IN THE SUPREME COURT OF THE STATE OF NEVADA

SPANISH HEIGHTS ACQUISITION COMPANY, LLC; A NEVADA LIMITED LIABILITY COMPANY; AND SJC VENTURES HOLDING COMPANY, LLC, d/b/a SJC VENTURES, LLC, A DELAWARE LIMITED LIABILITY COMPANY

Petitioners,

v.

CBC PARTNERS I, LLC; A FOREIGN LIMITED LIABILITY COMPANY; AND 5148 SPANISH HEIGHTS, LLC; A NEVADA LIMITED LIABILITY COMPANY,

Respondents.

Electronically Filed
Apr 25 2022 06:12 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

Supreme Court No. 83407
District Court Case No. A-20-813439-B

RESPONDENTS' APPENDIX OF DOCUMENTS

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RESPONDENTS' APPENDIX OF DOCUMENTS

CERTIFICATE OF SERVICE

Pursuant to NRAP 25(d), I certify that on this 25th day of April 2022, I served a true and correct copy of the foregoing **Respondents' Appendix of Documents** as follows:

[ ] by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada;

[X] via electronic means by operation of the Court's electronic filing system, upon each party in this case who is registered as an electronic case filing user with the Clerk;

[ ] via hand-delivery to the addressee listed below;

[ ] via facsimile;

[ ] by transmitting via email to the email address set forth below.

/s/Karen L. Foley
An Employee of
Mushkin & Coppedge

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CLERK OF THE COURT

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Attorneys for Larry L. Bertsch, CPA & Associates, LLP, Special Master

DISTRICT COURT

CLARK COUNTY, NEVADA

VION OPERATIONS, LLC, a Delaware limited liability company; and STRATEGIC FUNDING SOURCE, INC., a New York corporation,

Plaintiffs,

v.

JAY L. BLOOM, an individual; CAROLYN S. FARKAS, an individual; EAGLE GROUP HOLDINGS, LLC, a Nevada limited liability company; A.D.D. PRODUCTIONS, LLC, a Nevada limited liability company; ORDER 66 ENTERTAINMENT, LLC, a Nevada limited liability company; DOES I through X; and ROE CORPORATIONS I through X,

Defendants.

JAY L. BLOOM, an individual; CAROLYN S. FARKAS, an individual; EAGLE GROUP HOLDINGS, LLC, a Nevada limited liability company; ORDER 66 ENTERTAINMENT, LLC, a Nevada limited liability company,

Counter-claimants,

v.

VION OPERATIONS, LLC, a Delaware limited liability company; and STRATEGIC FUNDING SOURCE, INC., a New York corporation,

Counter-defendants.

Case No. A-11-646131-C
Dept. XXVI

ORDER FROM APRIL 4, 2013 HEARING

Date of Hearing: April 4, 2013
Time of Hearing: 10:00am

JAY L. BLOOM, an individual; CAROLYN S. FARKAS, an individual; EAGLE GROUP HOLDINGS, LLC, a Nevada limited liability company; ORDER 66 ENTERTAINMENT, LLC, a Nevada limited liability company,

Third-Party Plaintiffs,

v.

LOUIS VENTRE, an individual; ANDREW REISER, an individual; STRATEGIC FUNDING SOURCE, INC., a New York corporation; STRATEGIC CAPITAL MANAGEMENT, LLC, a New York limited liability company; STACEY SCHACTER, an individual; BARBARA ANDERSON, an individual; DOES I through X; and ROE CORPORATIONS I through X,

Third-Party Defendants.

KEITH BURHDOFF, an individual; CLIFF STOUT, an individual; MARK HELLNER, an individual; JAMES KLODT, an individual; JESSICA GUYER, an individual; JOE RANDAZZO, an individual; KEITH COOPER, an individual; KRIS THONDAPU, an individual; L.S. MARLOW TRUST, JOHN C. MORGANDO and APRIL MORGANDO as Trustees; MORGANDO FAMILY TRUST, JOHN PETER MORGANDO as Trustee; RON LEWIS, an individual; TRAVIS CUBLEY, an individual; JOHN CHRIS MORGANDO, an individual; GLENDA TUTTLE, an individual; ALBERT RAMIREZ, an individual; HOWARD PUTERMAN, an individual; WARREN BEST, an individual; SUSAN BEST, an individual; LARRY DEMATTEO, an individual; PATRICK O'LAUGLIN, an individual; SANDY O'LAUGLIN, an individual; KEN KEFALAS, an individual; TERRY BOMBARD, an individual; TERRY KROLL, an individual; BULLER FAMILY HOLDINGS, LLC, a Nevada limited liability company; GLEN TUTTLE, an individual; DAVID ZACHARIAS, an individual; ZBROS INVESTMENTS, a California

corporation; RON TULAK, an individual; JOSEPH GEORGIANO, an individual; BARRY LEWISOHN, an individual; VINNY MANNINO, an individual; SANDRO CARNIVALE, an individual; MICHAEL REGAN, an individual; TIM ALLEN, an individual; LINDENMUTH & ASSOCIATES, INC., a Texas corporation; CARLOS CARDENAS, an individual; and BENSON RISEMAN, an individual,

Intervening Plaintiffs,

v.

VION OPERATIONS LLC, a Nevada limited liability company; MHR FUND MANAGEMENT, LLC, a Delaware limited liability company; BARBARA ANDERSON, an individual; STACEY SCHACTER, an individual; DOES I through X; and ROE CORPORATIONS I through X, inclusive,

Intervening Defendants.

This matter came before the Court on Special Master Larry L. Bertsch's ("Special Master") (i) "Motion for Order: (1) Accepting Special Master's Final Report; and (2) Discharging Special Master" ("Special Master's Motion") filed on February 12, 2013; (ii) Special Master's "Fourth Joint Application for Allowance of Fees and Costs of Special Master and Special Master's Counsel for the Period February 13, 2012 through December 31, 2012 and Motion to Re-Allocate Payment of Special Master's Compensation and to Reduce Outstanding Unpaid Compensation to Judgment" ("Fourth Application"); Jay Bloom, Carolyn Farkas, Eagle Group Holdings, LLC, A.D.D. Productions, LLC and Order 66 Entertainment, LLC (collectively "Defendants") (iii) "Motion to Disqualify Larry Bertsch as Special Master, Strike the Special Master's Reports from the Record and for Monetary Sanctions" filed on February 12, 2013 and (iv) Intervening Plaintiffs joinder thereto filed on March 12, 2013 ("Motion to Disqualify"); and (v) "Defendants, Counterclaimants, and Third-Party Plaintiffs' Opposition to Special Master's Motion to Re-Allocate Payment of Special Master's

Compensation and Opposition to Fourth Joint Application for Fees and Costs of Special Master and Counter-Motion for Return of Fees."

Special Master and Defendants gave appropriate notice of their respective motions.

Pursuant to *Stipulation and Order to Consolidate Hearings* entered on March 4, 2013, the parties established a modified briefing schedule and agreed to have Special Master's Motion, Fourth Application, and Motion to Disqualify heard along with other related motions on April 3, 2013.

On March 12, 2013, Intervening Plaintiffs filed "Intervening Plaintiffs' Joinder to Motion to Disqualify Larry Bertsch as Special Master, Strike the Special Master's Reports from the Record and for Monetary Sanctions."

On March 18, 2013, Jay Bloom, Carolyn Farkas, Eagle Group Holdings, LLC, A.D.D. Productions, LLC and Order 66 Entertainment, LLC (collectively "Defendants") filed "Defendants, Counterclaimants, and Third-Party Plaintiffs' Opposition to Special Master's Motion to Re-Allocate Payment of Special Master's Compensation and Opposition to Fourth Joint Application for Fees and Costs of Special Master and Counter-Motion for Return of Fees;" Special Master filed "Special Master's Opposition to Motion to Disqualify Larry Bertsch as Special Master, Strike the Special Master's Reports from the Record and for Monetary Sanctions" and Vion Operations, LLC filed "Plaintiff's Opposition to Defendants' Motion to Disqualify Larry Bertsch As Special Master, Strike the Special Master's Reports From The Record and For Monetary Sanctions."

On March 21, 2013, Vion Operations, LLC filed "Plaintiff's Opposition to Defendants' Counter-Motion for Return of Fees and Request for Sanctions."

On March 27, 2013, Special Master filed "Special Master's Omnibus Reply in Support of Fourth Joint Application for Allowance of Fees and Costs of Special Master and Special Master's Counsel for the Period February 13, 2012 through December 31, 2012 and Motion to Re-Allocate Payment of Special Master's Compensation and to Reduce Outstanding Unpaid Compensation to Judgment and Motion for Order:

(1) Accepting Special Master's Final Report; and (2) Discharging Special Master" Defendants filed "Defendants/Third Party Plaintiffs/Counter-Claimant's Reply to Special Master's Opposition to Motion to Disqualify Larry Bertsch as Special Master, Strike the Special Master's Reports from the Record and for Monetary Sanctions."

On April 4, 2013, the Court conducted a hearing on the Special Master's Motion, the Fourth Application and Motion to Disqualify . Anthony A. Zmaila, Esq. and Peter J. Goatz, Esq. appeared for Special Master, who was also present; Todd M. Touton, Esq., Robert Hernquist, Esq., and Christopher Mathews, Esq. appeared for Vion Operations, LLC; and Joseph A. Gutierrez, Esq. and Jeffrey R. Albregts, Esq. appeared on behalf of Defendants and Intervening Plaintiffs. Jay L. Bloom was also present.

The Court read and considered the papers and pleadings on file in connection with Special Master's Motion, the Fourth Application, the Motion to Disqualify, and counter-motions related thereto, and considered the arguments of counsel.

The Court makes the following findings and conclusions:

A disclosure of Special Master's prior attorney-client relationship with Lionel Sawyer & Collins was not made to the parties until August 29, 2012. Defendants failed to take any action to prevent Special Master from issuing a final report prior to October 18, 2012 when Special Master filed "Final Report of Special Master." On October 18, 2012, Defendants sought disqualification of Lionel Sawyer & Collins. Because Defendants failed to timely object prior to the issuing the Final Report of Special Master, Defendants objections to the Court accepting Special Master's final report and their objections to discharging Special Master are overruled. *Venetian Casino Resort, LLC v. Dist. Ct.*, 118 Nev. 124, 41 P.3d 327, 330 (2002).

The Court finds applicable to Special Master NCJC 2.11(C), which requires Special Master to disclose certain relationships and business dealings. Based on NCJC 2.11(C), Special Master should have made a disclosure of his prior attorney-client relationship with Lionel Sawyer & Collins. The Court does not find that non-disclosure of such relationship constitutes grounds for disqualification. NRCP 53(a)(2); *See Ivey v. Dist.*

Ct., 129 Nev. Adv. Op. 16 (2013); *Venetian Casino Resort, LLC v. Dist. Ct.*, 118 Nev. 124, 41 P.3d 327 (2002). Special Master is a fair, impartial, unbiased and highly skilled forensic accountant, and the matters in this case to which the Court made its reference are in his area of expertise. The reference to Special Master in this case was proper.

The Court does not reach the issue of whether the relationship between Special Master and Lionel Sawyer & Collins created an impermissible conflict in this case requiring Special Master's recusal because the alleged conflict no longer existed at the point that Defendants raised the issue before the Court. As such, Defendants' Motion to Disqualify, and Intervening Plaintiffs' Joinder thereto, are denied.

With respect to approval of Final Report of Special Master, the Court finds that the failure of Special Master to disclose the prior attorney-client does not render the Final Report of Special Master invalid or erroneous. The Court finds that no party raised a formal objection to Special Master's report, but that the parties various other filings can be considered as an objection to the report. The Court, therefore, accepts the report as written. The Court does not adopt the Final Report of Special Master as findings of fact or conclusions of law. The Court will make determinations of fact and law at the trial on the merits in this case. As such, the Court, in accepting the Final Report of Special Master, did not conduct an analysis as to whether the findings were clearly erroneous nor a de novo review of the conclusions. Any party may use the Final Report of Special Master as such party sees fit. The Court's acceptance of the Final Report of Special Master does not limit or impair in any way any party's ability to challenge the report at trial.

The Court finds that Special Master has complied in all respects with the *Order* entered on October 19, 2011. Special Master's duties in this matter are complete; subject to those final items contained in this Order. Therefore, it is proper for Special Master to be discharged upon the completion of those final items contained in this Order, and the resolution and payment of Special Master's compensation.

Further, because of Special Master's failure to disclose, coupled with Defendants attempt to disqualify Lionel Sawyer & Collins, the Court finds that Defendants should not be responsible for Special Master's compensation from October 18, 2012 forward. With respect the previously entered orders regarding Special Master's compensation, *Order Granting Joint Application (First) for Allowance of Fees and Costs of Special Master and Special Master's Counsel for the Period September 28, 2011 through October 31, 2011* entered on January 6, 2012; *Order Granting Joint Application (Second) for Allowance of Fees and Costs of Special Master and Special Master's Counsel for the Period November 1, 2011 through November 30, 2011* entered on January 13, 2012; and *Order Granting Joint Application (Third) For Allowance of Fees and Costs of Special Master and Special Master's Counsel for the Period December 1, 2011 Through February 12, 2012* entered on April 25, 2012, those orders remain in full force and effect.

Finally, based on the rulings contained in this Order, the parties shall supplement the record with respect to their positions regarding the following matters:

(a) Fourth Joint Application for Allowance of Fees and Costs of Special Master and Special Master's Counsel for the Period February 13, 2012 through December 31, 2012 and Motion to Re-Allocate Payment of Special Master's Compensation and to Reduce Outstanding Unpaid Compensation to Judgment;

(b) Defendants' Countermotion for Return of Fees and Request for Sanctions; and

(c) Whether any additional relief should be granted with respect to the Final Report of Special Master.

Good cause appearing,

IT IS ORDERED that Special Master's Motion for Order: (1) Accepting Special Master's Final Report; and (2) Discharging Special Master is granted in part. The Court accepts Special Master's final report, but does not adopt such report as findings of fact or conclusions of law. The Court's acceptance of the Final Report of Special

Master does not limit or impair in any way any party's ability to challenge the report at trial.

IT IS FURTHER ORDERED that the Special Master is otherwise discharged from his duties in this case subject to those final matters outlined in this Order, and the resolution and payment of Special Master's compensation. Nothing in this Order shall be construed to limit or impair Special Master's ability to be awarded compensation or to enforce any order.

IT IS FURTHER ORDERED that Defendants' Motion to Disqualify Larry Bertsch as Special Master, Strike the Special Master's Reports from the Record and for Monetary Sanctions is denied.

IT IS FURTHER ORDERED that the parties shall file and serve supplements with respect to: (a) Fourth Joint Application for Allowance of Fees and Costs of Special Master and Special Master's Counsel for the Period February 13, 2012 through December 31, 2012 and Motion to Re-Allocate Payment of Special Master's Compensation and to Reduce Outstanding Unpaid Compensation to Judgment; (b) Defendants' Countermotion for Return of Fees and Request for Sanctions; and (c) whether any additional relief should be granted with respect to the Final Report of Special Master on or before May 2, 2013. Any oppositions, responses, or statements to the supplemental filings shall be filed and served no later than May 16, 2013. Replies shall be filed and served no later than May 24, 2013. A hearing on these matters shall occur on May 31, 2013 at 10:00am.

Dated this 9th day of May, 2013.

DISTRICT COURT JUDGE

10139-01/614807

Prepared and submitted by:

ANTHONY A. ZMAILA LIMITED PLLC

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Attorneys for Larry L. Bertsch, Special Master

133 Nev., Advance Opinion 33

IN THE SUPREME COURT OF THE STATE OF NEVADA

LARRY L. BERTSCH; AND LARRY L. BERTSCH CPA & ASSOCIATES,
Petitioners,
vs.
THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK; AND THE HONORABLE KENNETH C. CORY, DISTRICT JUDGE,
Respondents,
and
JAY BLOOM,
Real Party in Interest.

No. 69381

Original petition for a writ of mandamus challenging a district court order denying petitioners' motion to dismiss.

Petition granted.

Adam Paul Laxalt, Attorney General, and Frederick J. Perdomo, Senior Deputy Attorney General, Carson City; Pico Rosenberger and James R. Rosenberger, Las Vegas,
for Petitioners.

Maier Gutierrez Ayon PLLC and Joseph A. Gutierrez and Luis A. Ayon, Las Vegas,
for Real Party in Interest.

BEFORE PICKERING, HARDESTY and PARRAGUIRRE, JJ.

