IN THE SUPREME COURT OF THE STATE OF NEVADA

FIRST 100, LLC; and 1st ONE HUNDRED HOLDINGS, LLC, Appellants,

v.

TGC/FARKAS FUNDING, LLC, Respondent.

Supreme Court No. 82794

Eighth Judicial District Court
Case No. A-20-822273-C

RESPONDENT'S ANSWERING BRIEF

ERIKA PIKE TURNER
NVBN 6454
DYLAN T. CICILIANO
NVBN 12348
7251 Amigo Street, Suite 210
Las Vegas, Nevada 89119
Tel: (725) 777-3000
Fax: (725) 777-3112
Attorneys for Respondent
TGC/Farkas Funding, LLC

NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a) and must be disclosed. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

Respondent TGC/Farkas Funding, LLC ("TGC/Farkas") is a Delaware limited liability company and has no parent corporation or publicly held company owning 10% or more of its stock to disclose.

The only law firm of record for TGC/Farkas is, and has been, Garman Turner Gordon, LLP.

Dated this 1st day of November, 2021.

GARMAN TURNER GORDON LLP

By */s/ Erika Pike Turner*
ERIKA PIKE TURNER / NVBN 6454
DYLAN T. CICILIANO / NVBN 12348
7251 Amigo Street, Suite 210
Las Vegas, Nevada 89119
Attorneys for Respondent
TGC/Farkas Funding, LLC

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Rules

Other Authorities

I. INTRODUCTION

On April 15, 2021, First 100, LLC, 1st One Hundred Holdings, LLC (collectively, "First 100") and Jay Bloom ("Bloom")[1] filed their *Notice of Appeal* appealing the district court's *Findings of Fact, Conclusions of Law & Order re Evidentiary Hearing* entered April 7, 2021 (the "FFCL").[2] The FFCL followed a 2-day evidentiary hearing (the "Evidentiary Hearing") resolving the *Order to Show Cause Why First 100 And Bloom Should Not Be Found In Contempt Of Court* (the "OSC") issued on TGC/Farkas' December 18, 2020 *Application* (the "Contempt Motion") and confirming the earlier denial of First 100's January 17, 2021 *Motion to Enforce Settlement Agreement and Vacate Post-Judgment Discovery Proceedings* (the "Motion to Enforce").

The OSC issued on evidence of persistent disobedience of the performance

[1] Bloom's interests are central to First 100's stated issues on appeal; thus, Bloom is a real-party-in-interest to the appeal and should be considered for possible disqualification or recusal purposes under NRAP 26.1 in addition to First 100. Bloom's counsel in the district court proceedings is the same as First 100's counsel in the district court proceedings and on appeal. *See, e.g.*, First 100 and Bloom's *Response to OSC*, Appellants' Appendix ("AA"), Vol. I, AA0209-0214; *Notice of Appeal*, AA, Vol. VI, AA1386-1429 (identifying the law firm of Maier, Gutierrez & Associates ("MGA") as counsel for both First 100 and Bloom).

[2] AA, Vol. VI, AA1386-AA1429. Following the Notice of Appeal, Bloom was removed as an "Appellant" in subsequent filings and was not disclosed under NRAP 26.1 as a real party in interest in Appellants' *Opening Brief* ("AOB").

obligations under the *Order Granting Motion to Confirm Arbitration Award, Denying Countermotion to Modify Award Per NRS 38.242 and Judgment* entered in favor of TGC/Farkas on November 17, 2020 (the "Judgment"),[3] which included an order for the production of First 100's books and records to TGC/Farkas.

As outlined in the FFCL, Bloom was the sole natural person legally obligated to maintain the books and records of First 100 and to produce the books and records to its member TGC/Farkas. Bloom received notice of the Judgment, was personally served with the Contempt Motion and incorporated OSC, filed briefs, and actively participated in discovery and in the Evidentiary Hearing where it was established Bloom had taken affirmative action in disobedience of the Judgment, including orchestrating a purported settlement agreement providing First 100 should be excused from its performance obligation under the Judgment without any actual or apparent authority to bind TGC/Farkas and other defects.[4]

The FFCL is not an appealable order. Notwithstanding, there is no merit to First 100's arguments and the FFCL should be affirmed as it is supported by the evidence and consistent with the district court's broad authority to enforce its own orders against parties as well as parties' agents with notice.

---

[3] AA, Vol. I, AA0060-0068.

[4] *See* FFCL, AA, Vol. VI, AA1333-1334, AA1338.

II. JURISDICTIONAL STATEMENT

Nevada's appellate courts lack jurisdiction to hear the appeal.[5] An appeal may not be taken from an order denying a post-judgment motion to enforce settlement agreement[6] or post-judgment finding of civil contempt.[7] Further, the FFCL is not otherwise appealable as it is not a special order entered after final judgment "affecting rights incorporated in the judgment."[8] The FFCL enforced the Judgment; the FFCL did not modify or amend the Judgment or alter any party's rights under the Judgment. To that point, Bloom was determined to be jointly and severally responsible for the district court's contempt sanctions,[9] not the underlying Judgment's award of fees and costs. Accordingly, this appeal should be dismissed for lack of jurisdiction.

III. ROUTING STATEMENT

While appeals from "post judgment orders in civil cases" are presumptively assigned to the Nevada Court of Appeals, the Nevada Supreme Court appropriately

---

[5] This court issued an *Order Denying Motion to Dismiss* (Docket 21-17818) without prejudice.

[6] *Valley Bank of Nevada v. Ginsburg*, 110 Nev. 440, 446, 874 P.2d 729, 733 (1994).

[7] *Detwiler v. Eighth Judicial Dist. Court in & for County of Clark*, 137 Nev. Adv. Op. 18, 486 P.3d 710 (Nev. 2021).

[8] *Gumm v. Mainor*, 118 Nev. 912, 914, 59 P.3d 1220, 1221 (2002).

[9] *See* FFCL, AA, Vol. VI, AA1338.

retains the matter when either 1) it concerns issues matters raising as a principal issue a question of first impression involving the United States or Nevada Constitution or common law, or 2) it concerns matters raising a principal question of statewide public importance. NRAP 17(d), 17(b)(11)-(12).

The exercise of the district court's authority to find contempt against disobedient non-parties to the subject order appears to be a procedural issue yet to be addressed in an important developing area of Nevada jurisprudence –civil contempt.[10] No matter the substance of the underlying contempt proceeding, whether the district court's enforcement authority extends beyond the parties to their agents is implicated. Thus, notwithstanding this is an improper appeal, the FFCL does address principal questions of statewide public importance. Further, the United States Constitution is unquestionably implicated from First 100's contention that the FFCL precluded Bloom from "exercising his right to due process under Section 1 of the Fourteenth Amendment to the Constitution of the United States."[11]

…

---

[10] *See Detwiler*, 486 P.3d 710*; Nuveda, LLC v. Eighth Jud. District Court*, 137 Nev. Adv. Op. 54, 95 P.3d 500 (Nev. 2021) (recent opinions on writ petitions regarding NRS 22.030(3), a procedural rule implicated in contempt hearings no matter the underlying substantive issues). In *Detwiler*, the district court's authority to issue contempt sanctions against the non-party contemnor was not the subject of dispute.

[11] AOB, at p. 22.

IV. ISSUES ON APPEAL

1) Was Bloom afforded sufficient due process prior to being found in contempt when he was personally served with the Contempt Motion/OSC, and through counsel he was permitted to, and did, file briefs, participate in discovery, appear at hearings, and present evidence (documents and witnesses), or does the Fourteenth Amendment to the United States Constitution prohibit the FFCL's finding that Bloom was in contempt of the Judgment just by virtue of him being a non-party?

2) Can a settlement agreement be enforced when the signor lacked apparent and actual authority, the agreement lacked consideration, and/or the agreement was procured through substantial inequities as an artifice of contempt?

V. STATEMENT OF THE RELEVANT FACTS

On April 7, 2021, after weighing the evidence presented in the Evidentiary Hearing, the district court entered the FFCL[12] containing more than a dozen pages of findings of fact and the ultimate conclusion that First 100 and Bloom "disobeyed and resisted the [Judgment] in contempt of Court (civil)."[13]

First 100's AOB largely ignores the lengthy FFCL findings and instead

[12] FFCL, AA, Vol. VI, AA1302.

[13] *Id*., AA1337.

heavily relies on Bloom's self-serving testimony, which the district court rejected. The district court's findings and the evidence upon which they are predicated included:

A. Bloom is First 100's sole officer, manager and chairman.

First 100 consists of two affiliated Nevada limited liability companies governed by nearly identical operating agreements.[14] Bloom identifies himself as "the principal, founding director, and chairman of the board of directors of [First 100]."[15] There are no other officers or directors of First 100.[16] Since formation, both entities comprising First 100 have been single manager-managed by SJC Ventures Holding Company, LLC ("SJC"), which the sole manager of SJC has been Bloom.[17]

…

…

…

---

[14] FFCL, AA, Vol. VI, AA1305, ¶ 2; RA, Vol. II, RA0322 – 0349; RA, Vol. II, RA0350 – 0380; *Hearing Transcript of Testimony*, March 3, 2021 (the "3/3 Trans."), AA, Vol. IV, AA0767:10-16.

[15]FFCL, AA, Vol. VI, AA1305, ¶ 2; AA, Vol. III, AA0476; 3/3 Trans., AA, Vol. IV, AA0919:3-7.

[16] FFCL, AA, Vol. VI, AA1305, ¶ 2; RA, Vol. III, RA0459 – 0475; RA, Vol. III, RA0476 – 0486.

[17] FFCL, AA, Vol. VI, AA1305, ¶ 2; RA, Vol. II, RA0322 – 0349, RA0322 at §§ 1.19, RA0333 at 6.1; RA, Vol. II, RA0350 - 0380, RA0350 at §§ 1.19, RA0360 at 6.1; 3/3 Trans., AA, Vol. IV, AA0980:18-23.

B. TGC/Farkas was forced to compel production of First 100's books and records in its attempt to learn what happened to its $1 million investment.

