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.

Electronically Filed
Jan 03 2022 04:46 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

Supreme Court No. 83177

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

RESPONDENT'S ANSWERING BRIEF

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Docket 83177 Document 2022-00162

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 3rd day of January, 2022.

GARMAN TURNER GORDON LLP

By */s/ Erika Pike Turner*
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I. INTRODUCTION

On July 2, 2021, First 100, LLC, 1st One Hundred Holdings, LLC (together, "First 100") and Jay Bloom ("Bloom") filed their *Notice of Appeal* appealing the district court's *Order Awarding Attorneys' Fees and Costs* ("FCO") entered on June 11, 2021.[1] The district court's FCO found adequate factual and legal bases for a remedial award of costs and attorneys' fees, based on an earlier finding that First 100 and Bloom were in contempt, as described in the district court's *Findings of Fact, Conclusions of Law & Order re Evidentiary Hearing* entered April 7, 2021 (the "FFCL")—which is currently the subject of appeal—Case No. 82794. Bloom has not filed an opening appeal brief[2] or joined in First 100's brief.[3]

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[1] Appellants' Appendix ("AA"), Vol. VI, AA1345-1351.

[2] Following his inclusion in the Notice of Appeal of the FFCL, Bloom was removed as an "Appellant" in subsequent filings and was not disclosed under NRAP 26.1 as a real party in interest in either of Appellants' *Opening Briefs* filed in this case or in the companion appeal of the FFCL. References herein to "AOB1" shall refer to Appellants' opening brief of the FFCL in Case No. 82794. AOB1, Respondents' Appendix ("SA"), Vol. V, SA1061-1105. References herein to "AOB2," shall refer to Appellants' opening brief in this action.

[3] 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*, AA, Vol. I, AA0209-0214; *Notice of Appeal*, AA, Vol. VI, AA1345-1351 (identifying the law firm of Maier, Gutierrez & Associates ("MGA") as counsel for both First 100 and Bloom).

First 100 appeals from the FCO on two bases. First, it asserts that the district court erred in holding Bloom responsible, as a contemnor, for costs and attorneys' fees.[4] In support of that branch of its appeal, First 100 advances an identical argument to that made in support of its appeal of the FFCL.[5] Importantly, First 100 does not dispute that it was in contempt and that fees and costs can be awarded against it. Thus, although stylized as an appeal from the FCO that branch of the instant appeal is aimed squarely at the FFCL and its finding that Bloom was in contempt.[6] Second, First 100 contends that the costs and fees awarded by the district court were excessive and thus an abuse of discretion.[7] It is incorrect on both counts.

The FFCL was entered following 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"). The OSC was supported by evidence of Bloom's persistent disobedience of the performance obligations under the *Order Granting Motion to Confirm Arbitration Award,*

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[4] AOB2 at pp. 17-31.

[5] *Compare* AOB1 at pp. 19-30, SA, Vol. V, SA1083-1094 *with* AOB2 at pp. 17-31.

[6] Because First 100's appeal of the FFCL is pending separately, judicial resolution of Bloom's liability for the FCO's awarded fees and costs is not required here. Nonetheless, TGC/Farkas restates its positions with respect to that liability herein.

[7] AOB2 at pp. 31-37.

Denying Countermotion to Modify Award Per NRS 38.242 and Judgment entered in favor of TGC/Farkas on November 17, 2020 (the "Judgment"),[8] which included an order for the production of First 100's books and records to member TGC/Farkas.

As outlined in the FFCL, **Bloom** was the sole natural person legally obligated to maintain First 100's books and records and to produce the books and records to its member TGC/Farkas on First 100's behalf. **Bloom** received notice of the Judgment and prevented First 100's compliance therewith. Moreover, Bloom 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 causing First 100 to withhold the records and orchestrating a fraudulent settlement agreement for the purpose of relieving First 100 from its performance obligation under the Judgment.[9] It is Bloom's actions personally that led to the FFCL's finding that he was in contempt and ultimately jointly and severally liable for attorneys' fees and costs as a remedial damage flowing from the contempt.

Finally, the district court's discretion in determining the amount of fees and costs is supported by the evidence and consistent with the district court's broad

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

[9] *See* FFCL, AA, Vol. IV, AA0934-0935, AA0939.

discretion to enforce its own orders against parties and parties' agents with notice.

II. JURISDICTIONAL STATEMENT

This appeal should be dismissed for lack of jurisdiction. Nevada's appellate courts lack jurisdiction to resolve the subject appeal. While "attorney fees and costs awards are typically appealable under NRAP 3A(b)(8)," [10] here the fees and costs are not "post-judgment fees." They were awarded in the civil contempt context and are a remedial award part of the contempt order.[11] It is well-established that an appeal may not be taken from a post-judgment finding of civil contempt.[12]

Moreover, the appeal challenges whether Bloom—a non-party to the appeal—can be liable for attorney's fees and costs. First 100 lacks standing to challenge that portion of the FCO. However, even if construed as an appeal of a sanction, Bloom was not a party to the district court litigation. And "where the sanctioned party was not a party to the litigation below, he or she has no standing to appeal."[13] The proper

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[10] *Yonker Const., Inc. v. Hulme*, 126 Nev. 590, 592, 248 P.3d 313, 314 (2010) (citing *Lee v. GNLV Corp.*, 116 Nev. 424, 426, 996 P.2d 416, 417 (2000)).

[11] *Detwiler v. Eighth Judicial Dist. Court in & for County of Clark*, 137 Nev. Adv. Op. 18, 486 P.3d 710, 721 (2021).

[12] *Id.* at 715.

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

way to challenge the award is by writ petition by real-party-in-interest.[14]

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 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).