OPINION

By the Court, HARDESTY, J.:

Real party in interest Jay Bloom sued petitioners Larry L. Bertsch and Larry L. Bertsch CPA & Associates (collectively, Bertsch) for Bertsch's actions as a court-appointed special master in a lawsuit in which Bloom was a party. The district court rejected Bertsch's defense of absolute quasi-judicial immunity and denied his motion to dismiss Bloom's complaint.

In this original petition for a writ of mandamus, we consider whether a person must seek leave of the appointing court prior to filing suit in a non-appointing court against a court-appointed accountant in his capacity as special master.

Because we extend the *Barton* doctrine[1] to a court-appointed accountant in the capacity of special master, we require an individual to seek leave of the appointing court prior to filing suit in a non-appointing court against a court-appointed special master for actions taken in the scope of his court-derived authority. Thus, we grant the petition.

FACTS AND PROCEDURAL HISTORY

On October 11, 2011, Bertsch was appointed as special master by the district court in a lawsuit between Vion Operations, LLC, and Bloom (the Vion litigation). The order stated that Bertsch was to provide forensic accounting services, but would not be personally liable for acts performed as a special master, except in the event of gross negligence, fraud, or willful misconduct.

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[1]*Barton v. Barbour*, 104 U.S. 126, 127 (1881).

After Bertsch filed his preliminary report, but before he filed his final report, Vion's counsel, Lionel Sawyer & Collins (LSC), disclosed to the district court, on August 29, 2012, that it had also represented Bertsch "during the second half of 2011." On October 18, 2012, Bertsch filed his final report. Included in this report were statements relating to how certain companies associated with Bloom had the "earmarks of a Ponzi scheme."

Approximately two hours after Bertsch filed his final report, Bloom filed a motion to disqualify LSC as counsel for the plaintiffs, alleging a conflict of interest with Bertsch. On the next day, October 19, 2012, Bloom issued a *subpoena duces tecum* to Bertsch seeking "any and all documents, emails, and communications with any and all parties to this litigation." Bloom also noticed a deposition of Bertsch for November 20, 2012.

Bertsch moved for a protective order to prevent disclosure of document information and to quash the notice of deposition. The district court granted Bertsch's motion for a protective order in part, finding that Bertsch was not to be treated as an expert witness, but ordered that Bertsch and LSC produce all communications in the matter "for the period between August 1, 2011 and December 17, 2012." The district court reserved ruling on whether to quash the notice of deposition directed at Bertsch.

Pursuant to the district court's order, Bertsch produced documents related to his communications with LSC. Based on the content of these documents, Bloom filed a motion to disqualify Bertsch on February 12, 2013. In this motion, Bloom requested that the district court

strike Bertsch's report, and for sanctions, arguing that Bertsch's final report was not truly independent because, prior to its submission, 18 versions of the report were exchanged between Bertsch and counsel for Vion with no copies provided to, and therefore no input from, Bloom or any other party. Bloom further argued that Bertsch and LSC worked in concert for the purpose of building a case against Bloom and the other defendants. Bloom's motion contained various emails allegedly supporting his claims that Bertsch acted improperly. Notably, Bloom argued that "[t]he pattern and practice of egregious unethical conduct by LSC [and] Mr. Bertsch . . . has created a private right of action against them individually."

Bertsch opposed the motion, arguing that Bloom failed to show that Bertsch's report was influenced in any way by his former connection with LSC, and the one-on-one communications without the participation of other parties was a procedure known to and accepted by Bloom, and a procedure in which he engaged on dozens of occasions. Bertsch also filed a motion for an order discharging him as special master and accepting his final report, noting that neither party filed a timely objection to the report.

After a hearing on the motion, the district court denied Bloom's motion and discharged Bertsch from his duties as special master on May 13, 2013. With respect to Bloom's arguments for disqualification, the district court found that, pursuant to NCJC 2.11(C), Bertsch should have disclosed his prior attorney-client relationship with LSC; however, the district court also found that Bertsch's undisclosed conflict did not merit disqualification because the alleged conflict no longer existed at the time Bloom raised the issue to the court. The court noted that LSC disclosed the former attorney-client relationship in August 2012, and

Bloom failed to take any action to prevent Bertsch from issuing a final report until October 18, 2012, the same day Bertsch issued his final report. The court further determined that the failure to disclose the former attorney-client relationship did not render the report invalid or erroneous and it accepted the report as written. The court, however, declined to adopt the report as findings of fact or conclusions of law and thus declined to analyze whether the report's findings were clearly erroneous or conduct a de novo review of its conclusions. The court noted that the parties may use it as they see fit and that it may be challenged at trial.

The district court also found that

> [Bertsch] is a fair, impartial, unbiased and highly skilled forensic accountant, and the matters in this case to which the [c]ourt made its reference are in his area of his expertise. The reference to [s]pecial [m]aster in this case was proper.

Following the district court's May 13, 2013, order denying Bloom's motion to disqualify Bertsch, Bloom filed a motion to conduct discovery on Bertsch. On September 11, 2013, the district court denied Bloom's motion to conduct discovery, finding that Bertsch (1) was not to be treated as an expert witness for any purpose in the case, (2) was appointed as a special master under NRCP 53, and by accepting appointment, he assumed the duties and obligations of a judicial officer, and (3) enjoyed the same immunities from discovery as a judge, making his decision-making processes generally undiscoverable. The court reasoned, however, that non-privileged communications that occurred between Bertsch and any third party regarding his report, including specific requests to put anything into the report, were not protected from inquiry and were discoverable. The district court permitted Bloom to conduct a one-hour

deposition of Bertsch limited to non-privileged communications between Bertsch and LSC.

However, prior to any deposition of Bertsch, the Vion litigation was removed to the United States Bankruptcy Court for the District of Nevada. The bankruptcy case was subsequently settled, and the Vion litigation was dismissed with prejudice on October 14, 2014. As a result, Bertsch's deposition was never taken.

After the Vion litigation was dismissed, Bloom filed the underlying complaint against Bertsch alleging gross negligence, fraudulent concealment, willful misconduct, and defamation based on Bertsch's alleged actions in the Vion litigation. In response, Bertsch filed a motion to dismiss, arguing in part that he was entitled to absolute quasi-judicial immunity from suit. The district court denied the motion, finding that Bertsch was only entitled to qualified immunity based on the appointment order in the Vion litigation, which stated that Bertsch could be held personally liable for acts performed pursuant to his special mastership that constituted gross negligence, fraud, or willful misconduct.

Bertsch now petitions this court for a writ of mandamus, arguing that dismissal is required because he is entitled to absolute quasi-judicial immunity and such immunity is not waived by language contained in the order appointing him special master or because his alleged intentional, wrongful conduct fell outside the scope of his duties of special master. Bertsch also argues that Bloom's complaint is jurisdictionally improper, as Bloom did not first seek leave of the appointing court before instituting the underlying action.

Standard for writ relief

This court has original jurisdiction to grant extraordinary writ relief. *MountainView Hosp., Inc. v. Eighth Judicial Dist. Court*, 128 Nev. 180, 184, 273 P.3d 861, 864 (2012). Furthermore, writ relief is generally available only "where there is not a plain, speedy and adequate remedy in the ordinary course of law." NRS 34.170; *see also Halverson v. Miller*, 124 Nev. 484, 487, 186 P.3d 893, 896 (2008).

This court generally "decline[s] to consider writ petitions challenging district court orders denying motions to dismiss because such petitions rarely have merit, often disrupt district court case processing, and consume an enormous amount of this court's resources." *Int'l Game Tech., Inc. v. Second Judicial Dist. Court*, 124 Nev. 193, 197, 179 P.3d 556, 558-59 (2008) (internal quotations omitted). Nevertheless, this court has discretionary authority to consider a petition denying a motion to dismiss when "an important issue of law needs clarification and considerations of sound judicial economy and administration militate in favor of granting the petition." *Id.* at 197-98, 179 P.3d at 559. And, we have recognized that a pretrial claim of judicial or quasi-judicial immunity may merit extraordinary writ relief. *State v. Second Judicial Dist. Court*, 118 Nev. 609, 614, 55 P.3d 420, 423 (2002).

Because Bertsch's petition raises important issues of law in need of clarification—whether one must seek leave of the appointing court prior to filing suit in a non-appointing court against a court-appointed accountant in his capacity as a special master—and involves a claim of quasi-judicial immunity, we exercise our discretion and entertain this petition.

Bloom was required to seek leave of the appointing court prior to filing a separate complaint against Bertsch

Bertsch argues that Bloom's underlying complaint was jurisdictionally improper because Bloom failed to seek leave of the appointing district court before filing a separate action against him. Although Bertsch raises this issue for the first time in his reply brief, consideration of this issue is in the interest of justice. *See Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) (holding that "[i]ssues not raised in an appellant's opening brief are deemed waived" unless this court, in its discretion, determines that consideration of those issues "is in the interests of justice"). We also note that although Bertsch did not explicitly address this issue during oral argument, he did infer that the issues raised in the action should have been determined by the appointing court.

Bertsch's argument touches on the rule known as the *Barton* doctrine. *See Carter v. Rodgers*, 220 F.3d 1249, 1252 (11th Cir. 2000). The *Barton* doctrine is a federal common law rule that requires a party to obtain leave of the bankruptcy court before bringing suit in a non-appointing court against a trustee for acts done in his or her official capacity. *Id.* The doctrine was first articulated by the United States Supreme Court in *Barton v. Barbour*, where the Court held that "[i]t is a general rule that before suit is brought against a receiver [in state court,] leave of the court by which he was appointed must be obtained." 104 U.S. 126, 127 (1881). Over time, circuit courts analogized the position of a receiver in equity to that of a bankruptcy trustee and extended the doctrine accordingly. *Carter*, 220 F.3d at 1252. Going even further, it has been suggested that the doctrine applies more broadly to all court-appointed officers, *Blixseth v. Brown*, 470 B.R. 562, 567 (Bankr. D. Mont.

2012) (stating that the rule generally applies to court "appointed" officers), and has been applied outside the context of bankruptcy proceedings, *see Considine v. Murphy*, 773 S.E.2d 176, 177, 179 (Ga. 2015).

One purpose of the *Barton* doctrine is to prevent dissatisfied parties from freely suing the trustee in another court for discretionary decisions made while performing their court-derived duties. *See In re Linton*, 136 F.3d 544, 546 (7th Cir. 1998). Another purpose of the *Barton* doctrine is to prevent "the creation of disincentives for performing a [court-appointed official's] necessary duties and keeping the [court-appointed official] from being burdened with defending against unnecessary or frivolous litigation in distant forums." *In re Ridley Owens, Inc.*, 391 B.R. 867, 871-72 (Bankr. N.D. Fla. 2008); *see also Lehal Realty Assocs. v. Scheffel*, 101 F.3d 272, 277 (2d Cir. 1996).

Extending the *Barton* doctrine to an accountant in his capacity as special master makes sense, where the duties and responsibilities were designated by the appointing court, and where the purposes underlying the doctrine also apply. In the context of a receiver, this court has recognized the doctrine, holding that "[g]enerally, a receiver cannot be sued without leave of the appointing court" when the receiver acts within "the scope of its court-derived authority." *Anes v. Crown Partnership, Inc.*, 113 Nev. 195, 200, 932 P.2d 1067, 1070 (1997). Here, Bertsch was appointed special master by the district court, and the court tasked him with investigating and preparing a preliminary and final report concerning all transactions related to cash flow, assets, and capital investments of a third-party defendant in the Vion litigation. The district court instructed that:

> The Special Master may direct any of [the third-party defendant's] current or former managers or

> members to produce any business records he deems necessary to carry out his responsibilities, and shall have authority to issue subpoenas to any person or entity to obtain information which he deems relevant or necessary to perform his duties as [s]pecial [m]aster.

In executing his duties, Bertsch was required to use discretionary judgment to obtain and evaluate records related to the transactions outlined in the order. His subsequent analysis of those records in a written report consisting of findings related to the legitimacy and veracity of these business transactions was prepared to assist the district court in making determinations of law and fact. Therefore, although the district court did not adopt the final report, Bertsch was appointed as a person with expertise to evaluate and report on accounting issues to assist the district court in its neutral analysis of the legal issues presented in the case. Accordingly, we determine that Bertsch played an integral role in the judicial process and performed duties sufficiently similar to other court-appointed officials who have benefitted from the *Barton* doctrine. *See Hawaii Ventures, LLC v. Otaka, Inc.*, 164 P.3d 696, 716 (Haw. 2007) (defining the position of receiver and the duties associated therewith as beneficial to both parties and as "an officer of the court, deriv[ing] her authority wholly from the orders of the appointing court"); *Lawrence v. Goldberg*, 573 F.3d 1265, 1269 (11th Cir. 2009) (holding that "the *Barton* doctrine applies to actions against officers approved by the . . . court, when those officers function as the equivalent of court-appointed officers" (internal quotations omitted)).

We have previously recognized that "[e]xposure to liability could deter [a court-appointed professional's] acceptance of court appointments or color their recommendations." *Duff v. Lewis*, 114 Nev.

564, 568, 958 P.2d 82, 86 (1998) (internal quotations omitted). As the United States Supreme Court explained in *Butz v. Economou*, "controversies sufficiently intense to erupt in litigation are not easily capped by a judicial decree. The loser in one forum will frequently seek another, charging the participants in the first with [unlawful] animus." 438 U.S. 478, 512 (1978).

Because the purposes expressed in *Barton* extend similarly to court-appointed officials such as Bertsch, we hold that the *Barton* doctrine applies to court-appointed accountants in the capacity of special master, and that an individual must seek leave of the appointing court when suing a court-appointed special master in a non-appointing court for actions taken within the scope of the court-derived authority. *See Anes*, 113 Nev. at 200, 932 P.2d at 1070.

The appointing court determined that Bertsch did not act outside the scope of his court-derived duties

The district court denied Bloom's disqualification motion on May 13, 2013, and found as follows:

> Based on NCJC 2.11(C), [Bertsch] should have made a disclosure of his prior attorney-client relationship with [LSC]. The [c]ourt does not find that non-disclosure of such relationship constitutes grounds for disqualification. . . . *[Bertsch] is a fair, impartial, unbiased and highly skilled forensic accountant, and the matters in this case to which the [c]ourt made its reference are in his area of his expertise. The reference to [s]pecial [m]aster in this case was proper.*
>
> . . . .
>
> *The [district] [c]ourt finds that [Bertsch] has complied in all respects with the [order of appointment].*

(Emphasis added.)

Therefore, the district court, upon being presented with the evidence, implicitly rejected Bloom's contention and found that Bertsch had not acted beyond the scope of his court-derived duties. To the extent that Bloom's motion can be seen as seeking leave of court to sue Bertsch, the district court did not explicitly permit it.

Accordingly, Bloom must first have filed a motion with the appointing court in order to sue Bertsch personally. We, therefore, grant the petition and direct the clerk of this court to issue a writ of mandamus directing the district court to dismiss the underlying complaint against Bertsch.[2]

/ Hardesty, J.
Hardesty

We concur:

Pickering, J.
Pickering

Parraguirre, J.
Parraguirre

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[2]Because this issue is dispositive, we need not address the remaining issues in Bertsch's petition. Furthermore, the parties do not argue, and this court need not reach, whether the removal of the Vion litigation to the United States Bankruptcy Court for the District of Nevada, and its subsequent settlement, foreclosed further action by the parties in this case. *See Muratore v. Darr*, 375 F.3d 140, 147 (1st Cir. 2004) (holding that the *Barton* doctrine applies even after the case closes).

PLEDGE AGREEMENT

THIS PLEDGE AGREEMENT dated 27th (this "Agreement") is made by Kenneth & Sheila Antos Living Trust (the "Anton Trust), SJC Ventures, LLC ("SJCV") (collectively the "Pledgors" to CBC Partners I, LLC, a Washington limited-liability company ("Secured Party" or "CBCI").

WITNESSETH:

WHEREAS, Pledgors and Secured Party are parties to a certain Forbearance Agreement (the "Forbearance Agreement") dated as of the 27th day of September 2017 by and among CBC Partners I, LLC ("CBCI"), Kenneth & Sheila Antos Living Trust (the "Living Trust"), Kenneth M. Antos & Sheila M. Neumann-Antos Trust (the "K & S Trust"), Kenneth Antos and Sheila Neumann-Antos, as Trustees of the Living Trust and the K & S Trust, and as Personal Guarantors of the Secured Promissory Note described below, Spanish Heights Acquisition Company, LLC ("SHAC"), and SJC Ventures, LLC ("SJCV").