After moving to Las Vegas in 2013, Matthew Farkas ("Farkas")—Bloom's brother-in-law [18]—started working with First 100 to help raise capital.[19]

TGC/Farkas was formed as a Delaware limited liability company by 50% member TGC 100 Investor, LLC ("TGC Investor"), managed by Adam Flatto ("Flatto"),[20] and 50% member Farkas to facilitate TGC 100's investment of $1 million in First 100.[21] In exchange for TGC/Farkas' contributions, TGC/Farkas received a 3% membership interest in First 100.[22]

Under the TGC/Farkas Operating Agreement, Farkas was originally designated the "Administrative Member" with authority to act on behalf of TGC/Farkas "after consultation with, and upon the consent of, all Members [to wit:

---

[18] FFCL, AA, Vol. VI, AA1306:16; 3/3 Trans., AA, Vol. IV, AA0882:2-13.

[19] FFCL, AA, Vol. VI, AA1306:16-20; 3/3 Trans., AA, Vol. IV, AA0882:14-18. Farkas left his role at First 100 in summer 2016. *Id*.

[20] FFCL, AA, Vol. VI, AA1305:7-10; RA, Vol. III, RA0403 – 0425.

[21] *Id*.

[22] FFCL, AA, Vol. VI, AA1305; *Decision and AWARD of Arbitration Panel (1) Compelling Production of Company Records; and (2) Ordering Reimbursement of Claimant's Attorneys' Fees and Costs* (the "Arb. Award"), RA, Vol. II, RA0295 – 0300, RA0295, ¶ 1.

Flatto for TGC Investor]."[23] Farkas could not act on behalf of TGC/Farkas without Flatto's knowledge and consent.

1. First 100/Bloom knew that Farkas could not exercise authority on behalf of TGC/Farkas without Flatto's knowledge and consent.

On or about April 13, 2017, First 100 sent Farkas a form of membership redemption agreement for execution/return.[24] In response, on April 18, 2017, TGC/Farkas informed First 100 that Farkas lacked authority to unilaterally bind TGC/Farkas, and that any execution of documents "solely by [Farkas] is invalid and shall not be binding on [TGC/Farkas]."[25] Thereafter, on May 2, 2017, TGC/Farkas made a formal written demand for First 100's books and records pursuant to the terms of the First 100 operating agreements and NRS 86.241.[26] First 100 adamantly refused to produce any books and records, challenged TGC/Farkas' membership rights and intimated that only Farkas could direct TGC/Farkas.[27] In follow up, on July 13, 2017, TGC/Farkas again informed First 100 through their registered agent

---

[23] FFCL, AA, Vol VI, AA 1310:17-20; RA, Vol. III, RA0403 – 0425, RA0412 at §§ 3.4(a), RA0413 at 4.1(c).

[24] FFCL, AA, Vol VI, AA 1310:17-20; RA, Vol. II, RA0295 – 0300, RA0297.

[25] FFCL, AA, AA1307:7-8; RA, Vol. III, RA0426 – 0431; 3/3 Trans., AA, Vol. IV, AA0818:5-12.

[26] FFCL, AA, Vol. VI, AA1306; RA, Vol. II, RA0291 – 0294.

[27] FFCL, AA, Vol. VI, AA1306; RA, Vol. II, RA0295 – 0300, RA0296.

(MGA) that Farkas did not have the authority to bind TGC/Farkas without Flatto's consent.[28]

2. An arbitration panel found that Farkas could not bind TGC/Farkas without Flatto's knowledge and consent.

As a result of First 100's persistent refusal to produce any of its books and records to TGC/Farkas, TGC/Farkas filed an arbitration demand with the American Arbitration Association to enforce its membership rights.[29] In defense of the action, First 100 argued that Farkas had redeemed TGC/Farkas' membership interest.[30]

On September 15, 2020, the arbitration panel entered the Arb. Award,[31] finding that there had been a "long and bad faith effort by [First 100] to avoid their statutory and contractual duties to a member to produced requested records."[32] The Arb. Award conclusively resolved all of First 100's multiple arguments that they were not required to produce books and records to TGC/Farkas in favor of TGC/Farkas, including First 100's argument that Farkas had signed the form of

---

[28] FFCL, AA, Vol. VI, AA1311:3-6, AA1307:3-8; RA, Vol. II, RA0295 – 0300, RA0297, RA, Vol. III, RA0432 – 0448, RA0432, RA0443; RA, Vol. III, RA0459 – 0475; RA, Vol. III, RA0476 – 0486.

[29] FFCL, AA, Vol. VI, AA1306:4-8; RA, Vol. II, RA0295 – 0300.

[30] RA, Vol. II, RA0295 – 0300, RA0296.

[31] FFCL, AA, Vol. VI, AA1311:9-11; RA, Vol. II, RA0295 – 0300, RA0296.

[32] FFCL, AA, Vol. VI, AA1306:11-15; RA, Vol. II, RA0295 – 0300, RA0296.

redemption agreement purportedly releasing First 100 from any responsibility to make company records available to TGC/Farkas.[33] The Arb. Award expressly provided that "Mr. Farkas did not have authority to bind [TGC/Farkas]."[34]

The Arb. Award ordered First 100 to "no later than ten (10) calendar days from the date of this AWARD, make all the requested documents and information available from both companies [First 100] to [TGC/Farkas] for inspection and copying."[35] Fees and costs incurred in the arbitration were awarded to TGC/Farkas.[36] The Arb. Award then concluded that "[a]ll claims not expressly granted herein are hereby denied."[37]

Bloom had notice of the Arb. Award, including its finding that Farkas did not have authority to bind TGC/Farkas, but chose to ignore it.[38]

…

…

---

[33] FFCL, AA, Vol. VI, AA1307:10-12; RA, Vol. II, RA0295 – 0300, RA0296.

[34] FFCL, AA, Vol. VI, AA1307:12-14; RA, Vol. II, RA0295 – 0300, RA0297.

[35] FFCL, AA, Vol. VI, AA1307:15-21; RA, Vol. II, RA0295 – 0300, RA0299.

[36] *Id*. at ¶ 5.

[37] *Id*.

[38] FFCL, AA, Vol. VI, AA1317:3-5, 9-16, AA1329:15-17; 3/3 Trans., AA, Vol. IV, AA0960:1-6, AA0959:10-20, AA0962:2-11.

3. Farkas was removed as TGC/Farkas' Administrative Member.

Following the entry of the Arb. Award, on September 17, 2020, the TGC/Farkas Operating Agreement was amended to provide that TGC Investor (Flatto) shall have "full, exclusive, and complete discretion, power and authority…to manage, control, administer and operate the business and affairs of [TGC/Farkas]."[39] Pursuant to the amendment, Farkas was expressly prevented from taking *any* action on behalf TGC/Farkas in order to avoid any pressure Bloom might place on Farkas, his brother-in-law.[40] Farkas did not want the responsibility and made it clear to Bloom that he was not in a position to make any decisions on behalf of TGC/Farkas and that Bloom would need to speak with Flatto and TGC/Farkas' counsel.[41]

C. The district court confirmed the Arb. Award, ordering First 100 to produce their books and records to TGC/Farkas.

TGC/Farkas commenced the district court case to confirm the Arb. Award.[42] In response to TGC/Farkas' *Motion to Confirm Arb. Award*, First 100 filed a *Countermotion to Modify the Arb. Award* (the "Countermotion") and requested that

---

[39] FFCL, AA, Vol. VI, AA1311:10-13; RA, Vol. III, RA0449 – 0455, RA0450.

[40] FFCL, AA, Vol. VI, AA1311:13-16; 3/3 Trans., AA, Vol. IV, AA0826:16-AA0827:23, AA0890:7-13.

[41] 3/3 Trans., AA, Vol. IV, AA0895:11-21.

[42] FFCL, AA, Vol. VI, AA1308:2; AA, Vol. I, AA0001.

TGC/Farkas pay unspecified expenses as a condition of First 100 furnishing the books and records.[43] The Countermotion was supported by Bloom's declaration in his capacity as First 100's "principal, founding director, and chairman."[44] First 100, however, did not arbitrate any request for TGC/Farkas to pay expenses.[45]

On November 17, 2021, the district court entered the Judgment, which included denial of First 100's Countermotion.[46] The Judgment constituted a final, appealable judgment under NRAP 3A(b)(1); however, the Judgment was not appealed.[47]

D. Bloom resisted performance ordered by the Judgment, including manufacturing a "settlement" in an attempt to avoid the Judgment.

On December 18, 2020, upon evidence that First 100 failed to produce any books or records in response to the Judgment, the Court issued the OSC directed to First 100 and Bloom.[48] Bloom was personally served with the OSC on December

[43] FFCL, AA, Vol. VI, AA1308:2-5; AA, Vol. I, AA0041.

[44] FFCL, AA, Vol. VI, AA1308:5-8; AA, Vol. I, AA0046, ¶ 5.

[45] FFCL, AA, Vol. VI, AA1308:8-13; AA, Vol. I, AA0054-AA0055; RA, Vol. II, RA0322 – 0349; RA, Vol. II, RA0350 – 0380, RA0370 at § 13.9.

[46] FFCL, AA, Vol. VI, AA1308:10; AA, Vol. I, AA0054-AA0055.

[47] FFCL, AA, Vol. VI, AA1308:14-16; AA, Vol. 1, AA0123.

[48] OSC, AA, Vol. I, AA0151-155.

22, 2020.[49]

After Bloom was served with the OSC, he schemed to avoid the Judgment's performance obligation. First, Bloom took action to hire his own personal counsel, Raffi Nahabedian, Esq. ("Nahabedian") to replace TGC/Farkas' counsel-of-record, GTG, so new counsel would take direction from Bloom. Second, Bloom caused Farkas to go to a UPS store and execute documents without the benefit of review by Flatto or GTG, which included a form of settlement agreement that became the basis for First 100's Motion to Enforce.