Whether the district court's enforcement authority extends beyond the parties to their agents is implicated by this appeal. First 100 argues that the exercise of the district court's authority to hold non-party Bloom in contempt for his actions thwarting First 100's compliance with the Judgment is a matter of first impression and based solely on common law.[15] Thus, on First 100's own argument, the FFCL and FCO address principal questions of statewide public importance. Further, the

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[14] *See e.g. Emerson v. Eighth Judicial Dist. Court of State, ex rel. County of Clark*, 127 Nev. 672, 677, 263 P.3d 224, 227 (2011).

[15] *See Detwiler*, 486 P.3d 710*; NuVeda, LLC v. Eighth Judicial Dist. Court in & for County of Clark*, 137 Nev. Adv. Op. 54, 495 P.3d 500, 500 (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*, 137 Nev. Adv. Op. 18, the district court's authority to issue contempt sanctions against the non-party contemnor was not even the subject of dispute, demonstrating the exercise is really axiomatic.

United States Constitution is unquestionably implicated by First 100's contention that the FFCL and FCO precluded Bloom from "exercising his right to due process under Section 1 of the Fourteenth Amendment to the Constitution of the United States."[16] Thus, the Nevada Supreme Court appropriately retains the subject appeal.

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) Did the district court's award of attorneys' fees and costs to TGC/Farkas constitute a manifest abuse of discretion?

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[16] AOB2 at pp. 17-21.

V. STATEMENT OF THE RELEVANT FACTS[17]

On April 7, 2021, after weighing the evidence presented in the Evidentiary Hearing, the district court entered the FFCL[18] 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)."[19]

First 100 largely ignores the lengthy FFCL findings underlying the FCO and instead 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.[20] Bloom identifies himself as "the principal, founding director, and chairman of the board of directors of [First

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[17] Given that the AOB2 restates and reargues the issues from Case No. 82794, and given the prohibition on incorporating briefs from other appeals, TGC/Farkas sets forth similar facts and arguments as in Case No. 82794.

[18] FFCL, AA, Vol. IV, AA0903.

[19] *Id*., AA0938.

[20] FFCL, AA, Vol. IV, AA0906, ¶ 2; SA, Vol. I, SA0001-0028; SA, Vol. I, SA0052-0082; *Hearing Transcript of Testimony*, March 3, 2021 (the "3/3 Trans."), AA, Vol. III/IV, AA0544:10-16.

100]."[21] There are no other officers or directors of First 100.[22] 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.[23]

B. First 100 was compelled to produce its books and records to its member TGC/Farkas.

After moving to Las Vegas in 2013, Matthew Farkas ("Farkas")—Bloom's brother-in-law [24]—started working with First 100 to help raise capital.[25]

TGC/Farkas was formed for the purpose of facilitating an investment of $1 million into First 100.[26] 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

[21]FFCL, AA, Vol. III/IV, AA0906, ¶ 2; SA, Vol. II, SA0298; 3/3 Trans., AA, Vol. III/IV, AA0696:3-7.

[22] FFCL, AA, Vol. IV, AA0906, ¶ 2; SA, Vol. I, SA0110-0126; SA, Vol. I, SA0127-0137.

[23] FFCL, AA, Vol. IV, AA0906, ¶ 2; SA, Vol. II, SA0001-0028, SA0001 at §§ 1.19, SA0012 at 6.1; SA, Vol. I, SA0052 at §1.19, SA0062 at §6.1; 3/3 Trans., AA, Vol. III/IV, AA0757:18-23.

[24] FFCL, AA, Vol. IV, AA0907:16; 3/3 Trans., AA, Vol. III/IV, AA0659:2-13.

[25] FFCL, AA, Vol. IV, AA0907:16-20; 3/3 Trans., AA, Vol. III/IV, AA0659:14-18. Farkas left his role at First 100 in summer 2016. *Id*.

[26] *Id*.

wit: [an entity managed by Adam Flatto, "Flatto"]."[27] 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.[28] 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]."[29] 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.[30] First 100 adamantly refused to produce any books and records.[31] On July 13, 2017, in conjunction with TGC/Farkas' further demand, TGC/Farkas again informed First 100 through their registered agent (MGA) that Farkas did not have the authority to bind TGC/Farkas

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[27] FFCL, AA, Vol IV, AA 0911:17-20; SA, Vol. I, SA0029-0051, SA0038 at §§ 3.4(a), SA0039 at 4.1(c).

[28] FFCL, AA, Vol IV, AA 0911:17-20; SA, Vol. I, SA0145 – 0150, SA0147.

[29] FFCL, AA, Vol. IV, AA0908:7-8; SA, Vol. I, SA0083-0088; 3/3 Trans., AA, Vol. III/IV, AA0595:5-12.

[30] FFCL, AA, Vol. IV, AA0907; SA, Vol. I, SA0089-0092.

[31] FFCL, AA, Vol. IV, AA0907; SA, Vol. I, SA0145-0150, SA0146.

without Flatto's consent.[32]

2. First 100 was ordered to produce books and records by a panel of arbitrators.

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.[33] In defense of the action, First 100 argued that Farkas had redeemed TGC/Farkas' membership interest.[34]

On September 15, 2020, the arbitration panel entered the Arb. Award,[35] 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."[36] 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 redemption agreement purportedly releasing First 100 from any responsibility to make company records available to TGC/Farkas.[37] The Arb. Award expressly

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[32] FFCL, AA, Vol. IV, AA0912:3-6, AA0908:3-8; SA, Vol. II, SA0145-0150, SA0147, SA, Vol. I, SA0093; SA, Vol. I, SA0110-0126; SA, Vol. I, SA0127-0137.

[33] FFCL, AA, Vol. IV, AA0907:4-8; SA, Vol. I, SA0145 – 0150.

[34] SA, Vol. I, SA0146.

[35] FFCL, AA, Vol. IV, AA0912:9-11; SA, Vol. I, SA0146.

[36] FFCL, AA, Vol. IV, AA0907:11-15; SA, Vol. I, SA0146.