WHEREAS, Pledgors are the owners of 100%, of the membership interests (the "Membership Interests") of Spanish Heights Acquisition Company, LLC, a Nevada limited liability company ("SHAC"), which has been organized pursuant to the terms of the Limited Liability Company Agreement of Spanish Heights Acquisition Company, LLC.

WHEREAS, the Forbearance Agreement provides that several conditions must be satisfied before CBCI agrees to forbear from exercising its rights and remedies under the Forbearance Agreement. In particular, one of the conditions requires the Anton Trust and SJCV have agreed to pledge all right, title and interest in and to 100% of its membership interests in Spanish Heights Acquisition Company to Secured Party pursuant to this Agreement.

NOW, THEREFORE, in consideration of the premises and intending to be legally bound hereby, Pledgors hereby agrees as follows:

1. Pledge. Pledgors hereby pledges to Secured Party, and grants to Secured Party security interests in and to the following (collectively, the "Pledged Collateral"):

(a) the Membership Interests and the certificates representing the Membership Interests, if any, and all dividends, profits, income, cash, receipts, instruments, distributions (whether in cash or in-kind property) and other property from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of the Membership Interests;

(b) any and all additional membership interests in SHAC acquired by Pledgors in any manner, and all securities convertible into and warrants, options, and other rights to purchase or otherwise acquire interest in SHAC and the certificates representing such additional shares, and all dividends, profits, income, cash, receipts, instruments and other property or proceeds from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of such shares, additional securities, warrants, options or other rights;

(c) to the extent not covered by clauses (a) and (b) above, all proceeds of any or all of the foregoing Pledged Collateral.

For purposes of this Agreement, the term "proceeds" shall include whatever is receivable or received when Pledged Collateral or proceeds thereof are sold, exchanged, collected or otherwise disposed of, whether such disposition is voluntary or involuntary, and shall include, without limitation, proceeds of any indemnity or guaranty payable to Pledgors from time to time with respect to any of the Pledged Collateral.

2. Security for Obligations. This Agreement partially secures all the obligations of Pledgors under the Forbearance Agreement and this Pledge (all such obligations being collectively referred to herein as the "Obligations").

3. Delivery of Pledged Collateral. All certificates or instruments representing or evidencing the Pledged Collateral shall be delivered to and held by or on behalf of Secured Party pursuant hereto and shall be in suitable form for transfer by delivery, or shall be accompanied by duly executed instruments of transfer or assignment in blank, all in form and substance satisfactory to Secured Party. Secured Party shall have the right, at any time in Secured Party's discretion after a Non-Monetary Event of Default (as defined below) after notice and a 30 day cure period having been provided to Pledgors, to transfer to or to register in the name of Secured Party or any of Secured Party's nominees any or all of the Pledged Collateral, subject only to the revocable rights specified in Section 6(a). In addition, Secured Party shall have the right at any time to exchange certificates or instruments representing or evidencing Pledged Collateral for certificates or instruments of smaller or larger denominations.

4. Representations and Warranties. Pledgors, covenant, represent, warrant and agree as follows:

(a) The Membership Interests have been duly authorized and are validly issued.

(b) Pledgors are the legal and beneficial owner of the Pledged Collateral free and clear of any liens, security interests, options or other charges or encumbrances, except for the security interest created by this Agreement.

(c) Upon the filing of the Uniform Commercial Code Financing Statement with respect to the Pledged Collateral, the pledge of the Membership Interests pursuant to this Agreement creates a valid and perfected first priority security interest in the Pledged Collateral, securing the payment of the Obligations.

(d) Subject to such other consents or approvals which have been obtained, no consent of any other person or entity and no authorization, approval, or other action by, and no notice to or filing with, any governmental authority or regulatory body is required (i) for the pledge by Pledgors of the Pledged Collateral pursuant to this Agreement or for the execution, delivery or performance of this Agreement by Pledgors, (ii) for the perfection or maintenance of the security interests created hereby (including the first priority nature of such security interest), or (iii) for the exercise by Secured Party of the voting or other rights provided for in this Agreement or the remedies in respect of the Pledged Collateral pursuant to this Agreement (except as may be required in connection with any disposition of any portion of the Pledged Collateral by laws affecting the offering and sale of securities generally).

(e) The Membership Interests constitute 100% of the membership interests of the Pledgors.

(f) There are no conditions precedent to the effectiveness of this Agreement that have not been either satisfied or waived.

(g) Pledgors have, independently and without reliance upon Secured Party, and based upon such documents and information as Pledgors have deemed appropriate, made their own credit analysis and decision to enter into this Agreement.

5. Inconsistent Provision of the Operating Agreement. If the Operating Agreement contains any provision that is contrary to the terms of this Agreement, this Agreement shall control. Such provisions include Sections 2.6 and 6.01 of the Operating Agreement. Regarding Section 2.6, the Members shall be liable to CBCI under this Agreement and the Forbearance Agreement. Regarding Section 6.01, SJCV agrees that it may not resign as Manager of SHAC and that SJCV will appoint Jay Bloom to perform the duties of the Manager throughout the term of this Agreement and the Forbearance Agreement.

6. Further Assurances. Pledgors agree that at any time and from time to time, at the sole cost and expense of Pledgors, Pledgors will promptly execute and deliver all further reasonable instruments and documents, and take all further reasonable action, that may be necessary or desirable, or that Secured Party may reasonably request, in order to perfect and protect any security interest granted or purported to be granted hereby or to enable Secured Party to exercise and enforce Secured Party's rights and remedies hereunder with respect to any Pledged Collateral.

7. Voting Rights. Pledgors shall refrain from exercising any and all voting and other consensual rights pertaining to the Pledged Collateral or any part thereof. Pledgors shall, as members, not undertake any action that would have a material adverse effect on the value of the Pledged Collateral or any part thereof.

8. Transfers and Other Liens; Additional Shares. Pledgors agrees that he will not (i) sell, assign (by operation of law or otherwise) or otherwise dispose of, or grant any option with respect to, any of the Pledged Collateral, or (ii) create or permit to exist any lien, security interest, option or other charge or encumbrance upon or with respect to any of the Pledged Collateral, except for the security interest under this Agreement.

Pledgors agree that Pledgors will (i) not consent or otherwise facilitate SHAC to issue any stock, membership interests, or other securities in addition to or in substitution for the Membership Interests, except to Pledgors, and (ii) pledge hereunder, immediately upon Pledgors' acquisition (directly or indirectly) thereof, any and all additional shares of stock, membership interests, or other securities of SHAC.

9. Secured Party Appointed Attorney-in-Fact. Upon an Event of Default, and after the requisite cure period expires, should such Event of Default continue to exist, Pledgors hereby appoint Secured Party as Pledgors' attorney-in-fact, with full authority in the place and stead of Pledgors and in the name of Pledgors or otherwise, from time to time in Secured Party's sole discretion, to take any action and to execute any instrument which Secured Party may deem necessary or advisable to accomplish the purposes of this Agreement, including, without limitation, to receive, indorse and collect all instruments made payable to Pledgors representing any dividend or other distribution in respect of the Pledged Collateral or any part thereof and to give full discharge for the same.

10. Secured Party May Perform. If Pledgors fail to perform any agreement contained herein following the expiration of any applicable grace period, Secured Party may perform, or cause performance of, any such agreement, and the reasonable expenses of Secured Party incurred in connection therewith (including attorneys' fees and expenses) shall be payable by Pledgors to Secured Party, or alternatively, Secured Party shall have the right to add such reasonable expenses incurred to the secured balance due, pursuant to the provisions of Section 13 hereof.

11. Secured Party's Duties. The powers conferred on Secured Party hereunder are solely to protect Secured Party's interest in the Pledged Collateral and shall not impose any duty upon Secured Party to exercise any such powers. Except for the safe custody of any Pledged Collateral in Secured Party's possession and the accounting for moneys actually received by Secured Party hereunder, Secured Party shall have no duty as to any Pledged Collateral, as to ascertaining or taking action with respect to calls, conversions, exchanges, maturities, tenders or other matters relative to any Pledged Collateral, whether or not Secured Party has or is deemed to have knowledge of such matters, or as to the taking of any necessary steps to preserve rights against any parties or any other rights pertaining to any Pledged Collateral.

12. Remedies upon Default. If any Event of Default shall have occurred and be continuing:

(a) Secured Party may exercise, in respect of the Pledged Collateral, in addition to other rights and remedies provided for herein or otherwise available to Secured Party at law or in equity, all of the rights and remedies of a secured party on default under the Uniform Commercial Code in effect in the State of Nevada at that time (the "Code") (whether or not the Code applies to the affected Pledged Collateral), and may also, without notice except as specified below, sell the Pledged Collateral or any part thereof in one or more parcels at public or private sale, at any exchange, broker's board or at any of Secured Party's offices or elsewhere, for cash, on credit or for future delivery, and upon such other terms as Secured Party may deem commercially reasonable. Pledgors agree that, to the extent notice of sale shall be required by law, at least ten (10) days' notice to Pledgors of the time and place of any public sale or the time after which any private sale is to be made shall constitute reasonable notification. Secured Party shall not be obligated to make any sale of Pledged Collateral regardless of notice of sale having been given. Secured Party may adjourn any public or private sale from time to time by announcement at the time and place fixed therefor, and such sale may, without further notice, be made at the time and place to which it was so adjourned.

(b) Any cash held by Secured Party as Pledged Collateral and all cash proceeds received by Secured Party in respect of any sale of, collection from, or other realization upon all or any part of the Pledged Collateral may, in the sole discretion of Secured Party, be held by Secured Party as collateral for, and/or then or at any time thereafter be applied (after payment of any amounts payable to Secured Party pursuant to Section 13) in whole or in part by Secured Party against, all or any part of the Obligations in such order as Secured Party shall elect. Any surplus of such cash or cash proceeds held by Secured Party and remaining after payment in full of all the Obligations shall be paid over to Pledgors or to whomsoever may be lawfully entitled to receive such surplus.

13. Event of Default. The occurrence of any of the following events shall constitute an "Event of Default" hereunder:

(a) Monetary Default. If there shall occur any breach, failure or violation by Pledgors in the payment or performance of any of Pledgors' obligations, covenants or warranties under this Agreement, the Note, the Other Pledges and such breach, failure or violation continues uncorrected for a period of fifteen (15) days after written notice thereof from Secured Party to Pledgors;

(b) Non-Monetary Default. A non-monetary Event of Default shall occur:

1. If there shall occur any Event of Default by Pledgors of the Obligations, that is not a Monetary Default.

2. If either of the Pledgors resigns or is removed from the position of manager of SHAC.

14. Expenses. Pledgors will, upon demand, pay to Secured Party, or in the alternative, the Secured Party may add to the amount due and receivable, the amount of any and all reasonable expenses, including the reasonable fees and expenses of Secured Party's counsel and of any experts and agents, which Secured Party may incur in connection with (i) the administration of this Agreement, (ii) the custody or preservation of, or the sale of, collection from, or other realization upon, any of the Pledged Collateral, (iii) the exercise or enforcement of any of the rights of Secured Party hereunder, or (iv) the failure by Pledgors to perform or observe any of the provisions hereof.

15. Security Interest Absolute. All rights of Secured Party and security interests hereunder, and all obligations of Pledgors hereunder, shall be absolute and unconditional irrespective of:

(a) any lack of validity or enforceability of the Other Pledges;

(b) any change in the time, manner or place of payment of, or in any other term of, all or any of the Obligations, or any other amendment or waiver of or any consent to any departure from the Other Pledges, including, without limitation, any increase in the Obligations resulting from the extension of additional credit to Pledgors or otherwise;

(c) any taking, exchange, release or non-perfection of any other collateral, or any taking, release or amendment or waiver of or consent to departure from any guaranty, for all or any of the Obligations;

(d) any manner of application of collateral, or proceeds thereof, to all or any of the Obligations, or any manner of sale or other disposition of any collateral for all or any of the Obligations or any other assets of Pledgors; or

(e) any other circumstance which might otherwise constitute a defense available to, or a discharge of, Pledgors or a third party pledgor.

16. Amendments, Etc. No amendment or waiver of any provision of this Agreement, and no consent to any departure by Pledgors therefrom, shall in any event be effective unless the same shall be in writing and signed by Secured Party, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

17. Notices. Any notice, election, demand, request or other document or communication required or permitted under this Agreement shall be in writing and shall be deemed sufficiently given only if delivered in person or sent by certified or registered mail, postage prepaid, return receipt requested, addressed to Secured Party or Pledgors, as the case may be, as follows:

If to Pledgors:

c/o Maier Gutierrez & Associates8816 Spanish Ridge Avenue
Las Vegas, Nevada 89148

If to Secured Party:

777 108th Ave NE Suite 1895
Bellevue, WA 98004

With a copy to:

The Law Office of Vernon Nelson
9480 S. Eastern Ave., Suite 252
Las Vegas, NV 89052

18. Continuing Security Interest; Assignments under Credit Agreement. This Agreement shall create a continuing security interest in the Pledged Collateral and shall (i) remain in full force and effect until the Pledgors' payment in full of, or their express written release by Secured Party from, the Obligations and all other amounts payable under this Agreement, (ii) be binding upon and inure to the benefit of Pledgors, and Pledgors' respective heirs, legal representatives, successors and assigns, and (iii) inure to the benefit of, and be enforceable by, and be binding upon Secured Party and Secured Party's heirs, legal representatives, successors, transferees and assigns. Without limiting the generality of the foregoing clause (iii), Secured Party may assign or otherwise transfer all or any portion of Secured Party's rights under the Loan Documents to any other person or entity, and such other person or entity shall thereupon become vested with all the benefits in respect thereof granted to Secured Party herein or otherwise and charged with the obligations and responsibilities of Pledgors thereunder. Upon the payment in full of all amounts due and payable under this Agreement and the release of Pledgors from the Obligations, the security interest granted hereby shall terminate and all rights to the Pledged Collateral shall revert to Pledgors. Upon any such termination, Secured Party will, at Pledgors' expense, promptly return to Pledgors such of the Pledged Collateral as shall not have been sold or otherwise applied pursuant to the terms hereof and execute and deliver to Pledgors such documents as Pledgors shall reasonably request to evidence such termination.

19. Governing Law; Terms. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Nevada. Pledgors, on behalf of themselves and their respective heirs, legal representatives, successors and assigns, irrevocably consents that any legal action or proceeding against them under, arising out of, or in any manner relating to, this Agreement, may be brought in any court presiding in the State of Nevada, County of Clark. Pledgors, by execution and delivery of this Agreement and on behalf of themselves and their respective heirs, legal representatives, successors and assigns, expressly and irrevocably consents and submits to the personal jurisdiction of any of such courts in any such action or proceeding. Pledgors, on behalf of themselves and their respective heirs, legal representatives, successors and assigns, further irrevocably consents to the service of any complaint, summons, notice or other process relating to any such action or proceeding by delivery thereof to any of them by hand or by certified mail, delivered or addressed to Pledgors' address set forth herein.

Pledgors, on behalf of themselves and their respective heirs, legal representatives, successors and assigns, hereby expressly and irrevocably waives any claim or defense in any such action or proceeding based on any alleged lack of personal jurisdiction, improper venue or forum non conveniens or any similar basis. Nothing in this paragraph shall affect or impair in any manner or to any extent the right of Secured Party or Secured Party's heirs, legal representatives, successors or assigns, to commence legal proceedings or otherwise proceed against Pledgors in any jurisdiction or to serve process in any manner permitted by law.

Pledgors hereby waive all right to require a marshalling of assets by Secured Party.

Pledgors shall not, without Secured Party's prior written consent, create, incur or assume any Indebtedness in connection with the Pledged Collateral. "Indebtedness" means any and all liabilities and obligations owing by Pledgors to any person, including principal, interest, charges, fees, reimbursements and expenses, however evidenced, whether as principal, surety, endorser, guarantor or otherwise, direct or indirect, absolute or contingent, joint or several, due or not due, primary or secondary, liquidated or unliquidated, secured or unsecured, original, renewed or extended, (i) in respect of any borrowed money (whether by loans, the issuance and sale of debt securities or the sale of any property to another person subject to an understanding, agreement, contract or otherwise to repurchase such property) or for the deferred purchase price of any property or services, (ii) under direct or indirect guarantees and obligations (contingent or otherwise) to purchase or otherwise acquire, or otherwise assure any creditor against loss in respect of the obligations of others, (iii) in respect of letters of credit or similar instruments issued or accepted by banks and other financial institutions for the account of such indebted person, (v) in respect of unfunded vested benefits under plans covered by ERISA or any similar liabilities to, for the benefit of, or on behalf of, any employees of such indebted person, (vi) all obligations secured by any Lien on property owned by such person, whether or not the obligations have been assumed, (vii) all obligations under any agreement providing for a swap, ceiling rates, ceiling and floor rates, contingent participation or other hedging mechanisms with respect to interest payable on any of the items described above in this definition, or (viii) actual obligations imposed under the operating agreement for the LLC.