1. Bloom took action to replace GTG with his personal counsel.

On January 4, 2021, Bloom asked his personal[50] attorney Nahabedian to represent ***TGC/Farkas*** for the purpose of securing dismissal of the district court action subject of the Judgment and OSC. Within minutes of that initial ask, Nahabedian emailed Bloom an attorney retainer agreement providing Nahabedian

[49] FFCL, AA, Vol. VI, AA1308:17-19; RA, Vol. I, RA0003; RA, Vol. I, RA0004.

[50]FFCL, AA, Vol. VI, AA1313:14-16; *see also* 3/3 Trans., AA, Vol. IV, AA0772:13-0774:15; *Hearing Transcript of Testimony*, March 10, 2021 (the "3/10 Trans."), AA, Vol. V, AA1170:11-19. In addition to being concurrent counsel for Bloom, Nahabedian was also former counsel for First 100 and a client of MGA. 3/10 Trans. AA, Vol. V, AA1170:1-1171:1. *See also Nevada Speedway v. Bloom, et al*., Case No. A-20-809882-B of the Eighth Jud. Dist. Court (Nahabedian concurrently represented Bloom in the same January 2021 time period).

would represent TGC/Farkas in the district court case.[51] Bloom agreed to pay Nahabedian's retainer.[52] Nahabedian testified that he was comfortable taking direction from Bloom with respect to the retention because Bloom was Farkas' brother-in-law and he was acting as Farkas' "conduit."[53]

Bloom did not discuss the retention of Nahabedian for TGC/Farkas with Flatto or Farkas.[54] Nahabedian prepared the engagement agreement so that the signature line merely stated "Matthew Farkas" without any indication that the signature was on behalf of TGC/Farkas.[55]

2. Bloom threatened Farkas with adverse action causing Farkas to sign a stack of documents without review or counsel, including the Nahabedian engagement letter and a form of settlement agreement.

Enraged by the OSC, Bloom threatened Farkas, telling him that "he was going to go to all 50 members [of First 100], shareholders, and sue [Farkas] for $48

---

[51]FFCL, AA, Vol. VI, AA1313:16-19; RA, Vol. III, RA0487 – 0491. The retainer agreement does not discuss the conflict of interest created by Nahabedian's representation of TGC/Farkas when there was an OSC adverse to Nahabedian former client First 100 and current client Bloom pending in the district court case.

[52]FFCL, AA, Vol. VI, AA1314:1-4; 3/10 Trans. AA, Vol. V, AA1160:5-16.

[53]FFCL, AA, Vol. VI, AA1314:9-10; 3/10 Trans. AA, Vol. V, AA1176:17-20.

[54] FFCL, AA, Vol. VI, AA1313:19-21.

[55] FFCL, AA, Vol. VI, AA1313:19-21; RA, Vol. III, RA0491.

million."[56] Bloom further informed Farkas' parents—who live with Bloom—of the ways that he would hurt Farkas.[57]

On the heels of these threats, January 7, 2021, at 1:58 pm, Bloom emailed documents to a UPS store near Farkas' home and advised Farkas he could avoid adverse action if he went and signed the documents.[58] The documents sent by Bloom to the UPS store included: 1) a settlement agreement between TGC/Farkas and First 100 (the "Settlement Agreement"), 2) the Nahabedian attorney retainer agreement, 3) a letter terminating GTG, and 4) a Release, Hold Harmless and Indemnification Agreement between First 100 and Farkas (collectively, the "Bloom Documents"). [59] Bloom directed UPS to print one copy of the documents and then to email and mail the documents to Bloom once signed by Farkas.[60] The Bloom Documents were ***not*** emailed to any known representative of TGC/Farkas- not to Farkas, Flatto or GTG.[61]

---

[56] FFCL, AA, Vol. VI, AA1322; 3/10 Trans. AA, Vol. V, AA0890:25-AA0891:22.

[57] 3/3 Trans., AA, Vol. IV, AA0891:18-22. This was in addition to messages threatening Farkas if he provided a declaration or otherwise participated in the district court litigation. *Id*. at AA0892-0893.

[58] FFCL, AA, Vol. VI, AA1314:5-17; 3/3 Trans., AA, Vol. IV, AA0907:25-AA0908:24.

[59] FFCL, AA, Vol. VI, AA1314:4-9; RA, Vol. III, RA0492 – RA0508.

[60] FFCL, AA, Vol. VI, AA1314:9-13; RA, Vol. III, RA0492.

[61] FFCL, AA, Vol. VI, AA1314:14-17; RA, Vol. II, RA0397 – 0402, RA0397.

Bloom ensured that he would control the one copy of documents provided for Farkas' signature and prevent any meaningful review or counsel (GTG)[62] on behalf of TGC/Farkas.

The Bloom Documents were signed by Farkas and returned to Bloom within 45 minutes of being sent from Bloom to the UPS store.[63] Minutes later, Bloom forwarded the executed Bloom Documents to Nahabedian and directed Nahabedian to "get the Substitution of Attorney and Stip to Dismiss filed ***for [TGC/Farkas]*** and put this to bed in the next day or two…"[64]

The district court, after receiving testimony from Farkas, Bloom and Nahabedian during the Evidentiary Hearing, found that "Farkas did not know he was signing a Settlement Agreement when he signed it,"[65] that there was "no evidence he intended to bind [TGC/Farkas] to anything when he executed the documents," and "notwithstanding the express terms of the Settlement Agreement providing that the signatories were duly authorized, Farkas did not read that provision (or any

---

[62] As reflected in the record on appeal, GTG was counsel-of-record for TGC/Farkas consistently since May 2017, starting with the initial demand for books and records, and continuing through the arbitration and district court actions.

[63] FFCL, AA, Vol. VI, AA1314:17-20; RA, Vol. III, RA0492 – RA0508.

[64] FFCL, AA, Vol. VI, AA1314:19-AA1315:2; RA, Vol. III, RA0492.

[65] FFCL, AA, Vol. VI, AA1312:1-2; *See* 3/3 Trans., AA, Vol. IV, AA0859:15-AA0860:4, AA0861:14-20, AA0863:2-5, AA0874:11-21, AA0878:9-15, AA0876:16-24, AA0915:11-18.

provision) and testified he never otherwise represented to Bloom or anyone else that he had authority to enter into the Settlement Agreement on behalf of [TGC/Farkas]."[66] Further, Farkas "did not negotiate the terms of the Settlement Agreement with Bloom."[67]

The district court further found consistent with Farkas' testimony that Farkas "believed that the documents he signed at the UPS store related to resolution of a threatened claim against him by [First 100] in connection with his prior employment and included the retention of personal counsel for him."[68] This was corroborated by the fact that the Settlement Agreement was provided to Farkas at the same time as a form of release, releasing any claims First 100 purportedly had against Farkas.[69]

3. Bloom, Nahabedian and MGA concealed the Settlement Agreement from TGC/Farkas.

Nahabedian simply followed Bloom's directions when purportedly representing the interests of TGC/Farkas.[70] Then, Nahabedian and Bloom both

---

[66] FFCL, AA, Vol. VI, AA1312:2-4; RA, Vol. II, RA0387 - 0389, RA0388 at § 14; 3/3 Trans., AA, Vol. IV, AA0862:22, AA0877:3-9, AA0878:4-7, AA0895:16-19.

[67] FFCL, AA, Vol. VI, AA1312:6-9; 3/3 Trans., AA, Vol. IV, AA0896:1-8, 13-15.

[68] FFCL, AA, Vol. VI, AA1312:10-12; 3/3 Trans., AA, Vol. IV, AA0859:15-AA0860:4, AA0861:14-20, AA0863:2-5, AA0874:11-21, AA0878:9-15, AA0896:16-24, AA0902:21-25, AA0915:13-18.

[69] FFCL, AA, Vol. VI, AA1312:14-15; RA, Vol. III, RA0494 – RA0500.

[70] FFCL, AA, Vol. VI, AA1315, AA1316:8-10; RA, Vol. III/IV, RA0487 – 0814;

claimed that communications including Nahabedian related to TGC/Farkas were privileged because of Nahabedian's concurrent representation of Bloom personally.[71] In effect, Bloom had orchestrated a situation where he believed he could direct Nahabedian to act as TGC/Farkas counsel in relation to TGC/Farkas' pending district court action against Bloom and First 100 without any disclosure of those directions to TGC/Farkas. Only through a Motion to Compel were the Nahabedian communications relating to his purported retention on behalf of TGC/Farkas finally disclosed to TGC/Farkas (and the district court).[72]

4. Nahabedian attempted to execute on Bloom's scheme.

On January 8, 2021, Nahabedian informed Bloom and MGA that Farkas and GTG would need to execute a substitution of counsel so that he could effectuate a dismissal of the district court action. [73] Bloom responded he would "put in front of [Farkas]" further documents "for a second set of signatures" despite that getting Farkas to "sign stuff is a pain in the ass."[74] It was at this point that Nahabedian

---

RA, Vol. IV, RA0815; RA, Vol. IV, RA0816.

[71] RA, Vol. I., RA022.

[72] RA, Vol. I, RA0022 – 0150; RA, Vol. V, RA0969 – 0975.

[73] FFCL, AA, Vol. VI, AA1315:5-8; RA, Vol. III, RA0513.

[74] FFCL, AA, Vol. VI, AA1315:5-8; RA, Vol. III, RA0525.

questioned Farkas' authority to bind TGC/Farkas to Bloom and MGA.[75] Notwithstanding, Nahabedian pressed forward based on Bloom and MGA's assurances—despite having never even spoken to Farkas.[76]

Ultimately, on January 14, 2021, Nahabedian sent GTG a letter stating that he was hired to replace GTG for the dismissal of the action pursuant to a settlement agreement.[77] Nahabedian's letter regarding substitution was actually drafted by MGA and approved by Bloom,[78] and it constituted the first time the existence of the Settlement Agreement was disclosed to TGC/Farkas, albeit the agreement was not attached to Nahabedian's letter.[79]

On January 15, 2021, before the Settlement Agreement was ever provided to TGC/Farkas, TGC/Farkas, through GTG, sent notice of repudiation.[80] First 100 thereafter refused to produce the Settlement Agreement to TGC/Farkas or otherwise

---

[75] FFCL, AA, Vol. VI, AA1315:11-13; RA, Vol. III, RA0528, RA0531, RA0535.