[37] FFCL, AA, Vol. IV, AA0908:10-12; SA, Vol. I, SA0146.

provided that "Mr. Farkas did not have authority to bind [TGC/Farkas]."[38]

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."[39] Fees and costs incurred in the arbitration were awarded to TGC/Farkas.[40]

Bloom participated in the arbitration and had notice of the Arb. Award, including its finding that Farkas did not have authority to bind TGC/Farkas, but Bloom just chose to ignore that determination.[41]

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 prevent Farkas from taking *any* action on TGC/Farkas' behalf—which was done to avoid pressure Bloom was placing on Farkas, his brother-in-law.[42] Farkas made it clear to Bloom that he was not in a position to make any decisions on behalf of TGC/Farkas and that Bloom

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[38] FFCL, AA, Vol. IV, AA0908:12-14; SA, Vol. I, SA0147.

[39] FFCL, AA, Vol. IV, AA0908:15-21; SA, Vol. I, SA0149.

[40] SA, Vol. I, SA0149.

[41] FFCL, AA, Vol. IV, AA0918:3-5, 9-16, AA0930:15-17; 3/3 Trans., AA, Vol. III/IV, AA0737:1-6, AA0736:10-20, AA0739:2-11.

[42] FFCL, AA, Vol. IV, AA0912:13-16; 3/3 Trans., AA, Vol. III/IV, AA0603:16-0604:23, AA0655:16-18(Bloom "has done nothing but Bully [Farkas] for the last six months"), AA0667:7-13; SA, Vol. I, SA0139.

would need to speak with Flatto and TGC/Farkas' counsel.[43]

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.[44] In response to TGC/Farkas' *Motion to Confirm Arb. Award*, First 100 filed a *Countermotion to Modify the Arb. Award* (the "Countermotion"), requesting that TGC/Farkas pay unspecified expenses as a condition of First 100 furnishing the books and records.[45] The Countermotion was supported by Bloom's declaration in his capacity as First 100's "principal, founding director, and chairman."[46] First 100, however, did not arbitrate any request for TGC/Farkas to pay expenses.[47] On November 17, 2021, the district court entered the Judgment, which included denial of First 100's Countermotion.[48] The Judgment constituted a final, appealable judgment under NRAP 3A(b)(1); however, the Judgment was not appealed.[49]

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[43] 3/3 Trans., AA, Vol. III/IV, AA0672:11-21.

[44] FFCL, AA, Vol. IV, AA0909:2; AA, Vol. I, AA0001.

[45] FFCL, AA, Vol. IV, AA0909:2-5; AA, Vol. I, AA0041.

[46] FFCL, AA, Vol. IV, AA0909:5-8; AA, Vol. I, AA0046, ¶ 5.

[47] FFCL, AA, Vol. IV, AA0909:8-13; AA, Vol. I, AA0054-0055; SA, Vol. I, SA0001-0028; SA, Vol. I, SA0372 at § 13.9.

[48] FFCL, AA, Vol. IV, AA0909:10; AA, Vol. I, AA0054-0055.

[49] FFCL, AA, Vol. IV, AA0909:14-16; AA, Vol. 1, AA0123.

D. Bloom personally resisted performance ordered by the Judgment.

On December 18, 2020, upon undisputable evidence that First 100 failed to produce any books or records despite the Judgment, the Court issued the OSC directed to First 100 and Bloom.[50] Bloom was personally served with the OSC on December 22, 2020.[51]

After Bloom was served with the OSC, in furtherance of the contempt, he personally schemed to avoid the Judgment's performance obligation.[52] First, **Bloom** hired his own personal counsel, Raffi Nahabedian, Esq. ("Nahabedian"), to replace TGC/Farkas' counsel-of-record, GTG. The purpose was to cause TGC/Farkas to release the Judgment and dismiss the action with prejudice—thereby nullifying the OSC. Second, **Bloom** unilaterally drafted a settlement agreement between First 100 and TGC/Farkas and caused Farkas to sign the agreement on behalf of TGC/Farkas at a UPS store and without the benefit of review by Flatto or TGC/Farkas counsel.

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

[51] FFCL, AA, Vol. IV, AA0909:17-19; SA, Vol. I, SA0151; SA, Vol. I, SA0142.

[52] FFCL, AA, Vol. IV, AA0912-0923.

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

On January 4, 2021, **Bloom** asked his personal[53] 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 ask, Nahabedian emailed **Bloom** an attorney retainer agreement providing Nahabedian would represent TGC/Farkas in the district court case.[54] **Bloom** agreed to pay Nahabedian's retainer.[55] Nahabedian testified that he was comfortable taking direction from **Bloom** to represent Bloom's litigation adversary, TGC/Farkas—with the OSC already issued against Bloom—because Bloom was acting as Farkas' "conduit."[56]

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[53]FFCL, AA, Vol. IV, AA0914:14-16; *see also* 3/3 Trans., AA, Vol. III/IV, AA0549:13-0774:15; *Hearing Transcript of Testimony*, March 10, 2021 (the "3/10 Trans."), AA, Vol. IV, AA0809:11-19. 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. IV, AA0809:1-0810:1. *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 that he purported to represent TGC/Farkas adverse to Bloom at Bloom's request).

[54]FFCL, AA, Vol. IV, AA0914:16-19; SA, Vol. III, SA0528-0532. 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.

[55]FFCL, AA, Vol. IV, AA0915:1-4; 3/10 Trans., AA, Vol. IV, AA0799:5-16.

[56]FFCL, AA, Vol. IV, AA0915:9-10; 3/10 Trans., AA, Vol. IV, AA0815:17-20.

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 million."[57] **Bloom** further informed Farkas' parents—who live with Bloom—of the ways that he would hurt Farkas.[58]

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.[59] 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").[60] **Bloom** directed UPS to print one copy of the documents and then

[57] FFCL, AA, Vol. IV, AA0923; 3/10 Trans. AA, Vol. III/IV, AA0667:25-0668:22.