[THE NEXT PAGE IS THE SIGNATURE PAGE]

IN WITNESS WHEREOF, Pledgors has caused this Agreement to be duly executed and delivered as of the date first above written.

PLEDGORS:

Kenneth & Sheila Antos Living Trust

By: _____
Kenneth Antos, Trustee

By: Sheila Antos
Sheila Antos, Trustee

ACKNOWLEDGMENTS:

STATE OF NEVADA :
: ss.:
COUNTY OF CLARK :

On the 27 day of September, 2017 before me, the undersigned, personally appeared Kenneth Antos, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is(are) subscribed to within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted executed the instrument.

Donna Zamora
Notary Public

Donna Zamora
Notary Public
State of Nevada
My Comm. Expires: 05/08/2019
Certificate No: 03-80797-1

STATE OF NEVADA :
: ss.:
COUNTY OF CLARK :

On the 27 day of September, 2017 before me, the undersigned, personally appeared Sheila Antos, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is(are) subscribed to within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted executed the instrument.

Donna Zamora
Notary Public

Donna Zamora
Notary Public
State of Nevada
My Comm. Expires: 05/08/2019
Certificate No: 03-80797-1

SPANISH HEIGHTS ACQUISTION COMPANY, LLC

BY: _____
Jay Bloom, Manager

STATE OF NEVADA :
: ss.:
COUNTY OF CLARK :

On the 27 day of September, 2012 before me, the undersigned, personally appeared Jay Bloom, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is(are) subscribed to within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the the instrument, the individual(s), or the person upon behalf of which the individual(s) acted executed the instrument.

_____
Notary Public

Donna Zamora
Notary Public
State of Nevada
My Comm. Expires: 05/06/2019
Certificate No: 03-80797-1

SECURITY AGREEMENT

This Security Agreement is made by and between SJC Ventures, LLC ("SJCV") (the "Debtor") to CBC Partners I, LLC, a Washington limited-liability company ("Secured Party" or "CBCI").

WITN ESSETH:

WHEREAS, Debtor, other creditors, and Secured Party are parties to a certain Forbearance Agreement (the "Forbearance Agreement") dated as of the 7th day of September 2017 by and among CBC Partners I, LLC ("CBCI"), Kenneth & Sheila Antos Living Trust (the "Living Trust"), Kenneth M. Antos & Sheila M. Neumann-Antos Trust (the "K & S Trust"), Kenneth Antos and Sheila Neumann-Antos, as Trustees of the Living Trust and the K & S Trust, and as Personal Guarantors of the Secured Promissory Note described below., Spanish Heights Acquisition Company, LLC ("SHAC"), and SJC Ventures, LLC ("SJCV").

WHEREAS, the Forbearance Agreement provides that several conditions must be satisfied before CBCI agrees to forbear from exercising its rights and remedies under the Forbearance Agreement.

WHEREAS, one of the conditions of the Forbearance Agreement requires SJCV to execute a Security Agreement with respect to the "Creditors Judgment Interest" described below (the "Collateral") in favor of CBCI.

WHEREAS, subject to the terms of this Security Agreement, the SJCV agree to grant CBCI a Security Interest in the Collateral described below to secure the obligations of all parties to the Forbearance Agreement.

NOW, THEREFORE, in consideration of the premises and intending to be legally bound hereby, SJCV ("Debtor") and CBCI ("Secured Party") hereby agrees as follows:

1. *Grant of security interest.* In consideration of the Forbearance Agreement, the Debtor and Secured Party hereby grants to the Secured Party a security interest in the Collateral defined below as security for the prompt payment, performance, and observance by the Debtor, and all other parties to the Forbearance Agreement (the "Obligations").

2. *Collateral.*

(a) The term "Collateral" shall include that portion of Debtors current, or after-acquired, beneficial interest in the "Judgment" described below necessary to secure the Secured Party's Interest (the "Creditor's Judgment Interest"), regardless of whether the Creditor's Judgment Interest is the Judgment is considered "rights to cash or non-cash proceeds", accounts, contract rights, accounts receivable instruments, documents, chattel paper, securities, deposits, credits, "claims and demands," general intangibles, payment intangibles; and all ledger sheets, files, records, documents, and instruments (including, but not limited to, computer programs, tapes, and related electronic data processing software) evidencing any interest in or relating to the above described Collateral. The locations of the office where the records concerning rights are kept is set forth at the bottom of this Agreement. Debtor's address above stated against the Secured Party, and all proceeds, products, returns, additions, accessions and substitutions of and to any of the foregoing.

(b) All terms used herein which are defined in the Uniform Commercial Code of the State of Nevada shall have the meanings therein stated.

(c) The Creditor's Judgment Interest is described as follows:

SJCV represents that First 100, LLC and 1st One Hundred Holdings, LLC, obtained a Judgment in the amount of $2,221,039,718.46 against Raymond Ngan and other Defendants in the matter styled *First 100, LLC, Plaintiff(s) vs. Raymond Ngan, Defendant(s)*, Case No. A-17-753459-C in the 8th Judicial District Court for Clark County, Nevada (the "Judgment"). SJCV represents it holds a 24.912% Membership Interest in 1st One Hundred Holdings, LLC. SJCV represents and warrant that no party, other than the Collection Professionals engaged to collect the Judgment, have a priority to receive net judgment proceeds attributable to SJCV before SJCV; and that SJCV shall receive its interest at a minimum in pari passu with other parties who hold interests in the Judgment. 1st One Hundred Holdings, LLC represents and warrant that no party, other than the Collection Professionals engaged to collect the Judgment and certain other creditors of 1st One Hundred Holdings, have a priority to receive net judgment proceeds prior to distributions to 1st One Hundred Holdings Members; and that SJCV shall receive its interest at a minimum in pari passu with other parties who hold interests in the Judgment.

3. *Warranties and agreements.* The Debtor warrants and agrees that:

(a) *Collateral location and use.* The Debtor's chief places of business, its financial books and records relating to the Collateral, and the Collateral, are located at the address set forth at the bottom of this agreement. The Debtor will not move any of the Collateral from said location without the prior written consent of the Secured Party.

(b) *Existing liens, security interests, and encumbrances.* Except for the security interest granted herein, and except for the liens of certain "Collection Professionals," as set forth on the schedule annexed hereto as Schedule C and initialed by the Secured Party and the Debtor, the Debtor owns and will keep the Collateral free and clear of liens, security interests, or encumbrances, and will not assign, sell, mortgage, lease, transfer, pledge, grant a security interest in, encumber or otherwise dispose of or abandon any part or all of the Collateral without the prior written consent of the Secured Party. Accordingly, Debtor Any default by any party to the Forbearance Agreement, or any of the agreements related thereto shall constitute an event of default under this Security Agreement.

(c) *Inspection.* The Secured Party shall at all times have free access to and the right of inspection of any part or all of the Collateral and any records of the Debtor (and the right to make extracts from such records), and the Debtor shall deliver to the Secured Party the originals or true copies of such papers and instruments relating to any or all of the Collateral as the Secured Party may request at any time.

(d) *Collateral to remain personal property.* The Collateral is now and shall be and remain personal property, notwithstanding the manner in which the Collateral or any part thereof shall be now or hereafter affixed, attached or annexed to real estate. Debtor authorizes the Secured Party to enter upon any premises of the Debtor at any time to remove the Collateral.

(e) *Maintain security interests, reports.* In addition to all other provisions hereof, the Debtor will from time to time at its expense, perform any and all steps requested by the Secured Party at any time to perfect and maintain the Secured Party's security interest in the Collateral, including (but not limited to) transferring any part or all of the Collateral to the Secured Party or any nominee of the Secured Party, including placing and maintaining signs, executing and filing financing statements and notices of lien, delivering to the Secured Party documents of title representing the Collateral or evidencing the Secured Party's security interest in any other manner acceptable to and requested by the Secured Party.

If at any time any part or all of the Collateral is in the possession or control of any of the Debtor's bailees, agents, or processors, the Debtor will notify such persons of the Secured Party's security interest therein. Upon the Secured Party's request, the Debtor will instruct such persons to hold all such Collateral for the Secured Party's account and subject to the Secured Party's instructions and the Debtor will obtain and deliver to the Secured Party such instrument(s) requested by the Secured Party pursuant to which such persons consent to the security interest

granted herein, disclaim any interest in the Collateral, waive in favor of the Secured Party all liens upon and claims to the Collateral or any part thereof, and authorize the Secured Party at any time to enter upon and remove the Collateral from any premises upon which the same may be located.

(f) *Further documentation.* The Debtor shall, at its expense, upon the Secured Party's request, at any time and from time to time, execute and deliver to the Secured Party one or more financing statements pursuant to the Uniform Commercial Code, and all other papers, documents or instruments required by the Secured Party in connection herewith; including an Assignment of Judgment Interest in a form acceptable to Secured Party. The Debtor hereby authorizes the Secured Party to execute and file, at any time and from time to time, on behalf of the Debtor, one or more financing statements with respect to all or any part of the Collateral, the filing of which is advisable, in the sole judgment of the Secured Party, pursuant to the law of the State of Nevada, although the same may have been executed only by the Secured Party as secured party. The Debtor also irrevocably appoints the Secured Party, its agents, representatives and designees, as the Debtor's agent and attorney-in-fact, to execute and file, from time to time, on behalf of the Debtor, one or more financing statements with respect to all or any part of the Collateral.

(g) *Collection of accounts.* The Debtor is authorized, at its expense, to collect the proceeds of the Collateral for the Secured Party. In the event of default, the Debtor shall promptly turn over to the Secured Party the proceeds of accounts, up to the amount secured, and in no event in any amount greater than such amount secured, whether consisting of cash, commercial paper, or any other instrument, in precisely the form received, except for the Debtor's endorsement when required. Until so turned over, the proceeds up to the amount secured, shall be deemed to be held in trust by the Debtor for and as the property of the Secured Party. All remittances are received subject to collection. The Secured Party may endorse the name of the Debtor on all notes, checks, drafts, bills of exchange, money orders, commercial paper of any kind whatsoever, and any other document received in payment of or in connection with the Collateral or otherwise.

(h) *Settlement of Accounts.* The Debtor is not authorized or empowered to compromise or extend the time for payment of any of the Collateral, without the prior written consent of the Secured Party.

(I) *Payment of debtor's obligations, reimbursement.* The Secured Party may in its discretion, for the account and expense of the Debtor: (i) pay any amount or do any act which is required by the Debtor under this Security Agreement and which the Debtor fails to do or pay as herein required, and (ii) pay or discharge any lien, security interest or encumbrance in favor of anyone other than the Secured Party which covers or affects the Collateral or any part thereof. The Debtor will promptly reimburse and pay the Secured Party for any and all sums, costs and expenses which the Secured Party may pay or incur by reason of defending, protecting or enforcing the security interest herein granted or the priority thereof or in enforcing payment of the Obligations or in discharging any lien or claim against the Collateral or any part thereof or in the exchange, collection, compromise or settlement of any of the Collateral or receipt of the proceeds thereof or for the care of the Collateral, by litigation or otherwise, and with respect to either the Debtor, account debtors, guarantors of the Debtor and other persons, including but not limited to all court costs, collection charges, travel, and reasonable attorneys' fees, and all reasonable expenses (including reasonable counsel fees) incident to the enforcement of payment of any obligations of the Debtor by any action or participation in, or in connection with, a case or proceeding under the Bankruptcy Code, or any successor statute thereto. All sums paid and all costs, expenses and liabilities incurred by the Secured Party pursuant to the foregoing provisions, together with interest thereon at the rate of 12 percent per annum, shall be added to and become part of the Obligations secured hereby.

4. *Transfer of collateral.* The right is expressly granted to the Secured Party, at its discretion, to exchange any or all of the Collateral in the possession of the Secured Party for other property upon the reorganization, recapitalization or other readjustment of the Debtor and in connection therewith to deposit any or all of such Collateral with any committee or depositary upon such terms as the Secured Party may determine; At its discretion the Secured Party may, whether or not any of the Obligations are due, in its name or in the name of the Debtor or otherwise, notify any

account debtor or the obligor on any instrument, agreement, or consent order to make payment to the Secured Party, demand, sue for, collect or receive any money or property at any time payable or receivable on account of or in exchange for, or make any compromise or settlement deemed desirable by the Secured Party with respect to, any of the Collateral, but shall be under no obligation to do so, and/or the Secured Party may extend the time of payment, arrange for payment in installments, or otherwise modify the terms of, or release any of the Collateral, without thereby incurring responsibility to, or discharging or otherwise affecting any liability of, the Debtor. At any time, the Secured Party may assign, transfer and/or deliver to any transferee of any of the Obligations any or all of the Collateral, and thereafter the Secured Party shall be fully discharged from all responsibility with respect to the Collateral so assigned, transferred and/or delivered. Such transferee shall be vested with all the powers and rights of the Secured Party hereunder, with respect to such Collateral, but the Secured Party shall retain all rights and powers hereby given with respect to any of the Collateral not so assigned, transferred or delivered.

5. *Defaults.* The occurrence of any one or more of the following events shall constitute an event of default by the Debtor under this Security Agreement: if at any time the Secured Party, in its discretion, reasonably considers the Collateral or any part thereof unsatisfactory or insufficient, and the Debtor does not on demand furnish other Collateral or make payment on account, satisfactory to the Secured Party; if the Debtor or any obligor, maker, endorser, acceptor, surety or guarantor of, or any other party to any of the Obligations or the Collateral (the same, including the Debtor, being collectively referred to herein as "Obligors") defaults in the punctual payment of any sum payable with respect to, or in the performance of any of the terms and conditions of, any of the Obligations (or of any instruments evidencing the same) or of any terms or conditions of this Security Agreement or the Collateral; if any warranty, representation or statement of fact made herein or furnished to the Secured Party at any time by or on behalf of the Debtor proves to have been false in any material respect when made or furnished; in the event of loss, theft, substantial damage or destruction of any of the Collateral, or the making of any levy on, seizure or attachment of any of the Collateral; if the Debtor executes or files a certificate or other instrument evidencing the legal change of name of the Debtor without furnishing the Secured Party at least 10 days' prior written notice thereof; if any of the Obligors are dissolved; if any of the Obligors are party to a merger or consolidation without the prior written consent of the Secured Party; if any of the Obligors fail to maintain its corporate existence in good standing; if any of the Obligors default in the observance or performance of any term, covenant or agreement contained herein or in any instrument or document delivered pursuant hereto; if any of the Obligors become insolvent (however such insolvency may be defined or evidenced), or make or send notice of an intended bulk transfer, or fail, after demand, to furnish any financial information or to permit the inspection of books or records of account; if there is filed by or against any of the Obligors any petition for any relief under the bankruptcy laws of the United States as now or hereafter in effect or under any insolvency, readjustment of debt, dissolution or liquidation law or statute now or hereafter in effect (and whether any such action or proceeding is at law, in equity or under any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, receivership, liquidation or dissolution law or statute); if any of the Obligors suspend the transaction of its usual business, if any petition or application to any court or tribunal, at law or in equity, is filed by or against any of the Obligors for the appointment of any receiver or any trustee for any of the Obligors; if any governmental authority or any court or other tribunal takes possession or jurisdiction of any substantial part of the property of, or assumes control over the affairs or operations of, or a receiver is appointed of, any substantial part of the property of any of the Obligors; or if a meeting of the creditors or principal creditors of any of the Obligors is convened.