[76] RA, Vols. III, RA0487 – 0608, RA0578, RA0586.

[77] FFCL, AA, Vol. VI, AA1315; RA, Vol. II, RA0381 – 0386.

[78] FFCL, AA, Vol. VI, AA1315:18-AA1316:3; RA, Vol. III, RA0558, RA0563 – 0564, RA0565, RA0570, RA0576 – 0579.

[79] FFCL, AA, Vol. VI, AA1315:15-17; RA, Vol. II, RA0381 – 0386; *see also* [79] FFCL, AA, Vol. VI, AA1200:23-1201:14(Nahabedian admitted that although the correspondence indicates the agreement was attached, Nahabedian did not actually attach it).

[80] FFCL, AA, Vol. VI, AA1310:4-5; RA, Vol. III, RA0456 – 0458.

discuss it until it was filed in connection with the Motion to Enforce.[81] The Motion to Enforce argued that just by virtue of Farkas' signature on the Settlement Agreement that mandated dismissal of the action, that was sufficient to bind TGC/Farkas and require dismissal.

E. Bloom personally appeared and defended himself and First 100 in response to the OSC.

On January 19, 2021, First 100 filed its Motion to Enforce and sought to have it considered prior to the scheduled hearing on the OSC.[82] On January 20, 2021, First 100 and Bloom filed their Response to the OSC referencing the Motion to Enforce and regurgitating the previously denied Countermotion.[83]

The district court heard arguments on the Motion to Enforce and OSC on January 28, 2021. First 100 and Bloom were both represented by MGA at that hearing.[84] On February 9, 2021, the district court denied the Motion to Enforce without prejudice to the evidence to be presented at the Evidentiary Hearing and set the Evidentiary Hearing on the OSC.[85]

---

[81] FFCL, AA, Vol. VI, AA1310:5-7; AA, Vol. I, AA0156-AA0208;

[82] AA, Vol. I, AA0156-AA0208.

[83] FFCL, AA, Vol. I, AA0209-AA0214.

[84] AA, Vol. II., AA0742:9-13.

[85] *Id*. at AA0739-AA0743, the "Order Denying Motion to Enforce."

As part of the district court's Order Denying Motion to Enforce, the district court permitted the parties to take up to four (4) depositions in advance of the Evidentiary Hearing.[86] MGA noticed and took Flatto and Farkas' depositions in their capacity as counsel for both First 100 and Bloom.[87] During TGC/Farkas' deposition of Nahabedian, MGA asserted objections of privilege on behalf of Bloom.[88]

During the Evidentiary Hearing, First 100 and Bloom were jointly represented by MGA.[89] First 100 and Bloom introduced exhibits and called Flatto, Farkas, and Bloom as witnesses.[90]

F. Bloom was found in contempt based on his disobedience and/or resistance of the Judgment.

It was undisputed at the Evidentiary Hearing that there had been no compliance with the Judgment.[91] Contrary to the arguments in First 100's AOB, the district court did not find Bloom in contempt just by virtue of Bloom being alter ego.

---

[86] *Id*. at AA0742

[87] 3/3 Trans., AA, Vol. IV, AA0780:19-21, AA0842:15-22.

[88] RA, Vol I, RA0022 – 0150. The district court overruled Bloom's claim of privilege in time to obtain the Nahabedian communications and present them at the Evidentiary Hearing. RA, Vol. V, RA0969 – 0975, RA0970.

[89] 3/3 Trans., AA, Vol. IV, AA0763:20-24; 3/10 Trans. AA, Vol. V, AA1129:11-14.

[90] 3/3 Trans., AA, Vol. IV, AA0761; 3/10 Trans. AA, Vol. V, AA1127.

[91] AA, Vol. I, AA0209.

Instead, the Court found that "[First 100] and Bloom disobeyed and resisted the [Judgment] in contempt of Court (civil)."[92] Then, specific to Bloom's liability, the district court found that "Bloom, as the sole natural person legally associated with [First 100], did not testify to any efforts to marshal [First 100's] books and records for production to [TGC/Farkas]."[93] Bloom was First 100's only manager as well as the "Registered Agent" listed with the Nevada Secretary of State.[94] Bloom undeniably had notice of the Judgment.[95] Accordingly, the district court found that "[Bloom] himself had to take reasonable steps to provide the records in compliance with the Order in his capacity as the sole person legally associated with [First 100] and responsible for the books and records of [First 100], as manager of [First 100's] manager."[96] Per the terms of the First 100 Operating Agreements, "Bloom is expressly the only person with authority or power . . . to do any act that would be binding on [First 100], or incur any expenditures on behalf of [First 100]."[97]

---

[92] FFCL, AA, Vol. VI, AA1137:10-11.

[93] *Id*. at AA1331:19-23.

[94] FFCL, AA, Vol. VI, AA1324:8-11; RA, Vol. III, RA0459 – 0475; RA, Vol. III, RA0476 – 0486.

[95] FFCL, AA, Vol. VI, AA1325:4-5.

[96] *Id*. at AA1334:21-26.

[97] *Id*. at AA1325:4-13; *see also* RA, Vol. II, RA0322 – 0349, RA0327 at § 3.17; RA, Vol. II, RA0350 - 0380, RA0354 at § 3.17.

Bloom's responsibility for First 100's compliance was bolstered by his own representation that First 100 "have no continued operations, there are no employees, there are no bank accounts, there are no records being maintained as required under the operating agreements or NRS 86.241, and there is no active governance of any kind."[98]

First 100 and Bloom also failed to demonstrate that their lack of compliance in producing statutorily required records was somehow excused.[99] First 100 requested a condition for production to include payment from TGC/Farkas, but that was not a valid excuse as First 100 did not arbitrate the request, and the request was already rejected by the district court when it denied the Countermotion and confirmed the Arb. Award as part of the final Judgment[100] that was never appealed.

After considering all the evidence and arguments presented in conjunction with the Evidentiary Hearing, the district court expressly found that "the Motion to Enforce was a tool of that contempt as orchestrated by Bloom in disregard of the

---

[98] FFCL, AA, Vol. VI, AA1335:18-21; 3/3 Trans., AA, Vol. IV, AA0979:2-4; 3/10 Trans. AA, Vol. V, AA1137:10-19, AA1139:9-17, AA1140:16-25; RA, Vol. II, RA0322 – 0349, RA0324 at § 2.3 (requiring Bloom to maintain records); RA, Vol. II, RA0350 – 0380, RA0352 at § 2.3.

[99] FFCL, AA, Vol. VI, AA1332:21-A1333:7.

[100] *Id*. at AA1331:23-26, AA1335:18-21; RA, Vol. II, RA0295 - 0300.

Arb. Award confirmed by the [Judgment]."[101]

G. The district court found that First 100 and Bloom failed to establish an enforceable settlement agreement.

The district court found that at all relevant times Bloom and First 100 were adverse to TGC/Farkas with pending contempt proceedings against them, and that "under no circumstances should [Bloom] have been directing [TGC/Farkas'] counsel without any member of [TGC/Farkas'] participation."[102] The district court also found that "Bloom's refusal to recognize inconvenient limitations on Farkas' authority was shown to be pervasive and reckless."[103] The district court recognized that "given the arbitrators' expressly stated determination that Flatto's consent was required to bind [TGC/Farkas] (before the September 2020 amendment was entered) , . . . that no reasonably intelligent person with knowledge of that Arb. Award would once again attempt to enforce an agreement without Flatto's consent."[104] Likewise, the district court cited Bloom's testimony trying to justify ignoring the Arb. Award's finding that Farkas could not bind TGC/Farkas,[105] concluding it was unreasonable

---

[101] FFCL, AA, Vol. VI, AA1338:11-13.

[102] *Id*. at AA1316:11-13.

[103] *Id*. at AA1316:20-21.

[104] *Id*. at AA1316:20-AA1317:3.

[105] *Id* at AA1317:3-5; 3/3 Trans., AA, Vol. IV, AA0960:1-6; *see also* AA0959:10-

for Bloom to ignore the notices of the restrictions on Farkas' authority to bind TGC/Farkas.[106] Based thereon, the district court concluded that "there was no good faith basis for Bloom's intentional disregard of the Arb. Award and Order thereon [the Judgment] and reliance by Bloom on Farkas' signature on the Settlement Agreement was not reasonable."[107]

The district court ultimately concluded that Farkas did not have actual or apparent authority to bind TGC/Farkas under the Settlement Agreement;[108] that First 100's reliance of Farkas' execution of the Settlement Agreement was not reasonable;[109] that the arbitration panel had already concluded that Farkas lacked authority;[110] there was no meeting of the minds;[111] the Settlement Agreement lacked consideration;[112] and equities did not favor specific performance of the Settlement

---

20; AA0962:2-11.

[106] FFCL, AA, Vol. VI, AA1319:6-9.

[107] *Id*. at AA1329:15-17.

[108] *Id*. at AA1329:13-14.

[109] *Id*. at AA1329:16-17.

[110] *Id*. at AA1329:10-14.

[111] *Id*. at AA1321:9-10.

[112] *Id*. at AA1319:17-AA1320:8.

Agreement.[113]

These conclusions were bolstered by the following facts: "the Settlement Agreement was drafted by Bloom and executed by Bloom, as manager of [First 100];"[114] the Settlement Agreement was not negotiated;[115] Bloom exercised control over Farkas; Bloom did not provide TGC/Farkas with the Settlement Agreement or its terms, instead opting to mail a copy to a UPS store for immediate return; there were clear signs of Farkas' distress; "Farkas did not know he was signing a Settlement Agreement when he signed it;" there was "no evidence Farkas intended to bind [TGC/Farkas] to anything when he executed the documents; "[116] and Farkas did not read any provision of the Settlement Agreement[117] or represent to Bloom or anyone else that he had authority to enter into the Settlement Agreement on behalf of TGC Farkas.[118] Based on these findings and conclusions, the district court

---

[113] *Id*. at AA1321:12-13.

