comms w client, and commence draft of questions for Bloom at evidentiary hearing	0.40	\$400.00	\$160.00
Service	02/24/2021	KH	Phone conference w client and GTG	1.30	\$400.00	\$520.00
Service	02/25/2021	KH	Deposition Prep w client	2.40	\$400.00	\$960.00
Service	02/26/2021	KH	Deposition	4.50	\$400.00	\$1,800.00
Service	02/26/2021	KH	Phone conference w client after deposition	0.40	\$400.00	\$160.00

Time Keeper

Ken Hogan



Hogan Hulet PLLC

1140 N. Town Center Dr. Suite 300
Las Vegas, Nevada 89144
Phone: 702-800-5482
Fax: 702-508-9554
Email: jeff@h2legal.com

Matthew Farkas

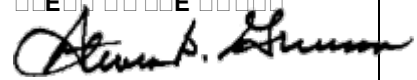
00380-Farkas

INVOICE

Invoice # 2165
Date: 03/31/2021
Due On: 04/15/2021

Defendant client in personal depositions and potential testimony at evidentiary hearing in action to which he is not a party

Type	Date	Attorney	Description	Quantity	Rate	Total
Service	03/01/2021	KH	Phone confr w client, receipt and relay of minute order w dial-in instructions for evidentiary hearing	0.20	\$400.00	\$80.00
Service	03/01/2021	KH	Comms w RN and his counsel concerning doc disclosure; receipt and review of doc disclosure	0.20	\$400.00	\$80.00
Service	03/04/2021	KH	Receipt of info concerning continued testimony of client this coming Wednesday; coordinate same with GTG and with client and with JH to confirm availability; phone confr w client re same	0.40	\$400.00	\$160.00
Service	03/05/2021	KH	Comms w client concerning	0.20	\$400.00	\$80.00
Service	03/08/2021	KH	Phone confr w client	0.40	\$400.00	\$160.00
Service	03/09/2021	KH	Comms w GTG and w client exchanging documents for review; discussion w client re same and likely line of questioning	0.60	\$400.00	\$240.00
Service	03/10/2021	KH	Coord w client on timing of testimony, and w GTG that I'd be the point of contact	0.20	\$400.00	\$80.00
Service	03/10/2021	KH	Continued testimony at evidentiary hearing	0.40	\$400.00	\$160.00



NOAS

JASON R. MAIER, ESQ.

Nevada Bar No. 8557

JOSEPH A. GUTIERREZ, ESQ.

Nevada Bar No. 9046

DANIELLE J. BARRAZA, ESQ.

Nevada Bar No. 13822

MAIER GUTIERREZ & ASSOCIATES

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

DISTRICT COURT

CLARK COUNTY, NEVADA

TGC/FARKAS FUNDING, LLC,

Plaintiff,

vs.

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

Defendants.

Case No: A-20-822273-C

Dept. No.: XIII

NOTICE OF APPEAL

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

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

3 DATED this 15th day of April, 2021.

4 Respectfully submitted,

5 **MAIER GUTIERREZ & ASSOCIATES**

6 /s/ Joseph A. Gutierrez

7 JASON R. MAIER, ESQ.

8 Nevada Bar No. 8557

9 JOSEPH A. GUTIERREZ, ESQ.

10 Nevada Bar No. 9046

11 DANIELLE J. BARRAZA, ESQ.

12 Nevada Bar No. 13822

13 8816 Spanish Ridge Avenue

14 Las Vegas, Nevada 89148

15 *Attorneys for First 100, LLC, 1st One Hundred*
16 *Holdings, LLC, and Jay Bloom*

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CERTIFICATE OF SERVICE

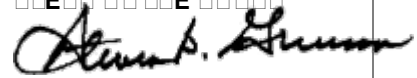
Pursuant to Administrative Order 14-2, a copy of the **NOTICE OF APPEAL** was electronically filed on the 15th day of April, 2021, and served through the Notice of Electronic Filing automatically generated by the Court's facilities to those parties listed on the Court's Master Service List, as follows:

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

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

EXHIBIT 1

EXHIBIT 1



NEFF
GARMAN TURNER GORDON LLP
ERIKA PIKE TURNER
Nevada Bar No. 6454
Email: eturner@gtg.legal
DYLAN T. CICILIANO
Nevada Bar. No. 12348
Email: dciciliano@gtg.legal
7251 Amigo Street, Suite 210
Las Vegas, Nevada 89119
Tel: (725) 777-3000
Fax: (725) 777-3112
Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

TGC/FARKAS FUNDING, LLC,
Plaintiff,

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

vs.