6. *Remedies on default.* If any one or more of the above events of default shall occur, the Secured Party may, at any time thereafter, declare any or all of the Debtor's Obligations immediately due and payable, after notice to or demand upon the Debtor and the provision of a 30-day cure period. In such event, the Secured Party shall have the following rights and remedies, all of which shall be cumulative and not exclusive, and shall be in addition to all other rights and remedies of a secured party under the Uniform Commercial Code or other applicable statute or rule in any jurisdiction in which enforcement is sought:

(a) *Collateral.* The Secured Party may, at any time and from time to time, Upon no less than 24 hours' notice, enter upon any premises in which all or any part of the Collateral is located and to the extent practicable, take possession of the Collateral, without the Debtor's resistance or interference; dispose of all or any part of the Collateral on any premises of the Debtor; require the Debtor to assemble and make available to the Secured Party all or any part of the Collateral at any place and time designated by the Secured Party which is reasonably convenient to the Secured Party and the Debtor; remove all or any part of the Collateral from any premises on which any part thereof is located for the purpose of effecting sale or other disposition thereof; sell, resell, lease, assign and deliver, or otherwise dispose of, the Collateral or any part thereof in its existing condition or following any commercially reasonable preparation or processing, at public or private proceedings, in one or more parcels at the same or different times with or without having the Collateral at the place of sale or other disposition, for cash, upon credit or for future delivery, and in connection therewith the Secured Party may grant options, at such place or places and time or times and to such persons, firms or corporations as the Secured Party deems best, and without demand for performance or any notice or advertisement whatsoever, except that where an applicable statute requires reasonable notice of sale or other disposition the Debtor hereby agrees that five days' notice by ordinary mail, postage prepaid, to any address of the Debtor set forth at the foot of this Security Agreement, of the place and time of any public sale or of the place and time after which any private sale or other disposition may be made, shall be deemed reasonable notice of such sale or other disposition; and liquidate or dispose of the Collateral or any part thereof in any other commercially reasonable manner.

If the Secured Party sells any of the Collateral upon credit or for future delivery, it shall not be liable for the failure of the purchaser to purchase or pay for the same and, in the event of any such failure, the Secured Party may resell such Collateral. The Debtor hereby waives all equity and right of redemption. The Secured Party may buy any part or all of the Collateral at any public sale and if any part of all of the Collateral is of a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations the Secured Party may buy at private sale, all free from any equity or right of redemption which is hereby waived and released by the Debtor, and the Secured Party may make payment therefor (by endorsement without recourse) in notes of the Debtor to the order of the Secured Party in lieu of cash to the amount then due thereon which the Debtor hereby agrees to accept.

The Secured Party may apply the cash proceeds actually received from any sale or other disposition to the reasonable expenses of retaking, holding, preparing for sale, selling, leasing and the like, to reasonable attorney's fees if this Security Agreement or any of the Obligations is referred to an attorney for enforcement, to all legal expenses, court costs, collection charges, travel and other expenses which may be incurred by the Secured Party in attempting to collect the Obligations or to enforce this Security Agreement and realize upon the Collateral, or in the prosecution or defense of any action or proceeding related to the subject matter of this Security Agreement; and then to the Obligations in such order and as to principal or interest as the Secured Party may desire; and the Debtor shall at all times be and remain liable and, after crediting the net proceeds of sale or other disposition as aforesaid, will pay the Secured Party on demand any deficiency remaining, including interest thereon and the balance of any expenses at any time unpaid, with any surplus to be paid to the Debtor, subject to any duty of the Secured Party imposed by law to the holder of any subordinate security interest in the Collateral known to the Secured Party.

The Debtor recognizes that the Secured Party may be unable to effect a public sale of all or a part of the Collateral, but may be compelled to resort to one or more private sales. The Debtor agrees that private sales so made may be at prices and other terms less favorable to the seller than sales were made at public sales, and that the Secured Party has no obligation to delay sale of all or any part of the Collateral. The Debtor agrees that private sales made under the foregoing circumstances shall be deemed to have been made in a commercially reasonable manner.

(b) *Secured Party deposits, balances, etc.* The Secured Party may appropriate, set off and apply for the payment of any or all of the Obligations, any and all balances, sums, property, claims, credits, deposits, accounts, reserves, collections, drafts, notes, or other items or proceeds of the Collateral in or coming into the possession of the Secured

Party or its agents and belonging or owing to the Debtor, without notice to the Debtor, and in such manner as the Secured Party may in its discretion determine.

(c) *Proceeds.* Any of the proceeds of the Collateral received by the Debtor shall not be commingled with other property of the Debtor, but shall be segregated, held by the Debtor in trust for the Secured Party as the exclusive property of the Secured Party, and the Debtor will immediately deliver to the Secured Party the identical checks, moneys or other proceeds of Collateral received, and the Secured Party shall have the right to endorse the name of the Debtor on any and all checks, or other forms of remittance received, where such endorsement is required to effect collection. The Debtor hereby designates, constitutes and appoints the Secured Party and any designee or agent of the Secured Party as attorney-in-fact of the Debtor, irrevocably and with power of substitution, with authority to receive, open and dispose of all mail addressed to the under signed, to notify the Post Office authorities to change the address for delivery of mail addressed to the Debtor, to such address as the Secured Party may designate; to endorse the name of the Debtor on any notes, acceptances, checks, drafts, money orders or other evidences of payment or proceeds of the Collateral that may come into the Secured Party's possession; to sign the name of the Debtor on any invoices, documents, drafts against account debtors of the Debtor, assignments, requests for verification of accounts and notices to debtors of the Debtor; to execute any endorsements, assignments, or other instruments of conveyance or transfer; and to do all other acts and things necessary and advisable in the sole discretion of the Secured Party to carry out and enforce this Security Agreement. All acts of said attorney or designee are hereby ratified and approved and said attorney or designee shall not be liable for any acts of commission or omission nor for any error of judgment or mistake of fact or law. This power of attorney being coupled with an interest is irrevocable while any of the Obligations shall remain unpaid.

7. *Liability disclaimer.* Under no circumstances whatsoever shall the Secured Party be deemed to assume any responsibility for or obligation or duty with respect to any part or all of the Collateral, of any nature or kind whatsoever, or any matter or proceedings arising out of or relating thereto. The Secured Party shall not be required to take any action of any kind to collect or protect any interest in the Collateral, including but not limited to any action necessary to preserve its or the Debtor's rights against prior parties to any of the Collateral. The Secured Party shall not be liable or responsible in any way for the safekeeping, care or custody of any of the Collateral, or for any loss or damage thereto, or for any diminution in the value thereof, or for any act or default of any agent or bailee of the Secured Party or the Debtor, or of any carrier, forwarding agency or other person whomsoever, or for the collection of any proceeds, but the same shall be at the Debtor's sole risk at all times. The Debtor hereby releases the Secured Party from any claims, causes of action and demands at any time arising out of or with respect to this Security Agreement or the Obligations, and any actions taken or omitted to be taken by the Secured Party with respect thereto, and the Debtor hereby agrees to hold the Secured Party harmless from and with respect to any and all such claims, causes of action and demands. The Secured Party's prior recourse to any part of all of the Collateral shall not constitute a condition of any demand for payment of the Obligations or of any suit or other proceeding for the collection of the Obligations.

8. *Nonwaiver.* No failure or delay on the part of the Secured Party in exercising any of its rights and remedies hereunder or otherwise shall constitute a waiver thereof, and no single or partial waiver by the Secured Party of any default or other right or remedy which it may have shall operate as a waiver of any other default, right or remedy or of the same default, right or remedy on a future occasion.

9. *Waivers by debtor.* The Debtor hereby waives presentment, notice of dishonor and protest of all instruments included in or evidencing any of the Obligations or the Collateral and any and all other notices and demands whatsoever (except as expressly provided herein) whether or not relating to such instruments. In the event of any litigation at any time arising with respect to any matter connected with this Security Agreement or the Obligations, the Debtor hereby waives the right to a trial by jury and the Debtor hereby waives any and all defenses, rights of setoff and rights to interpose counterclaims of any nature.

10. *Modification.* No provision hereof shall be modified, altered or limited except by an instrument expressly referring to this Security Agreement and to the provision so modified or limited, and executed by the party to be charged.

11. *Authorization.* The execution and delivery of this Security Agreement has been authorized by the Members and/or Manager(s) Boards of Directors of the Debtor and by any necessary vote or consent of Member(s) of the Debtor. The Debtor shall provide the Secured Party with certified copy of a proper resolution of the Member(s) and/or Managers of the Debtor, in a form reasonably acceptable to Secured Party.

12. *Binding effect.* This Security Agreement and all Obligations of the Debtor hereunder shall be binding upon the Debtor's successors and assigns and shall, together with the rights and remedies of the Secured Party hereunder, inure to the benefit of the Secured Party and its successors, endorsees and assigns.

13. *Headings.* Headings in this Agreement are only for convenience and shall not be used to interpret or construe its provisions.

14. *Governing law.* Any and all matters of dispute between the parties to this Agreement, whether arising from the agreement itself or arising from alleged extracontractual matters occurring prior to, during, or subsequent to the formation of the Agreement, including, without limitation, fraud, misrepresentation, negligence, or any other alleged tort or violation of the contract, shall be governed by, construed, and enforced in accordance with the laws of the state of Nevada, regardless of the legal theory upon which such matter is asserted.

15. *Counterparts.* This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

16. *Severability.* If any term of this Security Agreement is held to be invalid, illegal or unenforceable, such determination shall not affect the validity of the remaining terms.

17. *Merger.* The parties intend this statement of their agreement to constitute the complete, exclusive, and fully integrated statement of their agreement with respect to this Security Agreement. The parties also intend that this complete, exclusive, and fully integrated statement of their agreement with respect to this Security Agreement. This Security Agreement may not be supplemented or explained (interpreted) by any evidence of trade usage or course of dealing.

In witness whereof the Parties have executed or caused this Security Agreement to be executed this 22nd day of September, 2017.

SJC Ventures, LLC.

By: _____
Jay Bloom, Manager

CBC Partners I, LLC

BY: _____

DISTRICT COURT
CLARK COUNTY, NEVADA

NRS Chapters 78-89	**COURT MINUTES**	**January 04, 2021**

A-20-813439-B Spanish Heights Acquisition Company LLC, Plaintiff(s)
vs.
CBC Partners I LLC, Defendant(s)

January 04, 2021 **10:00 AM** **All Pending Motions**

HEARD BY: Gonzalez, Elizabeth **COURTROOM:** RJC Courtroom 03E

COURT CLERK: Dulce Romea

RECORDER: Jill Hawkins

PARTIES PRESENT:

Barraza, Danielle J.	Attorney for Plaintiffs
Mushkin, Michael R.	Attorney for Defendants

JOURNAL ENTRIES

- Parties appeared by telephone.

Following arguments by counsel, COURT ORDERED as follows:

PLAINTIFFS' RENEWED APPLICATION FOR TEMPORARY RESTRAINING ORDER AND MOTION FOR PRELIMINARY INJUNCTION ON AN ORDER SHORTENING TIME: Motion GRANTED on a limited basis that the July notice did not properly identify the current holder of the interest. Trial on the merits ADVANCED to the date of the date of Preliminary Injunction Hearing so all the factual issues raised can be put to bed. BOND LEFT at amounts currently paid by Mr. Bloom's company. Proposed findings of fact and conclusions of law due January 29, 2021 at noon. Parties estimated 3 to 4 days.

Mr. Mushkin advised discovery is closed and they have responded to everything except as to the issue of Dacia. Ms. Barraza advised they are expecting responses from subpoenas and will supplement disclosures.

PLAINTIFFS' MOTION FOR AN ORDER TO SHOW CAUSE AS TO WHY DEFENDANT DACIA, LLC SHOULD NOT BE HELD IN CONTEMPT FOR FAILING TO ABIDE BY THIS COURT S

10/10/2020 ORDER DENYING MOTION FOR PROTECTIVE ORDERS: Motion GRANTED IN PART; information will be provided on an attorney's eyes only basis and can only be reviewed by Ms. Barraza and Mr. Mushkin -- no consultants, no staff members, no Mr. Bloom -- within 5 days of execution of a limited attorney's eyes only provision.

Mr. Mushkin advised that regarding the sale he will issue a new notice today.

Court suggested parties enter into a stipulation on those issue covered in the pleadings that will be tried on February 1st; if unable to, the Court will need competing versions within one week, or January 8th.

STATUS CHECK: SCHEDULING OF CONTEMPT TRIAL: COURT ORDERED, preliminary injunction hearing and trial SET for Monday, February 1st at 1 pm.

1-11-21 9:00 AM RENEWED MOTION TO DISMISS FIRST AMENDED COMPLAINT AS TO DACIA, LLC OR IN THE ALTERNATIVE MOTION FOR SUMMARY JUDGMENT...DEFENDANTS/COUNTERCLAIMANTS MOTION TO QUASH SUBPOENA TO FIRST SAVINGS BANK AND FOR PROTECTIVE ORDER

1-15-21 CHAMBERS STATUS CHECK: ATTORNEY'S FEES

2-1-21 1:00 PM PRELIMINARY INJUNCTION HEARING AND TRIAL

2-18-21 9:15 AM PRE TRIAL CONFERENCE

3-9-21 9:30 AM CALENDAR CALL

3-15-21 1:30 PM JURY TRIAL

STIP
JOSEPH A. GUTIERREZ, ESQ.
Nevada Bar No. 9046
DANIELLE J. BARRAZA, ESQ.
Nevada Bar No. 13822
MAIER GUTIERREZ & ASSOCIATES
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E-mail: jag@mgalaw.com
djb@mgalaw.com

Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

SPANISH HEIGHTS ACQUISITION COMPANY, LLC, a Nevada Limited Liability Company; SJC VENTURES HOLDING COMPANY, LLC, d/b/a SJC VENTURES, LLC, a Delaware Limited Liability Company, Plaintiffs, vs. CBC PARTNERS I, LLC, a foreign Limited Liability Company; CBC PARTNERS, LLC, a foreign Limited Liability Company; 5148 SPANISH HEIGHTS, LLC, a Nevada Limited Liability Company; KENNETH ANTOS AND SHEILA NEUMANN-ANTOS, as Trustees of the Kenneth & Sheila Antos Living Trust and the Kenneth M. Antos & Sheila M. Neumann-Antos Trust; DACIA, LLC, a foreign Limited Liability Company; DOES I through X; and ROE CORPORATIONS I through X, inclusive, Defendants. AND RELATED CLAIMS.	Case No.: A-20-813439-B Dept. No.: 11 **STIPULATION REGARDING LEGAL ISSUES TO BE DECIDED BY THE COURT AT BIFURCATED TRIAL COMMENCING FEBRUARY 1, 2021**

As requested by the Court, in preparation for the bifurcated trial commencing on February 1, 2021, Plaintiffs/Counterdefendants and Defendants/Counterclaimants, by and through their respective

attorneys of record, hereby stipulate that the following unresolved legal issues should be adjudicated by the Court at the bifurcated trial:

1) Contractual interpretation and/or validity of the underlying "Secured Promissory Note" between CBC Partners I, LLC and KCI Investments, LLC and all modifications thereto;
2) Interpretation and/or validity of the claimed third-position Deed of Trust and all modifications thereto, and determination as to whether any consideration was provided in exchange for the Deed of Trust;
3) Contractual interpretation and/or validity of the Forbearance Agreement, Amended Forbearance Agreement and all associated documents/contracts;
4) Whether the Doctrine of Merger applies to the claims at issue; and
5) Whether the One Action Rule applies to the claims at issue.

Dated this 11th day of January, 2021.

Respectfully submitted,

MAIER GUTIERREZ & ASSOCIATES

/s/ Danielle J. Barraza

JOSEPH A. GUTIERREZ, ESQ.
Nevada Bar No. 9046
DANIELLE J. BARRAZA, ESQ.
Nevada Bar No. 13822
8816 Spanish Ridge Avenue
Las Vegas, Nevada 89148
Attorneys for Plaintiffs

Dated this 11th day of January, 2021.