[114] *Id*. at AA1321:18; 3/3 Trans., AA, Vol. IV, AA0952:25-0953:2; RA, Vol. II, RA0387 – 0389.

[115] FFCL, AA, Vol. VI, AA1312:7.

[116] RA, Vol. V, RA0941 - 0944; 3/3 Trans., AA, Vol. IV, AA0859:15-AA0860:4, AA0861:14-20, AA0863:2-5; AA0874:11-21, AA0878:9-15, AA0896:16-24, AA0915:13-18.

[117] 3/3 Trans., AA, Vol. IV, AA0862:22, AA0877:3-9, AA0878:4-7.

[118] *Id*. at AA0895:16-19.

appropriately confirmed the Settlement Agreement was unenforceable and provided no excuse to First 100 and Bloom's disobedience of the Judgment.[119]

H. Bloom ultimately purged the non-monetary portion of the contempt.

Contrary to the arguments in First 100's AOB, Bloom had the ability and wherewithal to comply with the Judgment. In fact, once the FFCL were entered, Bloom immediately took action to comply with the Judgment. Thousands of documents were ultimately produced after the entry of the FFCL in Bloom's (albeit still deficient) effort to purge the contempt.[120]

VI. STANDARD OF REVIEW

The FFCL's contempt determination is reviewed for an abuse of discretion, save and except that any related constitutional issue is reviewed *de novo*. [121] "Whether a person is guilty of contempt is generally within the particular knowledge of the district court, and the district court's order should not lightly be overturned."[122] When reviewing for an abuse of discretion, the district court's "discretionary power is subject only to the test of reasonableness" and is improperly exercised only when

---

[119] FFCL, AA, Vol. VI, AA1326:3-AA1331:16.

[120] RA, Vol. V, RA0976 – 1007; RA, Vol. V, RA1008.

[121] *Detwiler*, 486 P.3d at 715, citing *Lewis v. Lewis*, 132 Nev. 453, 456, 373 P.3d 878, 880 (2016).

[122] *Detwiler*, 486 P.3d at 715, citing *Pengilly v. Rancho Santa Fe Homeowners Ass'n*, 116 Nev. 646, 650, 5 P.3d 569, 571 (2000).

"no reasonable person would take the view adopted by the trial court."[123]

TGC/Farkas and First 100 agree that the question of whether an enforceable settlement agreement exists is a question of fact, subject to the district court's discretion.[124] Thus, this appellate court defers to district court findings unless they are clearly erroneous.[125]

VII. SUMMARY OF THE ARGUMENT

The Arb. Award was confirmed in the district court's Judgment. First 100 did not appeal the Judgment, nor did First 100 comply with it. After refusing to produce a single record and otherwise refusing to participate in post-Judgment discovery, the district court issued its OSC directing First 100 and the sole-natural person directing their operations, Bloom, to show cause why they were not in contempt of the Judgment for failing to produce books and records as directed. After the OSC issued, as found by the district court, Bloom used deceit and exploitation to illicitly orchestrate an unenforceable settlement agreement as a means of escaping contempt. After the Evidentiary Hearing where Bloom testified and presented evidence, the district court found that "[First 100] and Bloom disobeyed and resisted the

---

[123] *Imperial Credit v. Eighth Jud. Dist. Ct.*, 130 Nev. 558, 563, 331 P.3d 862, 866 (2014).

[124] *Mack v. Estate of Mack*, 125 Nev. 80, 95, 206 P.3d 98, 108 (2009).

[125] *Grisham v. Grisham*, 128 Nev. 679, 687, 289 P.3d 230, 236 (2012); *Certified Fire Prot. Inc. v. Precision Constr.*, 128 Nev. 371, 377, 283 P.3d 250, 254 (2012).

[Judgment] in contempt of Court (civil)," and awarded contempt sanctions in the form of attorneys' fees and costs related to the contempt against First 100 and Bloom.

1. ***Bloom disobeyed a Court order, for which he was accessed monetary sanctions***. Bloom, the sole natural person in control of First 100, refused to produce the books and records of First 100 in violation of the Judgment. Bloom was found in contempt because he was the sole natural person responsible for First 100's non-compliance.

***2. Bloom was afforded due process*.** Bloom was personally served with the Contempt Motion/OSC, filed an opposition thereto through counsel, personally appeared at the Evidentiary Hearing to testify and otherwise participate, presented evidence through counsel, and called and examined witnesses through counsel.

3. No valid settlement agreement existed. TGC/Farkas did not negotiate or agree to the terms of the Settlement Agreement. Instead, through threats, undue influence and deceit, Bloom procured Farkas' signature on the Settlement Agreement, which purported to release the Judgment and mandate dismissal of the district court action. Bloom, however, knew that Farkas lacked authority to sign the Settlement Agreement, including from the binding and final Arb. Award. Accordingly, the Settlement Agreement was not valid or enforceable. Even assuming there was binding authority (which there was not), the district court did

not abuse its discretion in finding that the Settlement Agreement lacked consideration and equity would not support enforcement of the Settlement Agreement.

VIII. LEGAL ARGUMENT

A. First 100 does not have standing to challenge a finding that Bloom is in contempt.

"Entitlement to appellate relief [] requires both standing and an appealable order."[126] The primary issue on appeal is whether the district court erred in finding ***Bloom*** was in contempt. Bloom is not an appellant and has not made an appearance following the Notice of Appeal as the real-party-in-interest.[127] Even if the FFCL is directly appealable, First 100 has not been aggrieved by the finding that Bloom was in contempt and jointly and severally liable for the contempt sanctions.[128]

As the contemnor, Bloom is the obvious real-party-in-interest of the appeal's

---

[126] *Matter of T.L.*, 133 Nev. 790, 795, 406 P.3d 494, 498 (2017).

[127] Doc. 2021-26748. The notice of appeal in this action identifies that Appellants and Bloom appealed the FFCL. Doc. 2021-11474. The case appeal statement, however, does not include Bloom as an appellant. Doc. 2021-11944. The docketing statements does not include Bloom as an appellant. Doc. 2021-14409. The Opening Brief does not identify Bloom as an appellant.

[128] NRAP 3A(a) (providing that a party must be "aggrieved by an appealable judgment or order" to have standing to "appeal from that judgment or order"); *Valley Bank of Nev. v. Ginsburg*, 110 Nev. 440, 446, 874 P.2d 729, 734 (1994) (holding that a party is aggrieved within the meaning of NRAP 3A(a) when either a personal right or right of property is adversely affected by a court ruling).

request for review of the FFCL.[129] As Bloom did not file any writ petition to request review,[130] thereby acknowledging the lack of merit of any such petition, First 100 lacks standing to raise issues surrounding the district court's finding that Bloom was in contempt.

B. <u>Bloom's contempt is based on his disobedience to the Judgment, not a finding that he is First 100's alter ego.</u>

Notwithstanding First 100's lack of standing, the appeal basis also lacks merit. The district court was abundantly clear that contempt was based on the finding that "[First 100] and Bloom disobeyed and resisted the [Judgment] in contempt of Court (civil)."[131] The Court's finding is reviewed for an abuse of discretion.[132]

To try to create an issue on appeal, First 100 falsely contends that the FFCL held that Bloom was liable for the Judgment ***because*** he is First 100's alter ego. No such order was made, nor is any such determination necessary to support a finding of contempt against Bloom.

---

[129] *Detwiler*, 137 Nev. Adv. Op. 18, 486 P.3d at 720–22 (recognizing a third-party contemnor's challenge of a contempt finding through a writ petition); *Div. of Child & Family Services, Dept. of Human Res., State of Nevada v. Eighth Judicial Dist. Court ex rel. County of Clark*, 120 Nev. 445, 449–50, 92 P.3d 1239, 1242 (2004).

[130] *Mona v. Eighth Judicial District Court of State in and for County of Clark,* 132 Nev. 719, 725, 380 P.3d 836, 840 (2016).

[131] FFCL, AA, Vol. VI, AA1337:10-12.

[132] *Detwiler*, 137 Nev. Adv. Op. 18, 486 P.3d at 715.

Importantly, the Judgment did two things: 1) compel production of First 100's books and records; and 2) order fees and costs related to the arbitration and contested proceedings confirming the Arb. Award.[133]

The finding of contempt was only based on the failure to produce books and records, and Bloom was personally held in contempt based on his intentional actions to frustrate First 100's compliance with the Judgment, not just because Bloom was First 100's alter ego.[134] Accordingly, to sustain the contempt finding, this Court only needs to find that the district court did not abuse its discretion when finding that Bloom caused First 100 to disobey the Judgment.

1. As the sole natural agent of First 100, Bloom can be found in contempt for disobedience and/or resistance of the Judgment.

First 100's AOB argues that just by virtue of Bloom not being a party to the Judgment, he cannot be found to be in contempt of the Judgment.[135] However, Nevada's contempt statutes (NRS Chapter 22) are directed ***to conduct*** of persons resisting or disobeying enforceable court orders, not just to the parties.

While limited liability companies are separate legal entities, they operate through the direction and control of natural persons.[136] Company agents, therefore,

---

[133] FFCL, AA, Vol. VI, AA1307-1308; AA0060-AA0068.

[134] FFCL, AA, Vol. VI, AA1337:10-12.

[135] AOB at p. 15.

[136] *See e.g. Collins v. Union Fed. Sav. & Loan Ass'n*, 99 Nev. 284, 303, 662 P.2d

may be punished for contempt where they direct the company's violations of court orders, as "a command to the corporation is in effect a command to those who are officially responsible for its affairs; if they, apprised of the [order], prevent compliance or fail to take appropriate action within their power for the performance of the corporate duty, they, no less than the corporation itself, are guilty of disobedience and may be punished for contempt."[137]

The "Responsible Party" rule, as it is often referred to, is neither controversial nor inapplicable. Courts around the country, including those interpreting Nevada law, recognize that contempt powers reach through the corporate veil to command not only the entity, but those who are officially responsible for the conduct of its affairs.[138] If it were otherwise, a company's truculent manager could simply ignore

---

610, 622 (1983)(recognizing that a shareholder cannot conspire with the entity its controls).