[58] 3/3 Trans., AA, Vol. III/IV, AA0668:18-22. This was in addition to messages threatening Farkas if he provided a declaration or otherwise participated in the district court litigation. *Id*. at AA0669-0670.

[59] FFCL, AA, Vol. IV, AA0915:5-17; 3/3 Trans., AA, Vol. III/IV, AA0684:25-0685:24.

[60] FFCL, AA, Vol. IV, AA0915:4-9; SA, Vol. III, SA0533-0549.

to email and mail the documents to **Bloom** once signed by Farkas.[61] By directing that only one copy be made and sent to Bloom, Bloom ensured the Bloom Documents would remain secret. The Bloom Documents were ***not*** emailed or otherwise provided to any known representative of TGC/Farkas- not to Farkas, Flatto or GTG.[62] Bloom controlled the one copy of documents provided for Farkas' signature and prevented any meaningful review by Farkas, Flatto or counsel (GTG)[63] on behalf of TGC/Farkas.

The Bloom Documents were signed by Farkas—with Farkas believing the documents related to Bloom's claim against Farkas personally—and were returned to Bloom within 45 minutes of being sent from Bloom to the UPS store.[64] 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…"[65]

The district court, after receiving testimony from Farkas, Bloom and

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[61] FFCL, AA, Vol. IV, AA0915:9-13; SA, Vol. III, SA0533.

[62] FFCL, AA, Vol. IV, AA0915:14-17; SA, Vol. II, SA0169.

[63] 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.

[64] FFCL, AA, Vol. IV, AA0915:17-20; SA, Vol. III, SA0533–0549.

[65] FFCL, AA, Vol. IV, AA0915:19-0916:2; SA, Vol. III, SA0533.

Nahabedian during the Evidentiary Hearing, found that "Farkas did not know he was signing a Settlement Agreement when he signed it,"[66] that there was "no evidence he intended to bind [TGC/Farkas] to anything when he executed the documents," and "he never otherwise represented to Bloom or anyone else that he had authority to enter into the Settlement Agreement on behalf of [TGC/Farkas]."[67] Further, Farkas "did not negotiate the terms of the Settlement Agreement with Bloom."[68]

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

After the execution of the Bloom Documents, Nahabedian followed Bloom's directions when purporting to act as counsel to TGC/Farkas—Bloom's adversary.[69] Outrageously, Nahabedian and Bloom asserted privilege over communications where Bloom was directing Nahabedian to take action on behalf of TGC/Farkas—Bloom's litigation adversary—as Nahabedian was concurrently representing

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[66] FFCL, AA, Vol. IV, AA0913:1-2; *See* 3/3 Trans., AA, Vol. III/IV, AA0636:15-0637:4, AA0638:14-20, AA0640:2-5, AA0651:11-21, AA0655:9-15, AA0653:16-24, AA0692:11-18.

[67] FFCL, AA, Vol. IV, AA0913:2-4; SA, Vol. I, SA0154 at § 14; 3/3 Trans., AA, Vol. III/IV, AA0639:22, AA0654:3-9, AA0655:4-7, AA0672:16-19.

[68] FFCL, AA, Vol. IV, AA0913:6-9; 3/3 Trans., AA, Vol. III/IV, AA0673:1-8, 13-15.

[69] FFCL, AA, Vol. IV, AA0916, AA0917:8-10; 3/10 Trans., AA, Vol. IV, AA0814; SA, Vol. III-V, SA0528–1018; SA, Vol. V, SA1019; SA, Vol. III, SA0527.

TGC/Farkas and Bloom personally.[70] In effect, Bloom had orchestrated a situation where he believed he could direct Nahabedian's representation of TGC/Farkas in relation to TGC/Farkas' pending district court action against Bloom and First 100 and conceal those communications by asserting there was an attorney client privilege. It was only through a Motion to Compel that the scheme involving Nahabedian and his purported retention by Bloom on behalf of TGC/Farkas was finally disclosed to TGC/Farkas (and the district court).[71]

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 dismiss the district court action.[72] 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."[73] It was at this point that Nahabedian questioned Farkas' authority to bind TGC/Farkas to Bloom and MGA.[74] Notwithstanding, Nahabedian pressed forward based on Bloom and MGA's assurances.[75] In other words,

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[70] SA, Vol. III, SA0398-0526.

[71] *Id*.; SA, Vol. V, SA1020-1026.

[72] FFCL, AA, Vol. IV, AA0916:5-8; SA, Vol. III, SA0554.

[73] FFCL, AA, Vol. IV, AA0916:5-8; SA, Vol. III, SA0566.

[74] FFCL, AA, Vol. IV, AA0916:11-13; SA, Vol. III, SA0569, SA0572, SA0576.

[75] SA, Vol. III/IV, SA0528–0649, SA0619, SA0627.

Nahabedian, who had not even spoken to an authorized representative of TGC/Farkas, was providing legal services based on Bloom's direction.

In furtherance of Bloom's scheme, on January 14, 2021, Nahabedian sent GTG a letter stating that he was hired to replace GTG and was going to dismiss the action pursuant to a settlement agreement.[76] Nahabedian's letter to TGC/Farkas' counsel (GTG) regarding substitution was drafted by First 100s counsel (MGA) and approved by Bloom.[77] That letter constituted the first time the existence of the Settlement Agreement was disclosed to TGC/Farkas, albeit the agreement itself was not attached to Nahabedian's letter.[78]

On January 15, 2021, before the Settlement Agreement was ever provided to TGC/Farkas, TGC/Farkas, through GTG, sent notice of repudiation.[79] Notwithstanding the repudiation, First 100 thereafter refused to produce the Settlement Agreement to TGC/Farkas or otherwise discuss it in favor of filing it with the district court in connection with a motion to enforce the Settlement Agreement

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[76] FFCL, AA, Vol. IV, AA0916; SA, Vol. I, SA0156-0161.

[77] FFCL, AA, Vol. IV, AA0916:18-0917:3; SA, Vol. III, SA0599, SA0604–0605, SA0606, SA0611, SA0617 – 0620.