Approved as to form and content:

MUSHKIN & COPPEDGE

/s/ Michael R. Mushkin

MICHAEL R. MUSHKIN, ESQ.
Nevada Bar No. 2421
L. JOE COPPEDGE, ESQ.
Nevada Bar No. 4954
6070 South Eastern Avenue, Suite 270
Las Vegas, Nevada 89119
Attorneys for Defendants CBC Partners I, LLC, CBC Partners, LLC, 5148 Spanish Heights, LLC, and Dacia LLC

Electronically Filed
4/6/2021 12:19 PM
Steven D. Grierson
CLERK OF THE COURT

FFCL

DISTRICT COURT

CLARK COUNTY, NEVADA

SPANISH HEIGHTS ACQUISITION COMPANY, LLC, a Nevada Limited Liability Company; SJC VENTURES HOLDING COMPANY, LLC, d/b/a SJC VENTURES, LLC, a Delaware Limited Liability Company, Plaintiffs, v. CBC PARTNERS I, LLC, a foreign Limited Liability Company; CBC PARTNERS, LLC, a foreign Limited Liability Company; 5148 SPANISH HEIGHTS, LLC, a Nevada Limited Liability Company; KENNETH ANTOS AND SHEILA NEUMANN-ANTOS, as Trustees of the Kenneth & Sheila Antos Living Trust and the Kenneth M. Antos & Sheila M. Neumann-Antos Trust; DACIA, LLC, a foreign Limited Liability Company; DOES I through X; and ROE CORPORATIONS I through X, inclusive, Defendants.	Case No. A-20-813439-B Dept. No.: XI **FINDINGS OF FACT AND CONCLUSIONS OF LAW**
5148 SPANISH HEIGHTS, LLC, a Nevada limited liability company; and CBC PARTNERS I, LLC, a Washington limited liability company, Counterclaimants, v. SPANISH HEIGHTS ACQUISITION COMPANY, LLC, a Nevada Limited Liability Company; SJC VENTURES, LLC, a Delaware limited liability company; SJC VENTURES HOLDING COMPANY, LLC, a Delaware limited liability company; JAY BLOOM, individually and as Manager, DOE	

Case Number: A-20-813439-B

DEFENDANTS 1-10; and ROE DEFENDANTS 11-20,

Counterdefendants.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter having come on for preliminary injunction and consolidated non-jury trial on related issues pursuant to NRCP 65(a)(2)[1] before the Honorable Elizabeth Gonzalez beginning on February 1, 2021, February 2, 2021 , February 3, 2021,[2] and March 15, 2021; Plaintiffs SPANISH HEIGHTS ACQUISITION COMPANY, LLC, ("Spanish Heights")[3] and SJC VENTURES HOLDING COMPANY, LLC, d/b/a SJC VENTURES, LLC ("SJCV") appearing by and through their representative Jay Bloom and their counsel of record JOSEPH A. GUTIERREZ, ESQ. and DANIELLE J. BARRAZA, ESQ. of the law firm of MAIER

[1] Pursuant to NRCP 65(a)(2), the parties have stipulated that the following legal issues surrounding the claims and counterclaims are advanced for trial to be heard in conjunction with the hearing on the preliminary injunction hearing:

a) Contractual interpretation and/or validity of the underlying "Secured Promissory Note" between CBC Partners I, LLC, and KCI Investments, LLC, and all modifications (Counterclaim First, Fourth, Ninth, and Twelfth Claim for Relief);
b) Interpretation and/or validity of the claimed third-position Deed of Trust and all modifications thereto, and determination as to whether any consideration was provided in exchange for the Deed of Trust (Counterclaim First, Fourth, Ninth, and Twelfth Claim for Relief);
c) Contractual interpretation and/or validity of the Forbearance Agreement, Amended Forbearance Agreement and all associated documents/contracts (Counterclaim First, Fourth, Ninth, and Twelfth Claim for Relief);
d) Whether the Doctrine of Merger applies to the claims at issue (Amended Complaint Fourth, Seventh Cause of Action); and
e) Whether the One Action Rule applies to the claims at issue (Amended Complaint Third Cause of Action).

The injunctive relief claims are contained in the Amended Complaint Sixth Cause of Action.

[2] The Court was advised on February 3, 2021, that Spanish Heights filed for bankruptcy protection. The Court suspended these proceedings and stayed the matter for 30 days as to all parties for Defendants to seek relief from the stay. As no order lifting the stay has been entered by the Bankruptcy Court, nothing in this order creates any obligations or liabilities directly related to Spanish Heights; however, factual findings related to Spanish Heights are included in this decision. The term "Plaintiffs" as used in these Findings of fact and Conclusions of Law is not intended to imply any action by this Court against the debtor, Spanish Heights.

[3] As a result of the bankruptcy filing, Spanish Heights did not participate in these proceedings on March 15, 2021.

GUTIERREZ & ASSOCIATES and Defendants CBC PARTNERS I, LLC, CBC PARTNERS, LLC, appearing by and through its representative Alan Hallberg ("Hallberg"); 5148 SPANISH HEIGHTS, LLC, KENNETH ANTOS and SHEILA NEUMANN-ANTOS, as Trustees of the Kenneth & Sheila Antos Living Trust and the Kenneth M. Antos & Sheila M. Neumann-Antos Trust; DACIA, LLC, (collectively "Defendants") all Defendants appearing by and through their counsel of record MICHAEL R. MUSHKIN, ESQ. and L. JOE COPPEDGE, ESQ. of the law firm of MUSHKIN & COPPEDGE; the Court having read and considered the pleadings filed by the parties; having reviewed the evidence admitted during the trial; having heard and carefully considered the testimony of the witnesses called to testify and weighing their credibility; having considered the oral and written arguments of counsel, and with the intent of rendering a decision on the limited claims before the Court at this time, pursuant to NRCP 52(a) and 58; the Court makes the following findings of fact and conclusions of law:

I. Procedural Posture

On April 9, 2020, the original complaint was filed and a Temporary Restraining Order was issued without notice by the then assigned judge.[4]

Spanish Heights and SJCV initiated this action against CBC PARTNERS I, LLC, CBC PARTNERS, LLC, 5148 SPANISH HEIGHTS, LLC, KENNETH ANTOS AND SHEILA NEUMANN-ANTOS, as Trustees of the Kenneth & Sheila Antos Living Trust and the Kenneth M. Antos & Sheila M. Neumann-Antos Trust ("Antos Trust"); DACIA, LLC, with the First Amended Complaint being filed on May 15, 2020.

By Order filed May 29, 2020, the Court granted Plaintiffs' Motion for Preliminary Injunction on a limited basis that remained in effect until after expiration of the Governor's

[4] This matter was reassigned to this department after an April 13, 2020, Request for Transfer to Business Court was made by the Defendants.

Emergency Directive 008.

On June 10, 2020, defendants CBC PARTNERS I, LLC, CBC PARTNERS, LLC, and 5148 Spanish Heights, LLC, filed their answer to the first amended complaint.

Defendants CBC PARTNERS I, LLC, and 5148 Spanish Heights, LLC, have also filed a counterclaim against plaintiffs, and Jay Bloom.

On September 3, 2020, Defendant Antos Trust filed an answer and counterclaim against SJCV, which SJCV answered on September 28, 2020.[5]

II. Findings of Fact

1. This action involves residential real property located at 5148 Spanish Heights Drive, Las Vegas, Nevada 89148, with Assessor's Parcel Number 163-29-615-007 ("Property").

2. The original owners of the Property were Kenneth and Sheila Antos as joint tenants, with the original deed recorded in April 2007.

3. On or about October 14, 2010, Kenneth M. Antos and Sheila M. Neumann-Antos (collectively, "Antos") transferred the Property to Kenneth M. Antos and Sheila M. Neumann-Antos, as Trustees of the Kenneth and Shelia Antos Living Trust dated April 26, 2007 (the "Antos Trust", and together with "Antos", the "Antos Parties").

4. Nonparty City National Bank is the beneficiary of a first-position Deed of Trust recorded on the Property.

5. Nonparty Northern Trust Bank is the beneficiary of a second-position Deed of Trust recorded on the Property.

6. The Property is currently owned by Spanish Heights[6] which has entered into a

[5] The Antos have a pending motion for summary judgment.

[6] The manager of Spanish Heights is SJCV.

written lease agreement with SJCV.[7]

7. Although the Property is residential, it is not owner occupied, but is occupied by Jay Bloom ("Mr. Bloom") and his family.

8. On or about June 22, 2012, nonparty KCI entered into a Secured Promissory Note (the "Note") with CBC Partners I, LLC, a Washington limited liability company ("CBCI").

9. The Note memorialized a $300,000 commercial loan that CBCI made to Antos' restaurant company KCI to be used for the restaurant business.

10. On or around June 22, 2012, Kenneth and Sheila Antos, in their individual capacities, signed a "Guaranty" in which they personally guaranteed payment of the Note.

11. The Note was secured by a "Security Agreement" dated June 22, 2012, where the security interest includes KCI's intellectual property, goods, tools, furnishings, furniture, equipment and fixtures, accounts, deposit accounts, chattel paper, and receivables.

12. The Property was not included as collateral for the original Note.

13. The Note was modified and amended several times.

14. On November 13, 2013, a Fourth Modification to Secured Promissory Note ("Fourth Modification") was executed.

15. Paragraph 4 of the Fourth Modification amended Paragraph 6.12 of the Note as follows:

> 6.12 Antos Debt. Permit guarantor Kenneth M. Antos ("Antos") to incur, create, assume or permit to exist any debt secured by the real property located at 5148 Spanish Heights Drive, Las Vegas, Nevada 89148.

16. Along with the Fourth Modification, the Antos Trust provided a Security Agreement with Respect to Interest in Settlement Agreement and Mutual Release (the "Security

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[7] The manager of SJCV is Bloom.

Agreement").

17. This Security Agreement not only granted a security interest in a Settlement Agreement, but also contained certain Representations, Warranties and Covenants of the Antos Parties, including:

> 3.3 Sale, Encumbrance or Disposition. Without the prior written consent of the Secured Party, Antos will not (a) allow the sale or encumbrance of any portion of the Collateral and (b) incur, create, assume or permit to exist any debt secured by the real property located at 5148 Spanish Heights Drive, Las Vegas, NV 89148, other than the first and second position deeds of trust or mortgages…

18. KCI was acquired by Preferred Restaurant Brands, Inc. formerly known as Dixie Foods International, Inc. ("Dixie").

19. The Note was assumed by Dixie with the Antos Parties continuing to guaranty the obligation.

20. On or about October 31, 2014, a Seventh Modification to Secured Promissory Note and Waiver of Defaults ("Seventh Modification") was entered.

21. CBCI determined that prior to extension of additional credit; additional security was required to replace a previously released security interest in other collateral.

22. Paragraph 18(f) of the Seventh Modification provided for a condition precedent:

> Execution and delivery by Kenneth M. Antos and Sheila M. Neumann-Antos, as Trustees of the Kenneth and Sheila Antos Living Trust dated April 26, 2007, and any amendments thereto (the "Antos Trust") to Lender of a Deed of Trust on the real property located at 5148 Spanish Heights Drive, Las Vegas, Nevada 89148 (the "Real Property"), in form and substance satisfactory to Lender in its sole discretion.

23. On or about December 17, 2014, the Antos Trust delivered to CBCI a Certificate of Trust Existence and Authority ("Certificate of Trust").

24. The Certificate of Trust provides in part:

> Kenneth M. Antos and Sheila M. Neumann-Antos, as trustees (each, a

"Trustee") acting on behalf of the Trust, are each authorized and empowered in the name of the Trust without the approval or consent of the other Trustee, the beneficiaries, or any other person:

> To execute and deliver a Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing (the "Deed of Trust"), to secure (i) obligations owing to Lender by KCI Investments, LLC, a Nevada limited liability company, and Preferred Restaurant Brands, Inc., a Florida corporation (individually and collectively, "Borrower"), (ii) that certain Secured Promissory Note dated as of June 22, 2012, in the maximum principal amount of $3,250,000.00 (the "Note") executed by Borrower in favor of Lender, (iii) that certain Guaranty dated June 22, 2012, executed by the Grantors as individuals and not in their capacity as trustees, and (iv) the other documents and instruments executed or delivered in connection with the foregoing.

25. The Certificate of Trust further provides:

> The Deed of Trust and Lender's provision of credit under the terms of the Note will directly and indirectly benefit the Trust and its beneficiaries.
>
> The Trustees of the Trust have the authority to enter into the transactions with respect to which this Certificate is being delivered, and such transactions will create binding obligations on the assets of the Trust.

26. On or about December 29, 2014, a Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing (the "Deed of Trust") was recorded against the Property in the Clark County Recorder's Office as Instrument No. 201412290002856 for the purpose of securing the Note.

27. The revocable trust indirectly benefitted from this additional credit that was issued to Antos and his business by CBCI.

28. The Deed of Trust is subordinate to the first mortgage to City National in the principal amount of approximately $3,240,000.00 with a monthly payment of $19,181.07, and a second mortgage to Northern Trust Bank in the principal amount of approximately $599,000.00 with monthly payments of $3,034.00.

29. On or about April 30, 2015, a Ninth Modification to Secured Promissory Note

and Waiver of Defaults ("Ninth Modification") was executed.

30. Paragraph 14(c) of the Ninth Modification provides for a condition precedent as follows:

> Execution by the Trustees of the Kenneth and Sheila Antos Living Trust dated April 26, 2007, and any amendments thereto, and delivery to Lender of the Correction to Deed of Trust Assignment of Rents, Security Agreement and Fixture Filing, in form and substance satisfactory to Lender.

31. On July 22, 2015, a Correction to Deed of Trust, Assignment of Rent, Security Agreement and Fixture Filing ("Correction to Deed of Trust") was recorded in the Clark County Recorder's Office as Instrument No. 201507220001146.

32. This Correction to Deed of Trust modified Paragraph One of the Deed of Trust to read:

> One: Payment of any and all amounts (collectively, the "Guarantied Obligations") due and owing by Trustor under that certain Guaranty from Kenneth Antos and Sheila Antos (individually and collectively, "Guarantor") dated June 22, 2012, in favor of Beneficiary (the "Guaranty"), guarantying the indebtedness evidenced by that certain Secured Promissory Note (and any renewals, extensions, modifications and substitutions thereof) (collectively, the "Note"), executed by KCI Investments, LLC, a Nevada limited liability company, and Preferred Restaurant Brands, Inc., a Florida corporation (individually and collectively, "Borrower"), dated June 22, 2012, as modified, in the maximum principal sum of THREE MILLION AND NO/100 DOLLARS ($3,000,000.00), together with interest thereon, late charges and collection costs as provided in the Note.

33. On or about December 2, 2016, CBCI sold a portion of the monetary obligations of the Note in the amount of $15,000.00 to Southridge Partners II, LP.

34. On or about December 2, 2016, CBCI and KCI entered into a Forbearance Agreement.

35. As part of the Forbearance Agreement, the Antos Trust executed a Consent, Reaffirmation, and General Release by the Trust wherein the Antos Trust agreed

> to join in and be bound to the terms of the Representations and Warranties contained in Sections 4 and 7, and the General Release contained in Section 8 of the Agreement applicable as though the Trust were a Credit Party.

36. On or about December 2, 2016, a Tenth Modification to Secured Promissory Note ("Tenth Modification") was entered into.

37. Paragraph 6(e) of the Tenth Modification provides for a condition precedent as follows:

> Delivery to Lender of a duly executed First Modification to Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing, by Kenneth M. Antos and Sheila M. Neumann-Antos, Trustees of the Kenneth and Sheila Antos Living Trust dated April 26, 2007, and any amendments thereto, as trustor, related to that certain Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing made December 17, 2014, and recorded in the Official Records of Clark County, Nevada, on December 29, 2014, as instrument number 20141229-0002856.

38. On December 19, 2016, the First Modification to Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing was recorded in the Clark County Recorder's Office as Instrument No. 201612190002739.

39. On or about July 21, 2017, Mr. Bloom proposed to service the CBCI Note in exchange for the ownership in the Property. Specifically, Mr. Bloom wrote,

> My thought is that this proposal gets the 3rd lender:
> - a full recovery of its Note balance plus all protective advances past and future,
> - interim cash flow and
> - provides interim additional full collateral where, given the current value of the property, the 3rd position lender is currently unsecured.
>
> As to the Seller, he:
> - gets out from under a potential deficiency judgment from the 3rd position lender and
> - unburdens himself from any additional assets that may have been pledged.

40. Spanish Heights was created to facilitate this transaction.

41. On September 27, 2017, CBCI, the Antos Trust, Spanish Heights and Mr.

Bloom's company, SJCV, entered into the 2017 Forbearance Agreement.

42. The September 27, 2017 Forbearance Agreement indicates that Mr. Bloom's company Spanish Heights intends to acquire the Property and make certain payments to CBCI pursuant to the terms of the 2017 Forbearance Agreement.

43. Mr. Bloom testified that he was not provided with a complete set of documents reflecting the prior transactions between the Antos and KCI[8] and that misrepresentations were made regarding the prior transactions by CBCI.

44. In the 2017 Forbearance Agreement, the Antos Parties, Spanish Heights and SJCV acknowledged default and affirmed CBCI has fully performed.

45. The 2017 Forbearance Agreement contains an acknowledgement that the prior agreements between the Antos and CBCI are valid.

> Par. 8.7 Enforceable Amended Note and Modified Deed of Trust/No Conflicts. The Amended Note and Modified Deed of Trust and the Forbearance Agreement, are legal, valid, and binding agreements of Antos Parties and the SJCV Parties, enforceable in accordance with their respective terms, and any instrument or agreement required hereunder or thereunder, when executed and delivered, is (or will be) similarly legal, valid, binding and enforceable. This Forbearance Agreement does not conflict with any law, agreement, or obligation by which Antos Parties and the SJCV parties is bound.