[137] 17 C.J.S. Contempt § 51 (updated 2020); *see Detwiler*, 137 Nev. Adv. Op. 18, 486 P.3d at 719 (citing favorably to Corpus Juris Secundum on Contempt); *see also* NRCP 37(b) (compelling compliance and authorizing sanctions against a party's "officers, directors or managing agents" for court discovery orders).

[138] *Wilson v. United States*, 221 U.S. 361, 376 (1911); *Electrical Workers Pension Trust Fund of Local Union #58, IBEW v. Gary's Elec. Service Co*., 340 F.3d 373, 380 (6th Cir. 2003) (holding defendant's non-party officer in contempt for the defendant's failure to obey the court's judgment and order). *Electrical Workers Pension Trust Fund of Local Union #58; United States v. Laurins*, 857 F.2d 529, 535 (9th Cir. 1988) ("A nonparty may be liable for contempt if he or she either abets or is legally identified with the named defendant…***An order to a corporation binds those who are legally responsible for the conduct of its affairs***.") (emphasis added); *Peterson v. Highland Music, Inc*., 140 F.3d 1313, 1323-24 (9th Cir. 1988); *NLRB v.*

a court's command with impunity.

Luv n Care Ltd. v. Laurain is particularly instructive on this point.[139] There, a non-party Nevada limited liability company that had ceased operating was found in contempt after it failed to respond to a subpoena for documents.[140] The managing member of the entity was found in contempt after arguing that he was legally distinguishable from the subpoenaed entity and was alternatively not in possession of responsive documents.[141] In holding the manager in contempt, the Nevada Federal District Court recognized that "an order to a corporation or another entity binds those who are legally responsible for the conduct of its affairs."[142] The court found when a company receives a court order for the production of documents, the company, as well as those responsible for its affairs and records, must take reasonable steps to comply with the order.[143] This expressly extends to the production of documents by the company's manager, who by statute must safeguard

---

Sequoia Dist. Council of Carpenters, 568 F.2d 628, 633 (9th Cir. 1977); *1st Tech, LLC v. Rational Enter., Ltd.*, 2008 WL 4571057, at *8 (D. Nev. July 29, 2008).

[139] 2019 WL 4279028, at * 4 (D. Nev. Sept. 10, 2019)

[140] *Id*. at *1.

[141] *Id*. at *3-4.

[142] *Id.*

[143] *Id*. at *5.

the company's assets and records.[144] Put another way, those who are legally responsible for the conduct of a company's affairs may not simply disregard a court order requiring the production of documents.[145]

Bloom, like the managing member in *Luv N Care*, cannot avoid obligations arising from the district court Judgment by hiding behind the corporate veil or otherwise disclaiming possession of First 100's records that are in his legal custody.

2. The district court did not abuse its discretion in finding Bloom in contempt.

Bloom is First 100's registered agent, principal, and chairman. The district court found that the entities comprising First 100 are manager-managed, and Bloom is the only person with authority or power to do any act that would be binding on First 100.[146] In other words, Bloom alone could cause First 100 to obey or disobey the Judgment.[147] As such Bloom had to take reasonable steps to comply with the Judgment.[148]

The district court found that First 100 and Bloom did nothing to produce

---

[144] *Id*.

[145] *Id*.

[146] RA, Vol. II, RA0322 – 0349, RA0327 at Sects. 3.17, RA0333 at 6.1(A); RA, Vol. II, RA0350 - 0380, RA0354 at Sects. 3.17, RA0360 at 6.1(A).

[147] FFCL, AA, Vol. VI, AA1325:4-14.

[148] *Id*. at AA1334:21-25; RA, Vol. II, RA0322 – 0349; RA, Vol. II, RA0350 – 0380.

documents in response to the Judgment.[149] Instead, Bloom orchestrated a scheme to discharge the Judgment through the bogus Settlement Agreement.[150] Both of these actions/inactions demonstrate disobedience to the Judgment that give rise to contempt.

"The burden of proving inability to comply is upon contemners."[151] In the Judgment itself, the district court considered and rejected First 100's earlier request to amend the Arb. Award to condition the production of documents on the payment of costs to First 100.[152] First 100 did not appeal the Judgment, such that it became a final order subject to issue preclusion.[153] First 100 failed to submit the issue of fee shifting to the arbitrators, thereby precluding consideration of the issue by the district court or this Court.[154]

3. NRS 86.371 does not shield Bloom from contempt.

First 100's AOB argues that Bloom is absolutely immune from contempt

---

[149] FFCL, AA, Vol. VI, AA1324:20-22.

[150] *Id*. at AA1336:15-18.

[151] *McCormick v. Sixth Judicial Dist. Court in & for Humboldt County*, 67 Nev. 318, 326, 218 P.2d 939, 943 (1950)

[152] FFCL, AA, Vol. VI, AA1308:2-20.

[153] *Id*.

[154] *Id.*

proceedings under NRS 86.371. While managers and members are not liable for debts of the company under NRS 86.371, whether Bloom is in contempt of an order is a different question from whether he is liable for First 100's debts. The FFCL does not make Bloom liable for First 100's debts (to wit, the monetary award of the Judgment). Instead, it finds Bloom in contempt for disobeying the Judgment's performance obligations. NRS 86.371 does not insulate members and managers from liability related to their actions,[155] such that NRS 86.371 does not preclude the contempt finding against Bloom or his liability for the contempt sanctions.

4. The district court's discussion of alter ego does not change the outcome of the FFCL or constitute error.

The near entirety of Opening Brief is dedicated to two paragraphs of the FFCL that mention *alter ego*.[156] First 100 seizes on the opportunity to falsely conclude that the district court found Bloom to be in contempt just by virtue of his being First 100's *alter ego*. Bloom was found to be in contempt because he is First 100's responsible party and instead of directing compliance, Bloom bucked it. The

[155] Under a variety of circumstances members and managers of a company are personally liable for their own actions. *See Gardner v. Henderson Water Park, LLC*, 133 Nev. 391, 393, 399 P.3d 350, 351 (2017); *see also* NRS 78.138(7)(recognizing liability for intentional misconduct, fraud or a knowing violation of law); *Montgomery v. eTrepped Technologies, LLC,* 548 F.Supp.2d 1175, 1179 (D. Nev. 2008) (recognizing the application of corporate law regarding the business judgment rule to limited liability companies).

[156] FFCL, AA, Vol. VI, AA1335:1-AA1336:3.

discussion of *alter ego* went to the equities at bar. The district court noted that "***in addition*** to the 'responsible party' rule that applies to contempt, there should be no immunity for liability when, as her, Bloom is [First 100's] *alter ego*."[157] The district court identified that only Bloom controlled First 100, First 100 was in default with the Nevada Secretary of State, had no operations, no employees, no bank accounts, no active governance, and claimed there were no corporate records.[158] The district court found that it would be inequitable for Bloom to escape the consequences of his causing First 100 to ignore the Order. In other words, notwithstanding his liability as First 100's responsible party, under the circumstances the corporate form should not shield Bloom from the consequences of his disobedience and resistance of the Judgment, observing that if that were not the case "there would never be a consequence for an entity's non-compliance."[159]

In addition, while it is unnecessary to determine whether Bloom is First 100's *alter ego*, the record supports such a finding. It is undeniable that Bloom influences and governs First 100 and that there is a unity of interest between Bloom and First 100.[160] Further, the district court found that it would promote a manifest injustice

---

[157] *Id*. at AA1336:1-3.

[158] *Id*. at AA1335:18-24.

[159] *Id*. at AA1334:27-AA335:2.

[160] The FFCL sets forth a unity of interest, including the following relative factors: undercapitalization, the failure to observe corporate formalities, refusal to produce

not to hold Bloom responsible for his actions on behalf of First 100, as doing so would effectively immunize the contempt.[161] Accordingly, substantial evidence exists—i.e. evidence a reasonable person could accept—that Bloom is First 100's alter ego.[162]

C. Bloom was not denied due process.

First 100 asserts that Bloom was not afforded due process and was deprived his right to due process "under Section 1 of the Fourteenth Amendment to the Constitution of the United States" as he was "not able to take depositions or file dispositive motions as to himself personally." (AOB at p. 22). Bloom failed to raise the argument in the district court, thereby waiving it.[163]

---

records, the non-existence of bank accounts and employees, and Blooms' domination and control over Appellants. *DFR Apparel Co., Inc. v. Triple Seven Promotional Products, Inc.*, 2:11-CV-01406-APG, 2014 WL 4828874, at *2 (D. Nev. Sept. 30, 2014); *N. Arlington Med. Bldg., Inc. v. Sanchez Const. Co.*, 86 Nev. 515, 523, 471 P.2d 240, 245 (1970).

[161]FFCL, AA, Vol. VI, AA1335:24-AA1336:3.

[162] *N. Arlington Med. Bldg., Inc. v. Sanchez Const. Co.*, 86 Nev. 515, 523, 471 P.2d 240, 245 (1970); *Vredenburg v. Sedgwick CMS*, 124 Nev. 553, 557 n. 4, 188 P.3d 1084, 1087 n. 4 (2008) (defining "Substantial evidence" as "evidence that a reasonable person could accept as adequately supporting a conclusion.").

[163] *Nelson v. Eighth Judicial Dist. Court in & for County of Clark*, 137 Nev. Adv. Op. 14, 484 P.3d 270, 272 (2021) (finding due process argument waived when not raised in the district court); *Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981).

Furthermore, civil contempt proceedings generally "do not require extensive procedural protections or due process safeguards, beyond basic due process, since a civil contemnor may purge the contempt and be absolved of the civil contempt sanction."[164] Bloom, however, was afforded substantial due process. He was personally served with OSC, individually appeared through counsel, filed briefs, was afforded the opportunity to engage in discovery, and called witnesses at the evidentiary hearing, including confronting Farkas and Flatto and testifying himself. As such, Bloom was afforded more than basic due process.