[78] FFCL, AA, Vol. IV, AA0916:15-17; SA, Vol. I, SA0156-0161; *see also* [78] FFCL, AA, Vol. IV, AA0839:23-0840:14 (Nahabedian admitted that although the correspondence indicates the agreement was attached, Nahabedian did not actually attach it).

[79] FFCL, AA, Vol. IV, AA0911:4-5; SA, Vol. I, SA0162–0164; SA, Vol. IV, SA0660-0662.

(the "Motion to Enforce").[80]

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.[81] On January 20, 2021, First 100 and Bloom filed their Response to the OSC, arguing that the Settlement Agreement mooted the OSC and abrogated the Judgment.[82]

The district court heard arguments on the Motion to Enforce and OSC on January 28, 2021. Bloom was represented by MGA at that hearing.[83] 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.[84]

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.[85] MGA noticed and took Flatto and Farkas' depositions in their

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[80] FFCL, AA, Vol. IV, AA0911:5-7; AA, Vol. I, AA0156-0208.

[81] AA, Vol. I, AA0156-0208.

[82] FFCL, AA, Vol. I, AA0209-0214.

[83] AA, Vol. III., AA0519:9-13.

[84] *Id*. at AA0516-0520, the "Order Denying Motion to Enforce."

[85] *Id*. at AA0519.

capacity as counsel for both First 100 and Bloom.[86] During TGC/Farkas' deposition of Nahabedian, MGA asserted objections of privilege on behalf of Bloom.[87]

During the Evidentiary Hearing, First 100 and Bloom were jointly represented by MGA.[88] First 100 and Bloom introduced exhibits and called Flatto, Farkas, and Bloom as witnesses.[89]

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.[90] Contrary to the arguments in First 100's AOB2, the district court did not find Bloom in contempt just by virtue of Bloom being First 100's alter ego. The Court also found that "[First 100] and Bloom disobeyed and resisted the [Judgment] in contempt of Court (civil)."[91] Then, specific to Bloom's liability, the district court found that "Bloom, as the sole natural person legally

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[86] 3/3 Trans., AA, Vol. III/IV, AA0557:19-21, AA0619:15-22.

[87] SA, Vol III, SA0398-0526. The district court overruled Bloom's claim of privilege in time to obtain the Nahabedian communications and present them at the Evidentiary Hearing. SA, Vol. V, SA1021.

[88] 3/3 Trans., AA, Vol. III/IV, AA0540:20-24; 3/10 Trans. AA, Vol. IV, AA0768:11-14.

[89] 3/3 Trans., AA, Vol. III/IV, AA0538; 3/10 Trans. AA, Vol. IV, AA0766.

[90] AA, Vol. I, AA0209.

[91] FFCL, AA, Vol. IV, AA0776:10-11.

associated with [First 100], did not testify to any efforts to marshal [First 100's] books and records for production to [TGC/Farkas]."[92] Bloom was First 100's only manager as well as the "Registered Agent" listed with the Nevada Secretary of State.[93] Bloom undeniably had notice of the Judgment.[94] 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."[95] 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]."[96]

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

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[92] *Id*. at AA0932:19-23.

[93] FFCL, AA, Vol. IV, AA0925:8-11; SA, Vol. I, SA0110-0126; SA, Vol. I, SA0127-0137.

[94] FFCL, AA, Vol. IV, AA0926:4-5.

[95] *Id*. at AA0935:21-26.

[96] *Id*. at AA0926:4-13; *see also* SA, Vol. I, SA0006 at § 3.17; SA, Vol. II, SA0056 at § 3.17.

the operating agreements or NRS 86.241, and there is no active governance of any kind."[97]

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 Arb. Award confirmed by the [Judgment]."[98]

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' purported] counsel without any member of [TGC/Farkas'] participation."[99] The district court also found that "**Bloom**'s refusal to recognize inconvenient limitations on Farkas' authority was shown to be pervasive and reckless."[100] Likewise, the district court cited **Bloom**'s testimony that he intentionally disregarded the Arb.

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[97] FFCL, AA, Vol. IV, AA0936:18-21; 3/3 Trans., AA, Vol. III/IV, AA0756:2-4; 3/10 Trans. AA, Vol. IV, AA0776:10-19, AA0778:9-17, AA0779:16-25; SA, Vol. I, SA0003 at § 2.3 (requiring Bloom to maintain records); SA, Vol. I, SA0054 at § 2.3.

[98] FFCL, AA, Vol. IV, AA0939:11-13 (emphasis added).

[99] *Id*. at AA0917:11-13.

[100] *Id*. at AA0917:20-21(emphasis added).

Award's finding that Farkas could not bind TGC/Farkas,[101]concluding it was unreasonable for **Bloom** to ignore the notices of the restrictions on Farkas' authority to bind TGC/Farkas.[102] 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] . . . ."[103]

The district court ultimately concluded that the Settlement Agreement was not binding and did not cure First 100's contempt.[104] These conclusions were bolstered by the following facts: "the Settlement Agreement was drafted by Bloom and executed by Bloom, as manager of [First 100];"[105] the Settlement Agreement was not negotiated;[106] 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 that Bloom caused 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

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[101] *Id* at AA0918:3-5; 3/3 Trans., AA, Vol. III/IV, AA0737:1-6; *see also* AA0736:10-20; AA0739:2-11.

[102] FFCL, AA, Vol. IV, AA0920:6-9.

[103] *Id*. at AA0930:15-17.

[104] *Id*. at AA0930:13-14.

[105] *Id*. at AA0922:18; 3/3 Trans., AA, Vol. III/IV, AA0729:25-0730:2; SA, Vol. I, SA0153-0155.