46. In connection with the 2017 Forbearance Agreement, on November 3, 2017, the Antos Trust conveyed the Property to Spanish Heights.

47. A lease agreement between Spanish Heights as the Landlord, and SJCV as the Tenant, was executed by both Spanish Heights and SJCV on or around August 15, 2017.

48. The lease agreement between Spanish Heights and SJCV indicates that the lease term is two years, with an option for SJCV to exercise two additional consecutive lease

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[8] The Court finds that regardless of whether all of the prior transactional documents were provided to Mr. Bloom, Mr. Bloom was on notice of the prior transactions. The 2017 Forbearance Agreement clearly identifies the nature of the prior transactions in the section entitled "The Parties and Background" which begins on page 1 of the document.

extensions.

49. Pursuant to the terms of the 2017 Forbearance Agreement, Spanish Heights was to make certain payments to CBCI and other parties. In addition, a balloon payment of the total amount owing, under the Note, was due on August 31, 2019.

50. Pursuant to the 2017 Forbearance Agreement, SJCV affirmed all obligations due to CBCI under the Note and Modified Deed of Trust.

51. The 2017 Forbearance Agreement provides in pertinent part, "CBCI is free to exercise all of its rights and remedies under the Note and Modified Deed of Trust…"

52. The 2017 Forbearance Agreement states the rights and remedies are cumulative and not exclusive, and may be pursued at any time.

53. As part of the 2017 Forbearance Agreement, there were certain requirements of Spanish Heights attached as Exhibit B to the 2017 Forbearance Agreement.

54. Among the requirements was the understanding that the First Lien holder would pay the real property taxes, that CBCI would pay the 1st and 2nd Mortgage payments to prevent default, that Spanish Heights would make certain repairs and improvements to the Property, Spanish Heights would maintain the Property, and Spanish Heights would pay for a customary homeowner's insurance policy and all Homeowner's Association dues.

55. In addition to the requirements of the 2017 Forbearance Agreement, there was additional security to be provided by Spanish Heights, SJCV, and others.

56. Among the additional security was a Pledge Agreement, through which the members of Spanish Heights pledged 100% of the membership interest in Spanish Heights.[9]

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[9] The Pledge Agreement states in pertinent part:

THIS PLEDGE AGREEMENT dated 27th (sic)(this "Agreement") is made by Kenneth & Sheila Antos

57. The Pledge Agreement provides in pertinent part, "Secured Party shall have the right, at any time in Secured Party's discretion after a Non-Monetary Event of Default … to transfer to or to register in the name of Secured Party or any of Secured Party's nominees any or all of the Pledged Collateral."

58. Pursuant to the Pledge Agreement, upon an event of default, Pledgors (SJCV and Antos) appointed CBCI as Pledgors' attorney-in-fact to execute any instrument which Secured Party may deem necessary or advisable to accomplish the purposes of the Pledge Agreement.

59. The Pledge Agreement was signed on September 27, 2017, by the Antos and Mr. Bloom as purported manager on behalf of Spanish Heights. No separate signature block for SJCV appears on the Pledge Agreement.

60. Paragraph 17 of the Pledge Agreement contained a notice provision which required notice to the Pledgors to be given to Pledgors through Plaintiffs' current counsel, Maier Gutierrez & Associates.

61. As additional required security, SJCV agreed to a Security Agreement to grant CBCI a Security Interest in a Judgment described as:

> SJCV represents that First 100, LLC, and 1st One Hundred Holdings, LLC, obtained a Judgment in the amount of $2,221,039,718.46 against Raymond Ngan and other Defendants in the matter styled *First 100, LLC, Plaintiff(s) vs. Raymond Ngan, Defendant(s)*, Case No, A-17-753459-C in the 8th Judicial District Court for Clark County, Nevada (the "Judgment"), SJCV represents It holds a 24,912% Membership Interest in 1st One Hundred Holdings, LLC. SJCV represents and warrant that no party, other

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Living Trust (the Antos Trust"), SJC Ventures, LLC ("SJCV")(collectively the "Pledgors") to CBC Partners I, LLC, a Washington limited-liability company ("Secured Party" or "CBCI").

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WHEREAS, Pledgors are the owners of 100%, of the membership interests (the "Membership Interests") of Spanish Heights Acquisition Company, LLC, a Nevada limited liability company ("SHAC"), which has been organized pursuant to the terms of the Limited Liability Company Agreement of Spanish Heights Acquisition Company, LLC.

> than the Collection Professionals engaged to collect the Judgment, have a priority to receive net Judgment proceeds attributable to SJCV before SJCV; and that SJCV shall receive Its interest at a minimum in pari passu with other parties who hold interests in the Judgment. 1st One Hundred Holdings, LLC, represents and warrant that no party, other than the Collection Professionals engaged to collect the Judgment and certain other creditors of 1st One Hundred Holdings, have a priority to receive net Judgment proceeds prior to distributions to 1st One Hundred Holdings Members; and that SJCV shall receive Its interest at a minimum in pari passu with other parties who hold interests in the Judgment.

62. In addition to the other consideration in the 2017 Forbearance Agreement, the Antos Trust signed a Personal Guaranty Agreement, guaranteeing to CBCI the full and punctual performance of all the obligations described in the 2017 Forbearance Agreement.

63. Pursuant to the Amendment to Forbearance Agreement and Related Agreements, dated December 1, 2019 (the "Amendment to 2017 Forbearance Agreement"), SJCV[10] acknowledged that it pledged its membership interest in Spanish Heights as collateral for the 2017 Forbearance Agreement.[11]

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[10] An argument has been made that SJCV did not pledge its stock under the original Pledge Agreement. Given the notice provision in the original Pledge Agreement, Mr. Bloom's signature as manager on behalf of Spanish Heights, rather than SJCV, and the language of the Pledge Agreement reflecting a pledge of 100% of the interest in membership of Spanish Heights, it appears the signature line for Mr. Bloom may have been incorrect. Mr. Bloom is not the manager of Spanish Heights; Mr. Bloom is the manager of SJCV, which serves as the manager of Spanish Heights. The language in paragraphs 5 and 9 of the Amendment to the 2017 Forbearance Agreement reaffirms SJCV's pledge of its membership interest.

[11] The Amendment to the 2017 Forbearance Agreement states in pertinent part:

> WHEREAS, on or about September 27, 2017, the parties executed a Forbearance Agreement whereby CBCI agreed to forbear from exercising the rights and remedies under certain loan documents executed by the "Antos Parties." In addition to the Forbearance Agreement, the parties executed "Exhibit B" to the Forbearance Agreement, a Lease Agreement, an Account Control Agreement, a Membership Pledge Agreement, an Assignment of Rents, and a Security Agreement (collectively "the Related Agreements").

***

> 5. The Membership Pledge Agreement executed by SJCV and the Antos Trust shall remain in effect and the execution of this Amendment shall not be considered a waiver of CBCI's rights under the Membership Pledge Agreement.

***

64. On or about December 1, 2019, CBCI, the Antos, Spanish Heights and SJCV entered into an Amendment to the 2017 Forbearance Agreement, extending the date of the balloon payment to March 31, 2020.

65. The Amendment to 2017 Forbearance Agreement was signed by the Antos, Bloom as purported manager on behalf of Spanish Heights, and Bloom as manager of SJCV.

66. Pursuant to the Amendment to 2017 Forbearance Agreement, the Security Agreement "shall remain in effect and the execution of this Amendment shall not be considered a waiver of CBCI's rights under the Security Agreement…"

67. Pursuant to the Amendment to 2017 Forbearance Agreement, any amendment must be in writing.

68. On March 12, 2020, Spanish Hills Community Association recorded a Health and Safety Lien against the Property. This Lien was for Nuisances and Hazardous Activities.

69. On or about March 16, 2020, CBCI mailed a Notice of Non-Monetary Defaults to Spanish Heights and SJCV. This Notice of Non-Monetary Default delineated the following defaults:

1. Evidence of homeowner's insurance coverage Pursuant to Paragraph 1(A)(6) of Amendment to Forbearance Agreement and Related Agreements;
2. Evidence of repairs pursuant to Paragraph 3(c)(1) of Exhibit B to Forbearance Agreement;
3. Evidence of Bank of America account balance of $150,000.00 pursuant to Paragraph 6(c) of Exhibit B to Forbearance Agreement;
4. Opinion letter from SJC Ventures and 1st One Hundred Holdings counsel regarding the Judgment and Security Agreement pursuant to Paragraph 1(A)(12) of Amendment to Forbearance Agreement and Related Agreements;

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9. The Membership Pledge Agreement executed by SJCV and the Antos Trust shall remain in effect and the execution of this Amendment shall not be considered a waiver of CBCI's rights under the Membership Pledge Agreement.

5. Evidence of corporate authority for SJC Ventures and 1st One Hundred Holdings pursuant to Paragraph 1(A)(13) of Amendment to Forbearance Agreement and Related Agreements; and
6. Evidence of SJC Ventures filing of applications for mortgages to refinance 5148 Spanish Heights Drive, pursuant to paragraph 1(C) of Amendment to Forbearance Agreement and Related Agreements.

70. On April 1, 2020, a Notice of Default and Demand for Payment was sent to Spanish Heights and SJCV. This letter had a typo on the date of final balloon payment being due on March 31, 2021. This was corrected and emailed to Spanish Height's and SJCV's counsel noting that the default date was corrected to March 31, 2020.

71. On April 1, 2020, under separate cover, counsel for CBCI sent a Notice to Spanish Heights, SJCV, and Antos that CBCI would exercise its rights under the Pledge Agreement by transferring the pledged collateral to CBCI's nominee CBC Partners, LLC.

72. On April 1, 2020, CBC Partners received the Assignment of Company and Membership Interest of Spanish Heights from the Antos Trust.

73. On April 3, 2020, a Notice to Vacate was sent to SJCV.

74. On April 6, 2020, CBCI sold the Note and security associated with the Note, to 5148 Spanish Heights, LLC.

75. On May 28, 2020, the Assignment of Interest in Deed of Trust was recorded in the Clark County Recorder's Office as Instrument No 202005280002508.

76. On September 15, 2020, Notice of Breach and Election to Sell Under Deed of Trust was recorded in the Clark County Recorder's Office as Instrument No 202009150001405.

77. On December 15, 2020, Notice of Trustee's Sale was recorded in the Clark County Recorder's Office Instrument No 20201215-0000746. The Sale was scheduled for January 5, 2021.

78. CBCI, through Hallberg, and Mr. Antos, both individually and as Trustee of the

revocable living trust as makers; confirm the original debt and the Deed of Trust as collateral for the Note.

79. 5148 Spanish Heights, LLC, issued a new Notice of Default on January 4, 2021.

80. NRS 107.080 sets forth the notice requirements that were followed by 5148 Spanish Heights, LLC, and Nevada Trust Deed Services.

81. Plaintiff has shown no defect or lack of adequate statutory notice in the current notice.

82. NRS 47.240 provides for conclusive presumptions relevant to certain provisions of the relevant documents.[12]

83. Nothing in the evidence presented during these proceedings provides any basis for departure from the conclusive presumptions recited in the agreements between the parties.[13]

84. At this time, CBCI has acquired the Antos interest in Spanish Heights through the Pledge Agreement. The membership interest in a limited liability company is not an interest in

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[12] **NRS 47.240 Conclusive presumptions.** The following presumptions, and no others, are conclusive:

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2. The truth of the fact recited, from the recital in a written instrument between the parties thereto, or their successors in interest by a subsequent title, but this rule does not apply to the recital of a consideration.

[13] For purposes of this proceeding, the Court applies the conclusive presumptions of NRS 47.240 to the following :

From the Pledge Agreement:

WHEREAS, Pledgors are the owners of 100%, of the membership interests (the "Membership Interests") of Spanish Heights Acquisition Company, LLC, a Nevada limited liability company ("SHAC"), which has been organized pursuant to the terms of the Limited Liability Company Agreement of Spanish Heights Acquisition Company, LLC.

From the Amendment to the 2017 Forbearance Agreement:

WHEREAS, on or about September 27, 2017, the parties executed a Forbearance Agreement whereby CBCI agreed to forbear from exercising the rights and remedies under certain loan documents executed by the "Antos Parties." In addition to the Forbearance Agreement, the parties executed "Exhibit B" to the Forbearance Agreement, a Lease Agreement, an Account Control Agreement, a Membership Pledge Agreement, an Assignment of Rents, and a Security Agreement (collectively "the Related Agreements").

real property. Title to the Property remains in Spanish Heights.

85. Plaintiff has not established unanimity of interest in title to the Property.

86. Plaintiff has not established an intent on behalf of the creditor to merge their lien with equitable title.

87. Plaintiff has provided no evidence that the 2017 Forbearance Agreement and Amendment to the 2017 Forbearance Agreement are vague or ambiguous.

88. Plaintiff has provided no evidence of fraud or misrepresentation by any Defendant.

89. If any findings of fact are properly conclusions of law, they shall be treated as if appropriately identified and designated.

III. Conclusions of Law

1. The legal standard for granting injunctive relief is set forth in NRS 33.010, which provides:

> Cases in which injunction may be granted. An injunction may be granted in the following cases:
>
> 1. When it shall appear by the complaint that the plaintiff is entitled to the relief demanded, and such relief or any part thereof consists in restraining the commission or continuance of the act complained of, either for a limited period or perpetually.
>
> 2. When it shall appear by the complaint or affidavit that the commission or continuance of some act, during the litigation, would produce great or irreparable injury to the plaintiff.
>
> 3. When it shall appear, during the litigation, that the defendant is doing or threatens, or is about to do, or is procuring or suffering to be done, some act in violation of the plaintiff's rights respecting the subject of the action, and tending to render the judgment ineffectual.

2. Given the current bankruptcy stay, the Court extends the existing injunctive relief

entered January 5, 2021, pending further order from the Bankruptcy Court.

3. The relevant documents, including, but not limited to, the 2017 Forbearance Agreement and Amendment to Forbearance Agreement and Related Agreements, dated December 1, 2019, are clear and unambiguous as a matter of law

4. The Note is secured by the Property.

5. As a condition precedent to the Fourth, Seventh, Ninth, and Tenth Modifications to the Note, a Deed of Trust encumbering the Property was required.

6. The Antos Parties had authority, individually and as Trustees of the Antos Trust, to encumber the Property with the Deed of Trust to CBCI.

7. Plaintiffs have waived any defects, acknowledged the encumbrance and agreed, in writing to pay twice; first in the 2017 Forbearance Agreement and second, in the Amendment to the 2017 Forbearance Agreement.

8. Plaintiffs agreed in the 2017 Forbearance Agreements to pay the amounts in question by separate promise to the Antos Parties.

9. The Antos Trust received an indirect benefit from the transactions related to the Deed of Trust.

10. Mr. Antos testified that the Property was used as security in exchange for additional capital and release of other collateral from CBCI .

11. Mr. Antos agrees with CBCI that Plaintiffs have failed to perform.

12. NRS 107.500 is only required of owner-occupied housing.

13. The doctrine of merger provides that "[w]henever a greater and a less estate coincide and meet in one and the same person, without any intermediate estate, the less is immediately merged in the greater, and thus annihilated." 31 C.J.S. Estates § 153.

14. Plaintiffs have made no showing of the applications of the doctrine of merger in this case. As no interests have merged, and there is no showing of intent to merge

15. The one-action rule "does not excuse the underlying debt." *Bonicamp v. Vazquez,* 120 Nev. 377, 382-83, 91 P.3d 584, 587 (2004).

16. The One-Action Rule prohibits a creditor from "first seeking the personal recovery and then attempting, in an additional suit, to recover against the collateral." *Bonicamp,* 120 Nev. at 383, 91 P.3d at 587 (2004). When suing a debtor on a secured debt, a creditor may initially elect to proceed against the debtor or the security. If the creditor sues the debtor personally on the debt, the debtor may then either assert the one-action rule, forcing the creditor to proceed against the security first before seeking a deficiency from the debtor, or decline to assert the one-action rule, accepting a personal judgment and depriving the creditor of its ability to proceed against the security. NRS 40.435(3); *Bonicamp,* 120 Nev. at 383, 91 P.3d at 587 (2004).

17. The "One-Action Rule" was specifically waived by the debtor. The Deed of Trust paragraph 6.21(a) states:

> Trustor and Guarantor each waive all benefits of the one-action rule under NRS 40.430, which means, without limitation, Trustor and Guarantor each waive the right to require Lender to (i) proceed against Borrower, any other guarantor of the Loan, any pledgor of collateral for any person's obligations to Lender or any other person related to the Note and Loan Documents, (ii) proceed against or exhaust any other security or collateral Lender may hold, or (iii) pursue any other right or remedy for Guarantors' benefit.