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

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

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

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

DATED this 7th day of April, 2021.

GARMAN TURNER GORDON LLP

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

CERTIFICATE OF SERVICE

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

Joseph A. Gutierrez, Esq.
Danielle J. Barraza, Esq.
MAIER GUTIERREZ & ASSOCIATES
8816 Spanish Ridge Avenue
Las Vegas, Nevada 89148
Email: jag@mgalaw.com
djb@mgalaw.com
Attorneys for Defendants

Bart K. Larsen, Esq.
SHEA LARSEN
1731 Village Center Circle, Suite 150
Las Vegas, NV 89134
Email: blarsen@shea.law
Attorneys for Raffi Nahabedian

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

Kenneth E. Hogan, Esq.
HOGAN HULET PLLC
1140 N. Town Center Dr., Suite 300
Las Vegas, NV 89144
Email: ken@h2legal.com
Attorneys for Matthew Farkas

/s/ Max Erwin

An Employee of
GARMAN TURNER GORDON LLP

Heather S. Smith
CLERK OF THE COURT

FFCL

DISTRICT COURT

CLARK COUNTY, NEVADA

TGC/FARKAS FUNDING, LLC,

Plaintiff/Judgment Creditor,

vs.

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

Defendants/ Judgment Debtors.

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

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

Hearing Date: March 3 and 10, 2021

FINDINGS OF FACT, CONCLUSIONS OF LAW & ORDER

INTRODUCTION

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

MARK R. DENTON
DISTRICT JUDGE

DEPARTMENT THIRTEEN
LAS VEGAS, NV 89155

AA1392

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

6 FINDINGS OF FACT

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

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

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

22 ¹ Exhibit 20, PLTF_154, 170.

23 ² Exhibit 2, PLTF_006.

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

25 ⁴ 3/3 Trans., 160:3-7.

26 ⁵ Exhibits 25-26.

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

28 ⁷ 3/3 Trans., 159:23-160:2.

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

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

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

22 ⁸ Exhibit 1.

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

25 ¹⁰ Exhibits 2 and II.

26 ¹¹ Exhibit 2, PLTF_006.

27 ¹² 3/3 Trans., 123:2-13.

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

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

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

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

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

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

24 ¹⁶ Exhibit 22.

25 ¹⁷ Exhibit 2, PLTF_007.

26 ¹⁸ *Id.*

27 ¹⁹ *See* Exhibit 1, PLTF_002.

28 ²⁰ Exhibit 2, PLTF_009.

²¹ *Id.*

1 denied.”²²

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

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

22 ²² *Id.*

23 ²³ Exhibit 3.

24 ²⁴ Exhibits 7 and 8, § 13.9.

25 ²⁵ Exhibit 4, PLTF_019, ll. 15-27.

26 ²⁶ Exhibit 5.

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

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

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

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

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

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

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

27 ³⁰ Exhibit 13, PLTF_106.

28 ³¹ *Id.*

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

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

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

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

22 ³² Exhibit 11, PLTF_097.

23 ³³ Exhibit 25.

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

25 ³⁵ Exhibits FF and J.

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

27 ³⁷ See, e.g., Exhibit 28.

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

³⁹ Exhibit 20, §§ 3.4(a), 4.1(c).

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

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

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

21
22 ⁴⁰ 3/3 Trans., 108:5-17.

23 ⁴¹ Exhibit 21.

24 ⁴² Exhibit 22, PLTF_, 179, 190.

25 ⁴³ Exhibit 2, PLTF_007

26 ⁴⁴ Exhibit 23.

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

28 ⁴⁶ Id., 193:25-194:2.

⁴⁷ Exhibit 13, PLTF_108.