[106] FFCL, AA, Vol. IV, AA0913:7.

anything when he executed the documents;"[107] and Farkas did not read any provision of the Settlement Agreement[108] or represent to Bloom or anyone else that he had authority to enter into the Settlement Agreement on behalf of TGC Farkas.[109] Based on these findings and conclusions, the district court appropriately confirmed the Settlement Agreement was unenforceable and provided no excuse to First 100 and Bloom's disobedience of the Judgment.[110]

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

Contrary to the arguments in First 100's AOB2, 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.[111]

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[107] SA, Vol. I, SA0165-0168; 3/3 Trans., AA, Vol. III/IV, AA0636:15-0637:4, AA0638:14-20, AA0640:2-5; AA0651:11-21, AA0655:9-15, AA0673:16-24, AA0692:13-18.

[108] 3/3 Trans., AA, Vol. III/IV, AA0639:22, AA0654:3-9, AA0655:4-7.

[109] *Id*. at AA0672:16-19.

[110] FFCL, AA, Vol. IV, AA0927:3-0932:16.

[111] SA, Vol. V, SA1028-1059; SA, Vol. V, SA1060.

I. As part of the FFCL, First 100 and Bloom were ordered to pay attorneys' fees and costs as a remedial award caused by First 100 and Bloom's contempt.

The FFCL ordered that First 100 and Bloom be jointly and severally responsible for the payment of reasonable costs and attorney's fees incurred by TGC/Farkas since entry of the Judgment for the purpose of ensuring compliance with the Judgment.[112] The FFCL provided that within 10 days, counsel for TGC/Farkas provide a declaration and supporting documentation "as necessary to meet the factors outlined in *Brunzell v. Golden Gate National Bank"* and delineating the fees and costs relating to the Motion to Compel, the Motion to Enforce and the OSC.[113] Counsel for TGC/Farkas submitted such declaration on April 9, 2021.[114] Pursuant to a briefing schedule provided in the FFCL, counsel for First 100 and Bloom submitted an opposition to the request for costs and fees on April 19, 2021,[115] to which counsel for TGC/Farkas replied on April 23, 2021.[116] After considering the parties' submissions, the district court entered a minute order wherein the Court

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[112] FFCL, AA, Vol IV, AA0939.

[113] *Id*.

[114] AA, Vol. IV, AA0943-0986.

[115] AA, Vol. V, AA0987-0994.

[116] AA, Vols. V/VI, AA0995-1336.

stated that it considered the *Brunzell* factors and with the exception of $10,120.00, found an "adequate factual and legal . . bases for a remedial award" of attorneys' fees in the sum of $146,719.00 and costs in the cum of $4,816.81.[117] The minute order was further reduced to the FCO on June 11, 2021.[118]

VI. STANDARD OF REVIEW

The district court awarded fees and costs to TGC/Farkas based on its contempt finding, as permitted by NRS 22.100(3).[119] The FFCL's contempt determination is reviewed for an abuse of discretion, save and except that any related constitutional issue is reviewed *de novo*. [120] Whether Bloom and First 100 were in contempt is already the subject of an appeal, Case No. 82794. That issue, however, is again raised by First 100 in this appeal. "[W]hether 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."[121] When reviewing for an abuse of discretion, the district court's "discretionary power is subject only to the test of reasonableness"

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[117] SA, Vol. V, SA1027.

[118] AA, Vol. VI, AA1340-1344.

[119] FFCL, AA, Vol IV, AA0939.

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

[121] *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).

and is improperly exercised only when "no reasonable person would take the view adopted by the trial court."[122]

A district court's award of costs and attorneys' fees is reviewed for "abuse of discretion."[123]

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

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

[123] *MB Am., Inc. v. Alaska Pac. Leasing*, 132 Nev. 78, 88, 367 P.3d 1286, 1292 (2016) (citing *Albios v. Horizon Communities, Inc.*, 122 Nev. 409, 417, 132 P.3d 1022, 1027–28 (2006) (fees award reviewed for abuse of discretion*; Logan v. Abe*, 131 Nev. 260, 267, 350 P.3d 1139, 1144 (2015), *Vill. Builders 96, L.P. v. U.S. Laboratories, Inc.*, 121 Nev. 261, 276, 112 P.3d 1082, 1092 (2005) for abuse of discretion).

district court found that "[First 100] and Bloom disobeyed and resisted the [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 assessed 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 further took actions to frustrate the Judgment. Bloom was found in contempt based on his actions.

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. The district court's fee award did not constitute an abuse of discretion. First 100 asserts that the attorneys' fees and costs awarded by the district court in the FCO were excessive, however it has failed to establish an abuse of discretion by the district court in making its award.

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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."[124] 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 Notices of Appeal as the real-party-in-interest.[125] First 100 has not been aggrieved by the finding that Bloom is liable for attorneys' fees and costs caused by the contempt.[126]

As the contemnor, Bloom is the obvious real-party-in-interest of the appeals' requests for review of the FFCL and FCO.[127] Bloom did not file any writ petition

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

[125] AOB2 at pp. 1. The notice of appeal in this action identifies that Appellants and Bloom appealed the FFCL. Doc. 2021-19760. The docketing statements does not include Bloom as an appellant. Doc. 2021-22138. The Opening Brief does not identify Bloom as an appellant.

[126] 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 Nevada 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).

[127] *Detwiler*, 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).

to request review,[128] thereby acknowledging the lack of merit of any such petition, and First 100 lacks standing to raise issues surrounding the district court's finding that Bloom was in contempt and liable for costs and attorneys' fees.

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

Notwithstanding First 100's lack of standing, the appeal's basis also lacks merit. NRS 22.100 provides that "if a person is found guilty of contempt" that the Court may award "attorney's fees" and "reasonable expenses" incurred "as a result of the contempt."[129] 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)" and that attorneys' fees and costs were being as a result thereof. [130] As the district court appropriate found Bloom in contempt, the award of fees under NRS 22.100 is appropriate.

First 100 cannot dispute the statutory provision for fees, so instead it reargues the same issue argued to the Court in its prior appeal- whether Bloom should be held in contempt in the first place.