Further, First 100's reliance on *Callie v. Bowling* is misapplied.[165] While *Callie* requires an independent action to make one individual personally liable for a judgment against another, that did not occur here. While the district court's order discussed alter ego in two paragraphs of its 35-page order, it never found that Bloom was liable for the Judgment and no one has looked to Bloom to pay the monetary award contained within the Judgment. The district court found that Bloom could not cause First 100 to disobey the Judgment- period. The Judgment remains only against First 100. Thus, *Callie* does not apply.

/ / /

---

[164] 17 C.J.S Contempt § 89 (2020) (footnotes omitted).

[165] 123 Nev. 181, 160 P.3d 878 (2007).

D. The Settlement Agreement was not enforceable.

The district court's determination that the Settlement Agreement was not unenforceable was not clearly erroneous and its decision not to enforce the Settlement Agreement was not an abuse of discretion.[166]

Tellingly, First 100's AOB jettison's the district court's factual findings—which are entitled to deference—in favor of Bloom's self-serving testimony. This court has no obligation to rely on Bloom's testimony disregarded by the district court following a credibility determination corroborated by documents and testimony presented at the Evidentiary Hearing.[167]

While settlement agreements are governed by contract principals, and therefore require offer, acceptance, meeting of the minds and consideration, the enforcement of settlement agreements are equitable in nature.[168] Not only must the district court be willing to order specific performance, but performance must have

---

[166] *Grisham*, 128 Nev. at 687, 289 P.3d at 236.

[167] *Jackson v. Groenendyke*, 132 Nev. 296, 300, 369 P.3d 362, 365 (2016)(holding that the appellate courts afford "deference to the point of view of the trial judge since he had the opportunity to weigh evidence and evaluate the credibility of witnesses—an opportunity foreclosed to this court."); *State v. Rincon*, 122 Nev. 1170, 1177, 147 P.3d 233, 238 (2006) (holding "the district court is in the best position to adjudge the credibility of the witnesses and the evidence"); *Riley v. State*, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994) (giving deference to district credibility determination).

[168] *Mack*, 125 Nev. at 95, 206 P.3d at 108; *Park W. Companies, Inc. v. Amazon Constr. Corp.*, 473 P.3d 459 (Nev. 2020) (unpublished disposition); 81A C.J.S. Specific Performance § 2 (2015).

been tendered and there must be an inadequate remedy at law.[169]

1. Farkas did not have authority to execute the Settlement Agreement.

To bind TGC/Farkas in an enforceable settlement agreement, Farkas must have had TGC/Farkas' actual or apparent authority.[170] "An agent acts with actual authority when, at the time of taking action that has legal consequences for the principal, the agent reasonably believes, in accordance with the principal's manifestations to the agent, that the principal wishes the agent so to act."[171] The evidence was uncontroverted that in the relevant January 2021 time period, Farkas did not have, nor did he believe he had, the authority to bind TGC/Farkas.[172] Under the TGC/Farkas Operating Agreement, Farkas needed Flatto's consent to bind TGC/Farkas.[173] Then, by September 2020, Farkas had executed the TGC/Farkas Operating Agreement Amendment that prevented Farkas from taking any action on

---

[169] *Mayfield v. Koroghli*, 124 Nev. 343, 351, 184 P.3d 362, 367 (2008).

[170] *Simmons Self-Storage v. Rib Roof, Inc.*, 130 Nev. 540, 549, 331 P.3d 850, 856 (2014).

[171] *Simmons Self-Storage*, at 549, 331 P.3d at 856 (citing Restatement (Third) of Agency § 2.01 (2006)).

[172] FFCL, AA, Vol. VI, AA1310:14-16

[173] *Id*. at AA1310:17-20; RA, Vol. III, RA0412 at §3.4(a), RA0413 at §4.1(c).

behalf of TGC/Farkas.[174] Accordingly, there was no actual authority.

In contrast, an agent has apparent authority where the "principal holds his agent out as possessing or permits him to exercise or to represent himself as possessing" and "there must also be evidence of the principal's knowledge and acquiescence."[175] "A party claiming apparent authority of an agent as a basis for contract formation must prove (1) that he subjectively believed that the agent had authority to act for the principal and (2) that his subjective belief in the agent's authority was objectively reasonable."[176] Reasonable reliance on the agent's authority "is a necessary element" of apparent authority.[177] In determining reasonableness, "the party who claims reliance must not have closed his eyes to warnings or inconsistent circumstances."[178] There can only be apparent authority, "where a person of ordinary prudence, conversant with business usages and the nature of the particular business, ***acting in good faith, and giving heed not only to opposing inferences but also to all restrictions which are brought to his notice***,

---

[174] *Id*. at AA1311:9-16; RA, Vol. III, RA0449 – 0455.

[175] *Simmons Self-Storage v. Rib Roof, Inc.*, 130 Nev. 540, 550, 331 P.3d 850, 857 (2014)(quoting *Ellis v. Nelson*, 68 Nev. 410, 418–19, 233 P.2d 1072, 1076 (1951)).

[176] *Great Am. Ins. Co. v. Gen. Builders, Inc.*, 113 Nev. 346, 352, 934 P.2d 257, 261 (1997).

[177] *Id.; Forrest Tr. v. Fid. Title Agency of Nevada, Inc.*, 281 P.3d 1173 (Nev. 2009).

[178] *Great Am. Ins. Co.*, 113 Nev. at 352, 934 P.2d at 261.

would reasonably rely."[179]

The district court found that even if Farkas held himself out as having authority—which he did not—First 100 could not have reasonably believed he had authority. The district court expressly found that First 100 understood the restriction on Farkas' authority whether or not they knew about the amended TGC/Farkas Operating Agreement.[180] There was an April 18, 2017 email[181] and a July 13, 2017 letter[182] (attaching the April 18, 2017 email and further stating "Farkas is not the manager" "Farkas does not have the authority to bind [TGC/Farkas]") all of which make this point clear.

Most significantly, there was the Arb. Award. At issue there was whether a document Bloom had Farkas sign was enforceable. The Arb. Award is clear that "a document executed by Farkas was irrelevant without the consent of Flatto as Farkas' signature alone did not bind [TGC/Farkas]."[183] The Judgment confirmed the Arb.

---

[179] *Ellis v. Nelson*, 68 Nev. 410, 418–19, 233 P.2d 1072, 1076 (1951) (noting that where inferences against the existence of apparent authority are as equally reasonable as those supporting it, a party may not rely on apparent authority).

[180] FFCL, AA, Vol. VI, AA1328:18-24.

[181] *Id.* at AA1311:4-6; RA, Vol. III RA0426 – 0431.

[182] FFCL, AA, Vol. VI, 1311:4-6; RA, Vol. III, RA0432 – 0448.

[183] FFCL, AA, Vol. VI, 1311:6-8; RA, Vol. II, RA0297.

Award on November 17, 2020. That decision therefore has preclusive effect.[184]

There is no good faith argument that Bloom had a basis to believe that Farkas could bind TGC/Farkas, particularly when at the Evidentiary hearing, Bloom testified that he disregarded the Arb. Award, as well as the evidence relied upon by the arbitrators, because he disputed it.[185] The district court rejected his unilateral determination, finding "Bloom's refusal to recognize inconvenient limitations on Farkas' authority was shown to be pervasive and reckless."[186] Furthermore, the district court found that "no reasonably intelligent person with knowledge of that Arb. Award would once again attempt to enforce an agreement without Flatto's consent."[187] These findings underscore why there was no apparent authority.

Accordingly, the district court did not abuse its discretion in finding that there was no actual or apparent authority.

. . .

. . .

. . .

---

[184] *See Kirsch v. Traver*, 134 Nev. 163, 166, 414 P.3d 818, 821 (2018).

[185] 3/3 Trans., AA, Vol. IV, AA0960:1-6, AA0960:10-20 (disregarding notices of restricted authority of Farkas), AA0962:2-11 (limiting the holding to the authority to execute the redemption agreement without limitation of a settlement agreement).

[186] FFCL, AA, Vol. VI, AA1316:19-20.

[187] *Id*. at AA1317:2-3.

2. First 100 and Bloom knew that the Settlement Agreement was not enforceable and yet acted to defraud TGC/Farkas and the district court.

Tautologically, a party to a legitimate settlement agreement does not have to conceal the settlement agreement from the other party. And what occurred in this case is repugnant. Bloom had to employ his personal counsel in another matter to carry out his plan to try to avoid the Judgment.[188] Nahabedian accepted the assignment and communicated with Bloom, never receiving approval from TGC/Farkas for his substitution as counsel for TGC/Farkas or other actions to effectuate dismissal of the district court action that would prevent the OSC from going forward.[189] The sole purpose of Nahabedian's retention was to release the Judgment pursuant to a Settlement Agreement that had not even been presented to TGC/Farkas or its counsel for review.[190] Nahabedian even denied reviewing the Settlement Agreement.[191] It was Bloom and MGA that drafted and approved the substitution documents for Nahabedian to execute and submit to GTG and the district court on behalf of TGC/Farkas. Hopelessly conflicted, Nahabedian was

---

[188] *Id*. at AA1313:14-16.

[189] *Id*. at AA1313:14-21, AA1318:17-AA1319:4, AA1320:12-19.

[190] *Id*.

[191] 3/10 Trans. AA, Vol. V, AA1203:1-14.

willing to do as Bloom directed, no matter TGC/Farkas' interests.

Simultaneously, Bloom leveraged his relationship with his brother-in-law to obtain signatures on the Bloom-crafted documents. Legitimate settlements are negotiated, not thrust upon a party in a stack of documents at a UPS store. Nor are they coerced through a promise of personal counsel and a personal release. While Bloom claims Farkas was a willing participant, Bloom did not email, hand deliver, or mail documents to Farkas (who lives in the same city as Bloom), but instead forced Farkas to go to a UPS store to sign and immediately return documents to Bloom—assuring that Farkas would not seek counsel or advice from TGC/Farkas or its counsel who were at the same time aggressively pursuing post-judgment rights and remedies against First 100 and Bloom.[192]

The district court expressly found that the Settlement Agreement was not negotiated, Farkas was unaware of what he signed, and that Bloom misrepresented the contents of the documents.[193] These are not actions taken by a party pursuing a legitimate settlement, they are actions taken to avoid alerting TGC/Farkas and its controlling member to a scheme. Neither the law, nor equity, supports the enforcement of an agreement that was deliberately and intentionally concealed from

[192] FFCL, AA, Vol. VI, AA1318:17-AA1319:5.