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

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

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

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

22 ⁵⁰ Exhibit 13, PLTF_107, § 14.

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

24 ⁵² *Id.*, 136:16-19.

25 ⁵³ 3/3 Trans., 137:1-8, 13-15.

26 ⁵⁴ *Id.*, 211:17-25; 213:15-23.

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

28 ⁵⁶ Exhibit 11, PLTF_097.

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

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

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

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

14 It was revealed from Nahabedian's records:

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

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

24 ⁶⁰ See *Nevada Speedway v. Bloom, et al.*, Case No. A-20-809882-B of the Eighth Jud. Dist. Court (showing
25 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.

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

27 ⁶² Exhibit 28, PLTF_240-244.

28 ⁶³ 3/3 Trans., 149:25-150:7.

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

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

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

24 ⁶⁵ 3/10 Trans., 35:5-16

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

26 ⁶⁷ Exhibit 28, PLTF_245.

27 ⁶⁸ See Exhibit 17, PLTF_123.

28 ⁶⁹ Exhibit 28, PLTF_245-261.

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

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

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

23 ⁷¹ *Id.* at PLTF_266.

24 ⁷² *Id.* at PLTF_278.

25 ⁷³ *Id.* at PLTF_281, 284, 288.

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

27 ⁷⁵ Exhibit 11.

28 ⁷⁶ *Id.* at PLTF-097.

⁷⁷ 3/3 Trans., 144:22-148:24.

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

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

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

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

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

23 ⁷⁹ 3/10 Trans., 51:17-20.

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

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

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

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

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

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

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

21 ⁸⁴ 3/10 Trans., 87:25-88:14.

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

23 ⁸⁶ Exhibit 2, PLTF_007.

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

26 ⁸⁸ Exhibit 22.

27 ⁸⁹ Motion to Enforce, 3:1-6.

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

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

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

23 ⁹⁰ Exhibit 28, PLTF_299-300.

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

25 ⁹² Motion to Enforce, 3:6-11.

26 ⁹³ Exhibit 20, PLTF_159.

27 ⁹⁴ *Id.* at Exhibit 20, PLTF_162.

28 ⁹⁵ *See* fn. 81 above.

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

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

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

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

24 ⁹⁶ Exhibit 13, PLTF_106.

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

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

28 ⁹⁹ Exhibits 7 and 8, Article V.

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

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

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

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

26 ¹⁰⁰ 3/3 Trans., 72:15- 73:5.

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

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

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

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

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

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

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

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

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

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

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

27 ¹⁰⁵ *Id.* at 102:17-20.

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

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

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

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

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

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

¹⁰⁷ Exhibit 4, p. 3.

¹⁰⁸ Exhibit 6.

¹⁰⁹ 3/3 Trans., 219:4-9.

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

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

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

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

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

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

25 ¹¹¹ 3/10 Trans., 14:9-18.

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

27 ¹¹³ Exhibits 26 and 27.

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

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

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

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

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

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

24 ¹¹⁶ Exhibit 7, p. 28.

25 ¹¹⁷ Exhibit 8, p. 29.

26 ¹¹⁸ Exhibits 7-8, 26-27.

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

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

CONCLUSIONS OF LAW

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

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

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

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

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

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

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

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

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

28 ¹²⁰ 3/3 Trans., 72:19-23.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 ¹²¹ Exhibit V.
28

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

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

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

25 ¹²² Exhibit 4.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 **ORDER**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Dated this 7th day of April, 2021



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Mark R. Denton
District Court Judge

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1 **CSERV**

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3 DISTRICT COURT
CLARK COUNTY, NEVADA

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

CASE NO: A-20-822273-C

7 vs.

DEPT. NO. Department 13

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9 First 100, LLC, Defendant(s)

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11 **AUTOMATED CERTIFICATE OF SERVICE**

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

15 Service Date: 4/7/2021

16 Dylan Ciciliano dciciliano@gtg.legal

17 Erika Turner eturner@gtg.legal

18 MGA Docketing docket@mgalaw.com

19 Tonya Binns tbinns@gtg.legal

20 Bart Larsen blarsen@shea.law

21 Max Erwin merwin@gtg.legal

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

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