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[128] *Mona*, 132 Nev. at 725.

[129] NRS 22.100(3).

[130] FFCL, AA, Vol. IV, AA0938:10-12.

The Court's finding of contempt is reviewed for an abuse of discretion.[131] 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. 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.[132]

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.[133] Accordingly, to sustain the district court's decision to award fees, this Court only needs to find that the district court did not abuse its discretion when finding that Bloom was in contempt.

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 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.[134] However, Nevada's

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[131] *Detwiler*, 486 P.3d at 715.

[132] FFCL, AA, Vol. IV, AA0908-0909; AA0060-0068.

[133] FFCL, AA, Vol. IV, AA0938:10-12.

[134] AOB1, SA, Vol. V, SA1079; AOB2 at p. 17.

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.[135] Company agents, therefore, 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."[136]

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

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[135] *See e.g. Collins v. Union Fed. Sav. & Loan Ass'n*, 99 Nev. 284, 303, 662 P.2d 610, 622 (1983)(recognizing that a shareholder cannot conspire with the entity its controls).

[136] 17 C.J.S. Contempt § 51; *see Detwiler*, 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).

affairs.[137] If it were otherwise, a company's truculent manager could simply ignore a court's command with impunity.

Luv n Care Ltd. v. Laurain is particularly instructive on this point.[138] 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.[139] 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.[140] In holding the manager in contempt, the Nevada Federal District Court recognized that "an order to a corporation or another

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[137] *Wilson v. United States*, 221 U.S. 361, 376 (1911); *Elec. Workers Pension Tr. Fund of Local Union #58, IBEW v. Gary's Elec. Serv. 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. 1998); *N.L.R.B. v. Sequoia Dist. Council of Carpenters, AFL-CIO*, 568 F.2d 628, 633 (9th Cir. 1977); *1ST Tech., LLC v. Rational Enterprises Ltda*, 2:06CV-01110-RLH-GWF, 2008 WL 4571057, at *8 (D. Nev. July 29, 2008).

[138] *Luv N' Care, Ltd. v. Laurain*, 218CV02224JADEJY, 2019 WL 4279028, at *4 (D. Nev. Sept. 10, 2019).

[139] *Id*. at *1.

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

entity binds those who are legally responsible for the conduct of its affairs."[141] 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.[142] This expressly extends to the production of documents by the company's manager, who by statute must safeguard the company's assets and records.[143] 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.[144]

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

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[141] *Id.*

[142] *Id*. at *5.

[143] *Id*.

[144] *Id*.

First 100.[145] In other words, Bloom alone could cause First 100 to obey or disobey the Judgment.[146] As such Bloom had to take reasonable steps to comply with the Judgment.[147]

The district court found that First 100 and Bloom did nothing to produce documents in response to the Judgment.[148] Instead, Bloom orchestrated a scheme to discharge the Judgment through the bogus Settlement Agreement.[149] 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."[150] 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.[151] First 100 did not appeal the Judgment, such that it became a

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[145] SA, Vol. I, SA0006 at Sects. 3.17, SA0012 at 6.1(A); SA, Vol. I, SA0350-0380, SA0056 at Sects. 3.17, SA0062 at 6.1(A).

[146] FFCL, AA, Vol. IV, AA0926:4-14.

[147] *Id*. at AA0935:21-25; SA, Vol. I, SA0001-0028; SA, Vol. I, SA0052-0082.

[148] FFCL, AA, Vol. IV, AA0925:20-22.

[149] *Id*. at AA0937:15-18.

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

[151] FFCL, AA, Vol. IV, AA0909:2-20.

final order subject to issue preclusion.[152] 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.[153]

3. NRS 86.371 does not shield Bloom from contempt.

First 100 also argues that Bloom is absolutely immune from contempt 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,[154] such that NRS 86.371 does not preclude the contempt finding against Bloom or his liability for the contempt sanctions.

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[152] *Id*.

[153] *Id.*

[154] 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. eTreppid Techs., 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).

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 Briefs are dedicated to two paragraphs of the FFCL that mention *alter ego*.[155] 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 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*."[156] 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.[157] 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

[155] FFCL, AA, Vol. IV, AA0936:1-0937:3.

[156] *Id*. at AA0937:1-3.

[157] *Id*. at AA0936:18-24.

Judgment, observing that if that were not the case "there would never be a consequence for an entity's non-compliance."[158]

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.[159] Further, the district court found that it would promote a manifest injustice not to hold Bloom responsible for his actions on behalf of First 100, as doing so would effectively immunize the contempt.[160] Accordingly, substantial evidence exists—i.e. evidence a reasonable person could accept—that Bloom is First 100's alter ego.[161]

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[158] *Id*. at AA0935:27-0936:2.

[159] The FFCL establishes a unity of interest, including the following relative factors: undercapitalization, the failure to observe corporate formalities, refusal to produce 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).

[160]FFCL, AA, Vol. IV, AA0936:24-0937:3.

[161] *N. Arlington Med. Bldg., Inc.*, 86 Nev. at 523, 471 P.2d at 245; *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.").

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."[162] Bloom failed to raise the argument in the district court, thereby waiving it.[163]

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

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[162] AOB2 at p. 23.

[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).

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

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

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.

D. The district court did not abuse its discretion in awarding costs and attorneys' fees.

"The award of attorneys' fees resides within the discretion of the court [and] in the absence of a manifest abuse of discretion, the court's decision on the issue will not be overturned."[166] When considering a request for attorneys' fees, a district court considers: (1) the qualities of the advocate; (2) the character of the work; (3) the work actually performed; and (4) the result.[167] "While it is preferable for a district court to expressly analyze each [*Brunzell*] factor relating to an award of attorney fees, express findings on each factor are not necessary for a district court

[166] *Clark County v. Blanchard Const. Co.*, 98 Nev. 488, 492, 653 P.2d 1217, 1220 (1982).