[193] *Id*. at AA1310:14-16, AA1312:1-2.

the party that it supposedly binds.

3. There was no meeting of the minds as to the terms of the agreement.

Coincidingly, even if Farkas had authority, there was no meeting of the minds. "A meeting of the minds exists when the parties have agreed upon the contract's essential terms."[194] Neither Bloom nor Farkas discussed a settlement agreement or potential terms. Instead, Bloom had the Settlement Agreement put before Farkas at the UPS store for signature. There was no evidence that Bloom even told Farkas that he was sending Farkas the Settlement Agreement, Bloom just sent it amongst a stack of other papers knowing that Farkas would dutifully cede to his brother-in-law's demands and sign documents in order to avoid threatened adverse action. The tactic does not bespeak negotiation and agreement but expected and demanded blind fealty. First 100's position that Farkas could have "marked up" the Settlement Agreement is belied by the Court's other findings, including that Farkas did not know what he was signing.

Furthermore, at the Evidentiary Hearing, Bloom attempted to contrive a meeting of the minds, stating that Bloom and Flatto had discussions in 2017, where Flatto stated he wanted a return of the $1 million investment made on behalf of TGC/Farkas, and the Settlement Agreement would provide that return of

[194] *Certified Fire Prot. Inc. v. Precision Constr.*, 128 Nev. 371, 378, 283 P.3d 250, 255 (2012).

investment.[195] The district court rejected the argument, finding that a discussion in 2017 cannot "be reasonably construed as [an] agreement to the terms of the Settlement Agreement, as there has been the passage of over three years' time," an intervening arbitration, Judgment, and the Settlement Agreement was only providing a contingent return on investment, something not discussed in 2017. [196]

The district court therefore did not abuse its discretion in refusing to enforce the Settlement Agreement.

4. The Settlement Agreement lacked consideration.

"Consideration is the exchange of a promise or performance, bargained for by the parties."[197] The adequacy of consideration is relevant to issues of capacity, fraud, mistake, misrepresentation, duress, or undue influence in addition to being relevant to whether there is an essential element of a contract, and an inadequacy of consideration justifies a denial of specific performance.[198]

The Settlement Agreement did not provide consideration, instead it provided that if First 100 sold a judgment in its favor—for which there was "no evidence of

---

[195] 3/3 Trans., AA, Vol. IV, AA0962: 16-25; RA, Vol. V, RA0937.

[196] FFCL, AA, Vol. VI, AA1320:19-:1321:10.

[197] *Jones v. SunTrust Mortg., Inc.,* 128 Nev. 188, 191, 274 P.3d 762, 764 (2012).

[198] *Oh v. Wilson*, 112 Nev. 38, 41–42, 910 P.2d 276, 278–79 (1996) *citing* Restatement (Second) of Contracts § 79 cmt. c (1979).

any actual sale, or even ability to sell"—they would return TGC/Farkas' $1 million investment.[199] The district court found the promise for contingent payment to be particularly illusory given the concession that despite efforts First 100's judgment had not been monetized in four years[200] and the fact that TGC/Farkas was already entitled to recover the proceeds as a member First 100. Additionally, Bloom actually had Farkas release the payment obligation to TGC/Farkas as part of the release executed at the UPS store along with the Settlement Agreement.[201]

The district court therefore did not abuse its discretion in refusing to enforce the Settlement Agreement based on a lack of consideration.

5. Specific performance is not appropriate when considering equity.

The district court found that the settlement agreement was orchestrated for the purpose of avoiding the contempt order, such that it gave "special care to determine if the equities support an order for specific performance."[202] While, the lack of consideration were considered inequitable, the district court also evaluated indicia of fraud and duress in declining to enforce the settlement agreement.[203]

---

[199] FFCL, AA, Vol. VI, AA1321:6-8.

[200] 3/3 Trans., AA, Vol. IV, AA0976:18-24, AA0977:9-15.

[201] FFCL, AA, Vol. VI, AA1320:1-8.

[202] *Id.* at AA1321:10-15.

[203] FFCL, AA, Vol. VI, AA1329:17-AA1332:18.

Bloom is Farkas' brother-in-law. Farkas testified that he trusted Bloom and signed the documents based on Bloom's false representation as to what they were.[204] The district court correctly found that based on that familial relationship and its dynamics, Farkas and Bloom had a confidential relationship and Bloom had an equitable duty of disclosure to Farkas.[205] The evidence supports the district court's conclusion that Bloom breached that duty, a constructive fraud, when he finagled Farkas' signature on the Settlement Agreement,[206] as well as the fact that Farkas' execution of the documents was not a typical arms' length transaction, such that equity and good conscience "bound [Bloom] to act in good faith and with due regard to the interests of Farkas who was reposing his confidence in Bloom."[207] It cannot legitimately be disputed that "Bloom had a duty to at least disclose to Farkas (as well as Flatto) his plan to settle this case under the Settlement Agreement and have the Order [the Judgment], underlying Arb. Award and pending OSC dismissed, with prejudice."[208] It is revealing that there was no evidence that Bloom made any effort

---

[204] *Id*. at AA1321:17-AA1322:2

[205] *Id*. at AA1322:2-9; *Perry v. Jordan*, 111 Nev. 943, 947, 900 P.2d 335, 337-338 (1995) (citations omitted).

[206] FFCL, AA, Vol. VI, AA1322:10-18.

[207] *Id*. at AA1330:9-10; *Perry*, 111 Nev. at 946-947, 900 P.3d 337 (citing *Long v. Towne*, 98 Nev. 11 at 13, 639 P.2d 528, 529-30 (1982)).

[208] FFCL, AA, Vol. VI, AA1330:11-14.

to even tell Farkas of the Settlement Agreement. Bloom's actions clearly reveal a scheme to conceal, "inclusive of hiring Farkas separate counsel to orchestrate dismissal in the shadows," not providing the Settlement Agreement to GTG, or to Farkas in a way that he could seek counsel.[209] That inequity does not support specific performance.

Furthermore, the district court found evidence of duress that would support the denial of specific performance. [210] While the AOB laments that Bloom did not threaten physical harm, Bloom threatened Farkas with civil action, which can amount to duress.[211] The subjective test looks to the relationship of the parties, as well as whether the threat induced assent.[212]

The district court found that Bloom threatened Farkas with civil action if Farkas did not sign a stack of documents, which included the Settlement Agreement. The district court likewise accepted Farkas' testimony that he felt "he had no choice but to sign any document that Bloom put in front of him." The district court concluded that Farkas signed the documents placed in front of him because he

---

[209] FFCL, AA, Vol. VI, AA1330:15-18.

[210] FFCL, AA, Vol. VI, AA1329:17-AA1332:18; *Kaur v. Singh*, 136 Nev. Adv. Op. 77, 477 P.3d 358, 362 (2020).

[211] FFCL, AA, Vol. VI, AA1312:10-14, AA1322:10-18; Restatement (Second) of Contracts § 175, cmt. B, c (1981); Restatement (Second) of Contracts § 176 (1)(c).

[212] *Id*.

believed he would suffer adverse action that he could not afford.

The facts are undeniable. Bloom could only procure a signature on the Settlement Agreement by knowingly and intentionally concealing the Settlement Agreement from TGC/Farkas and its counsel. Equity clearly does not support the enforcement of the Settlement Agreement given that there is no evidence that the Settlement Agreement was executed by a person with authority, was discussed with TGC/Farkas (or even Farkas), was negotiated \ by any person affiliated with TGC/Farkas, and was only procured by an abuse of Bloom's relationship with Farkas, the district court clearly did not abuse his discretion in finding that enforcement of the Settlement Agreement was inequitable.

IX. CONCLUSION

Based on the forgoing, this Court should dismiss the appeal or alternatively affirm the findings and conclusions of the district court outlined in the FFCL.

Dated this 1st day of November 2021.

GARMAN TURNER GORDON LLP

By */s/ Erika Pike Turner*
ERIKA PIKE TURNER / NVBN 6454
DYLAN T. CICILIANO / NVBN 12348
7251 Amigo Street, Suite 210
Las Vegas, Nevada 89119
Attorneys for Respondent
TGC/Farkas Funding, LLC

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Office 365 Word in 14-point Times New Roman font.

I further certify that this brief complies with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is either:

☒ proportionally spaced, has a typeface of 14 points or more and contains 11,698 words; or

☐ does not exceed 30 pages.

Finally, I hereby certify that I have read this brief, and to the best of my knowledge, information and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules

of Appellate Procedure.

Dated this 1st day of November 2021.

GARMAN TURNER GORDON LLP

By */s/ Erika Pike Turner*
ERIKA PIKE TURNER / NVBN 6454
DYLAN T. CICILIANO / NVBN 12348
7251 Amigo Street, Suite 210
Las Vegas, Nevada 89119
Attorneys for Respondent
TGC/Farkas Funding, LLC

CERTIFICATE OF SERVICE

I hereby certify that the foregoing ***Respondent's Answering Brief*** was filed electronically with the Nevada Supreme Court on November 1, 2021. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

MAIER GUTIERREZ & ASSOCIATES
Jason R. Maier
Nevada Bar No. 8557
Email: jrm@mglaw.com
Joseph A. Gutierrez
Nevada Bar No. 9046
Email: jag@mgalaw.com
Danielle J. Barraza
Nevada Bar No. 13822
8816 Spanish Ridge Avenue
Las Vegas, Nevada 89148
Attorneys for Appellants

BY: */s/ Max Erwin*
an employee of Garman Turner Gordon LLP