[167] *Brunzell v. Golden Gate Nat. Bank*, 85 Nev. 345, 349, 455 P.2d 31 (1969).

to properly exercise its discretion."[168]

Here, the district court's FFCL ordered submissions from the parties for the explicit purpose of allowing it to consider the *Brunzell* factors in making any fee award.[169] Having "considered each of those factors outlined in *Brunzell v. Golden Gate National Bank*," and in light of the parties' submissions, the district court entered an award of attorneys' fees in the sum of $146,719.00 and costs in the sum of $4,816.81.[170] Notably, the amount award was less than the amount sought by TGC/Farkas and the Court's minute order demonstrates that the Court considered First 100's arguments, accepted some and rejected the rest—including those raised in this appeal.

First 100 appeals from the FCO to the extent that the fees and costs awarded are purportedly excessive.[171] In support of its argument, First 100 spends pages attempting to relitigate the same issues considered by the district court, however it does not even attempt to show, nor does it provide any authority, for the position that the district court's award was somehow outside of the court's discretion, let

[168] *Logan v. Abe*, 131 Nev. 260, 266, 350 P.3d 1139, 1143 (2015).

[169] FFCL, AA, Vol. IV, AA0939.

[170] FCO, AA, Vol. VI, AA1340-1344.

[171] AOB2 at pp. 31-37.

alone that it constituted a manifest abuse of discretion.[172] Instead, it relies on its own conclusory say-so regarding hourly rates and attempts to second guess counsel's work in responding to its own improper conduct (conduct which the district court found constituted contempt of the court in the FFCL).[173]

With respect to billing rates, First 100 acknowledges that counsel for TGC/Farkas – Erika Pike Turner, Esq. and Dylan Ciciliano, Esq. – are "qualified legal advocates in terms of education background and experience" but suggests (without having provided any relevant evidence to the district court) that their billing rates are unreasonably high.[174] With respect to Mr. Ciciliano in particular, First 100 requested that the district court award fees incurred in 2021 at a rate no higher than Mr. Ciciliano's billing rate in 2020.[175] Counsel for TGC/Farkas introduced sworn declaration testimony, however, that Mr. Ciciliano's 2021 hourly rates are commensurate with (or even lower than) attorneys in the same market with similar experience and skill.[176] Indeed, counsel for TGC/Farkas also submitted evidence that Mr. Ciciliano's hourly rate is lower than First 100's counsel who has less

[172] AOB2 at pp. 31-37.

[173] AOB2 at pp. 31-37.

[174] AOB2 at pp. 31-32.

[175] *See* AOB2 at p. 32. (First 100 requested that work completed by Mr. Ciciliano be billed at $345 per hour, not $385 per hour.)

[176] AA, Vol. V, AA1007-1008.

experience.[177]

In a similar vein, First 100 requested below, without providing any evidence to support such request, that paralegal rates for work performed on behalf of respondent's counsel be reduced by the district court from an hourly rate of $215 to an hourly rate of $115.[178] TGC/Farkas, however, provided declaration testimony from counsel establishing that Ms. Michele Pori, the timekeeper in question, has approximately ten years of experience and is the former vice president of a public company.[179] That declaration explained that Ms. Pori's rates are reasonable in view of the overall time and expense saved by utilizing such an experienced and skilled paralegal.[180]

As concerns the character of the work done and the work actually performed in connection with the Motion to Compel, Motion to Enforce and OSC, First 100 accuses respondent's counsel of "overworking" the case.[181] In support of this theory, First 100 identifies a laundry list of purported examples in which it seeks to substitute its own professional judgment for that of respondent's counsel.[182] For

[177] AA, Vol. V, AA1008:18-21.

[178] AOB2 at p. 32.

[179] AA, Vol. V, AA1008-1009.

[180] AA, Vol. V, AA1008-1009.

[181] AOB2 at pp. 33-37.

[182] AOB2 at pp. 33-37.

example, it arbitrarily argued that the fees incurred in connection with opposing First 100's Motion to Enforce be reduced from a total of $14,514.50 to "at least $3,500," in order to "account for a more reasonable amount of time" for what it characterizes as a straightforward motion.[183] It ignores that First 100 sought to enforce an agreement that until the Motion to Enforce was filed, TGC/Farkas had never seen. It conceals that the Motion to Enforce was intended to be dispositive and would have released the Judgment and redeemed TGC/Farkas' interest in First 100 (which was acquired in exchange for $1,000,000). The Motion to Enforce was anything but straightforward, and the nuances of the case were well known to the district court, who is in the best position to exercise its discretion when determining reasonable fees.

Contrary to First 100's assertions, the nature of the work at issue ended up not being standard or straightforward.[184] As explained by respondent in its briefing in support of its request for costs and fees, the work involved was complex and was such due to *Bloom and First 100's contemptuous conduct*.[185] At each and every turn, Bloom and First 100 worked to conceal and defraud both the district court and

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[183] AOB2 at p. 34.

[184] *See* AOB2 at p. 33. (Characterizing the nature of the work done as "three standard motions filed in a straightforward business matter.")

[185] AA, Vol. V, AA1000-1001.

TGC/Farkas. The innumerable examples are set forth above, but include fabricating a settlement agreement, concealing the settlement agreement, suppressing communications between Bloom and TGC/Farkas' purported counsel, relitigating decided issues, and generally obstructing ordered discovery.

The district court was well within its discretion in ignoring First 100's spurious objections to respondent's fee request. Because First 100 has failed to establish a manifest abuse of discretion by the district court in awarding costs and attorneys' fees to TGC/Farkas, the FCO should be affirmed.

IX. CONCLUSION

Based on the forgoing, this Court should affirm the district court's award of costs and attorneys' fees as outlined in the FCO.

Dated this 3rd day of January 2022.

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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 10,252 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 3rd day of January 2022.

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing ***Respondent's Answering Brief*** was filed electronically with the Nevada Supreme Court on January 3, 2022. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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