18. The 2017 Forbearance Agreement paragraph 25 gives the benefit of cumulative remedies.

> The rights and remedies of CBCI under this Forbearance Agreement and the Amended Note and Modified Deed of Trust are

> cumulative and not exclusive of any rights or remedies that CBCI would otherwise have, and may be pursued at any time and from time to time and in such order as CBCI shall determine in its sole discretion.

19. The Court concludes as a matter of law that the Plaintiffs have not established facts or law to support the claim that the One-Action Rule bars recovery under the defaulted Note and Security documents.

20. The Court's Temporary Restraining Order, filed January 5, 2021, will remain in place pending further order of the Bankruptcy Court.

21. If any conclusions of law are properly findings of fact, they shall be treated as if appropriately identified and designated.

JUDGMENT

Based upon the foregoing Findings of Fact and Conclusions of Law, and other good cause appearing:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that as to the Claims for Declaratory Relief, the Court declares the third position Deed of Trust is a valid existing obligation against the Property.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that as to the Claims for Declaratory Relief, the Court declares that the Note is a valid existing obligation.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that as to the Claims for Declaratory Relief, the Court declares that the Pledge Agreement is a valid existing obligation of SJCV.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that as to the Claims for Declaratory Relief, the Court declares that the acquisition of a membership interest in Spanish Heights does not merge the Defendants interests.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that as to the Claims for Declaratory Relief, the Court declares that there has been a valid waiver of the One-Action Rule.

Dated this 6th day of April, 2021

Elizabeth Gonzalez, District Court Judge

Certificate of Service

I hereby certify that on the date filed, a copy of the foregoing Findings of Fact and Conclusions of Law was electronically served, pursuant to N.E.F.C.R. Rule 9, to all registered parties in the Eighth Judicial District Court Electronic Filing Program.

/s/ Dan Kutinac
Dan Kutinac, JEA

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DISTRICT COURT

CLARK COUNTY, NEVADA

TGC/FARKAS FUNDING, LLC, Plaintiff/Judgment Creditor, vs. FIRST 100, LLC, a Nevada Limited Liability Company; FIRST ONE HUNDRED HOLDINGS, LLC, a Nevada limited liability company aka 1st ONE HUNDRED HOLDINGS LLC, a Nevada Limited Liability Company, Defendants/ Judgment Debtors.	CASE NO. A-20-822273-C DEPT. 13 **FINDINGS OF FACT, CONCLUSIONS OF LAW, & ORDER RE EVIDENTIARY HEARING** **Hearing Date: March 3 and 10, 2021**

FINDINGS OF FACT, CONCLUSIONS OF LAW & ORDER

INTRODUCTION

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

MARK R. DENTON
DISTRICT JUDGE
DEPARTMENT THIRTEEN
LAS VEGAS, NV 89155

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

FINDINGS OF FACT

1. In 2013, Plaintiff was formed for the purpose of facilitating an investment in Defendants consisting of $1 million from 50% member TGC 100 Investor, LLC, managed by Adam Flatto ("Flatto"), and services (aka sweat equity) from 50% member Matthew Farkas ("Farkas").[1] In exchange for Plaintiff's contributions, Plaintiff received a 3% membership interest in Defendants.[2]

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

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

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[1] Exhibit 20, PLTF_154, 170.

[2] Exhibit 2, PLTF_006.

[3] Exhibits 7 and 8; Hearing Transcript of Testimony, March 3, 2021 ("3/3 Trans."), 8:10-16.

[4] 3/3 Trans., 160:3-7.

[5] Exhibits 25-26.

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

[7] 3/3 Trans., 159:23-160:2.

affiliated entities in 2017 (the "Ngan Judgment"). As Plaintiff did not receive any accounting to show what happened to Defendants' business or its assets and had questions, on May 2, 2017, Plaintiff made a written demand for the books and records of Defendants pursuant to the terms of Defendants' operating agreements and NRS 86.241.[8] Defendants did not provide any documents in response to Plaintiff's demand, resulting in Plaintiff filing an arbitration demand under a provision of Defendants' operating agreements requiring that such matters be determined through arbitration with the party bringing the matter required to pay all the upfront costs of the arbitration, subject to reimbursement in the event said party prevailed.[9]

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

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

[8] Exhibit 1.

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

[10] Exhibits 2 and II.

[11] Exhibit 2, PLTF_006.

[12] 3/3 Trans., 123:2-13.

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

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

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

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

7. The Arb. Award granted relief in favor of Plaintiff and against Defendants "in all respects" on the claim for books and records of Defendants arising from Defendants' operating agreements and NRS 86.241[19] and ordered Defendants to "forthwith, but no later than ten (10) calendar days from the date of this AWARD, make all the requested documents and information available from both companies to [Plaintiff] for inspection and copying."[20] Fees and costs were awarded Plaintiff.[21] The Arb. Award further provided that the "Award is in full settlement of all claims submitted to this arbitration. All claims not expressly granted herein are hereby

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[15] Exhibit 26, PLTF_218, and Exhibit 27, PLTF_235.

[16] Exhibit 22.

[17] Exhibit 2, PLTF_007.

[18] *Id.*

[19] *See* Exhibit 1, PLTF_002.

[20] Exhibit 2, PLTF_009.

[21] *Id.*

denied."[22]

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

9. The Order was entered November 17, 2020, constituting a final, appealable judgment. No appeal was filed by Defendants. On December 18, 2020, the OSC was filed upon Plaintiff's application citing no compliance or communicated intention to comply with the Order. The OSC scheduled a hearing for January 21, 2021.[26] The OSC was served on MGA on December 18, 2020; in addition, Bloom was personally served with the OSC on December 22, 2020.[27] On December 21, 2020, notices of judgment debtor examinations for each of Defendants and post-judgment discovery were served on MGA.[28] Bloom was also personally

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[22] *Id.*

[23] Exhibit 3.

[24] Exhibits 7 and 8, § 13.9.

[25] Exhibit 4, PLTF_019, ll. 15-27.

[26] Exhibit 5.

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

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

served with post-judgment discovery under NRCP 69(2) on December 29, 2020.[29]

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

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

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

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

[30] Exhibit 13, PLTF_106.

[31] *Id.*

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

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

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

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

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[32] Exhibit 11, PLTF_097.

[33] Exhibit 25.

[34] *See* Exhibit 38, PLTF_405 (Nahabedian's email).

[35] Exhibits FF and J.

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

[37] *See, e.g.*, Exhibit 28.

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

[39] Exhibit 20, §§ 3.4(a), 4.1(c).

of a management role with Plaintiff and left everything to Flatto and counsel, whether or not that was reflected in a formal amendment to Plaintiff's operating agreement.[40] Further, whether Defendants could rely on the signature of Farkas alone to bind Plaintiff was specifically addressed in multiple communications to Defendants. First, there was the April 18, 2017 email,[41] then the July 13, 2017 letter[42] (attaching the April 18, 2017 email and further stating "Farkas is not the manager." "Farkas does not have the authority to bind [Plaintiff]"), and then there was the Arb. Award's conclusion that a document executed by Farkas was irrelevant without the consent of Flatto as Farkas' signature alone did not bind Plaintiff.[43]

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

18. The circumstances surrounding how the Settlement Agreement was prepared and executed are also relevant. The Settlement Agreement was drafted by Bloom[46] and executed by Bloom, as manager of Defendants.[47] It is dated January 6, 2021 but was executed by Farkas on January 7, 2021 at the same time that Farkas executed other documents sent by Bloom to a UPS

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[40] 3/3 Trans., 108:5-17.

[41] Exhibit 21.

[42] Exhibit 22, PLTF_, 179, 190.

[43] Exhibit 2, PLTF_007

[44] Exhibit 23.

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

[46] Id., 193:25-194:2.

[47] Exhibit 13, PLTF_108.

store for Farkas' signing and return.[48] Farkas did not know he was signing a Settlement Agreement when he signed it,[49] and there is no evidence he intended to bind Plaintiff to anything when he executed the documents. Notwithstanding the express terms of the Settlement Agreement providing that the signatories were duly authorized,[50] Farkas did not read that provision (or any provision)[51] and testified he never otherwise represented to Bloom or anyone else that he had authority to enter into the Settlement Agreement on behalf of Plaintiff.[52] Farkas testified he did not negotiate the terms of the Settlement Agreement with Bloom, which is corroborated by the lack of evidence of any back and forth on terms prior to the agreement being finalized by Bloom.[53] There is no evidence Bloom provided Farkas a copy of the Settlement Agreement for Farkas, Flatto or counsel's review prior to sending it to the UPS store with other documents to be signed.[54] Farkas testified he believed that the documents he signed at the UPS store related to resolution of a threatened claim against him by Defendants in connection with his prior employment and included the retention of personal counsel for him.[55] This testimony was corroborated by Nahabedian's January14, 2021 correspondence referencing a threat of adverse action against Farkas from Defendants[56] and the fact that a form of Release between Farkas and Defendants was executed at the same time as the Settlement Agreement.[57]

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

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

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

[50] Exhibit 13, PLTF_107, § 14.

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

[52] *Id.*, 136:16-19.

[53] 3/3 Trans., 137:1-8, 13-15.

[54] *Id.*, 211:17-25; 213:15-23.

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

[56] Exhibit 11, PLTF_097.

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

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

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

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

It was revealed from Nahabedian's records:

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

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

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

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

[62] Exhibit 28, PLTF_240-244.

[63] 3/3 Trans., 149:25-150:7.

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

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

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

[65] 3/10 Trans., 35:5-16

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

[67] Exhibit 28, PLTF_245.

[68] *See* Exhibit 17, PLTF_123.

[69] Exhibit 28, PLTF_245-261.

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

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

[70] *Id.* at PLTF_245 (emphasis added).

[71] *Id.* at PLTF_266.

[72] *Id.* at PLTF_278.

[73] *Id.* at PLTF_281, 284, 288.

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

[75] Exhibit 11.

[76] *Id.* at PLTF-097.

[77] 3/3 Trans.,144:22-148:24.

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

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

22. Although there is dispute between Farkas and Bloom regarding when Bloom was specifically informed that Farkas was removed from having *any* management interest in Plaintiff in September 2020,[80] Bloom and Nahabedian both knew that Farkas had officially resigned his management position in September 2020 by at least the time the Motion to Enforce was filed.[81] Despite learning of the restriction on Farkas' authority, Bloom and his counsel[82] were unfazed and moved forward on their enforcement efforts.

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

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[78] PLTF_311, 316-317, 318, 323, 328-332.

[79] 3/10 Trans., 51:17-20.

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

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

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

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

24. Not only did Bloom disregard the Arb. Award, but also the basis for the Arb. Award, including the April 18, 2017 email to Defendants providing notice that Farkas cannot bind Plaintiff without Flatto's consent in addition to the declarations of Flatto and Farkas.[86] Further, on July 13, 2017, Plaintiff also sent written correspondence to MGA[87] representing Farkas is "not the manager" of Plaintiff and that "Farkas does not have the authority to bind [Plaintiff]."[88] Bloom did not heed any of the notices of Farkas' restricted authority to bind Plaintiff.

25. In the Motion to Enforce, Maier testified[89] that Farkas had authority based on Plaintiff's engagement letter with GTG, which Farkas executed as a member of Plaintiff "and

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

[84] 3/10 Trans., 87:25-88:14.

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

[86] Exhibit 2, PLTF_007.

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

[88] Exhibit 22.

[89] Motion to Enforce, 3:1-6.

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

26. In addition, Maier testified in support of the Motion to Enforce[92] that Plaintiff's operating agreement provided the apparent authority for Farkas to bind Plaintiff to the terms of the Settlement Agreement. Section 3.4 of the operating agreement, which was in effect prior to September 2020, provides that the Administrative Member (Farkas) could not act without first obtaining the consent of the other members (Flatto).[93] At Section 4.4, it provides that persons dealing with Plaintiff are entitled to rely conclusively upon the power and authority of the Administrative Member (Farkas until September 2020).[94] However, by the time of the Motion to Enforce, Defendants and Bloom had received notice of the amendment executed in September 2020 that changed the Administrative Member to Flatto and Flatto was the only person with authority to bind Plaintiff subsequent to that date.[95] In addition, the entry of the Arb. Award and 2017 communications providing notice of a restriction on Farkas' authority post-dated the operating agreement, negating Defendants' ability to conclusively rely upon Farkas' signature as binding authority under Section 4.4.

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

[90] Exhibit 28, PLTF_299-300.

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

[92] Motion to Enforce, 3:6-11.

[93] Exhibit 20, PLTF_159.

[94] *Id.* at Exhibit 20, PLTF_162.

[95] *See* fn. 81 above.

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

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

29. The Settlement Agreement expressly provides that, in exchange for dismissal, if Defendants sell the Ngan Judgment, Defendants will pay Plaintiff $1,000,000.00, plus 6% interest.[96] There is no evidence of any actual sale, or even ability to sell[97] the Ngan Judgment for a sufficient sum to pay Plaintiff $1,000,000.00 plus interest. Further, Defendants' promise for payment in the future upon a sale of the Ngan Judgment is particularly speculative upon the concession that the Ngan Judgment has not resulted in any collections since its entry in 2017, despite diligent collection efforts from MGA and other collection counsel.[98]

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

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[96] Exhibit 13, PLTF_106.

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

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

[99] Exhibits 7 and 8, Article V.

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

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

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

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

[100] 3/3 Trans., 72:15- 73:5.

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

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

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

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

[102] 3/3 Trans., 116:1-21, 119:9-16.

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

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

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

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

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

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

[105] *Id.* at 102:17-20.

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

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

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

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

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

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

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[107] Exhibit 4, p. 3.

[108] Exhibit 6.

[109] 3/3 Trans., 219:4-9.

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

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

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

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

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

Defendants are not incapable of abiding by the Order; Bloom merely determined to do nothing to comply with the Order.[115] Bloom's affiliated SJC is the 45.625% Class A Member of First 100. [116]

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[111] 3/10 Trans., 14:9-18.

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

[113] Exhibits 26 and 27.

[114] Exhibits 7 and Exhibit 8, p. 8.

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

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

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

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

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

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[116] Exhibit 7, p. 28.

[117] Exhibit 8, p. 29.

[118] Exhibits 7-8, 26-27.

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

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

CONCLUSIONS OF LAW

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

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

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

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

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

legal consequences for the principal, the agent reasonably believes, in accordance with the principal's manifestations to the agent, that the principal wishes the agent so to act." *Simmons Self-Storage*, at 549, 331 P.3d at 856 (citing Restatement (Third) of Agency § 2.01 (2006)). When examining whether actual authority exists, the courts are to focus on an agent's reasonable belief. *Id.* (citing § 2.02 & cmt. e ("Whether an agent's belief is reasonable is determined from the viewpoint of a reasonable person in the agent's situation under all of the circumstances of which the agent has notice.")).

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

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

[120] 3/3 Trans., 72:19-23.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[121] Exhibit V.

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

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

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

[122] Exhibit 4.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ORDER

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

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

2) Based on its determination that Defendants and Bloom disobeyed and resisted the Order in contempt of Court (civil), the Court orders immediate compliance. In order to purge their contempt, Defendants, and any manager, representative or other agent of Defendants receiving notice of this order shall take all reasonable steps to comply with the Order, and within 10 days of notice of entry of this order, shall produce the following books and records for Defendants to Plaintiff[128] at their expense:[129]

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

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

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

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

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

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

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

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

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

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

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

Dated this 7th day of April, 2021

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

MARK R. DENTON
DISTRICT JUDGE

DEPARTMENT THIRTEEN
LAS VEGAS, NV 89155

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

TGC/Farkas Funding, LLC, Plaintiff(s) vs. First 100, LLC, Defendant(s)	CASE NO: A-20-822273-C DEPT. NO. Department 13

AUTOMATED CERTIFICATE OF SERVICE

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

Service Date: 4/7/2021

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

Joseph Gutierrez

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Attorneys for Defendant and Counterclaimants
5148 Spanish Heights, LLC and
CBC Partners I, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

SPANISH HEIGHTS ACQUISITION COMPANY, LLC, a Nevada Limited Liability Company; SJC VENTURES HOLDING COMPANY, LLC, d/b/a SJC VENTURES, LLC, a Delaware Limited Liability Company, Plaintiffs, v. CBC PARTNERS I, LLC, a foreign Limited Liability Company; CBC PARTNERS, LLC, a foreign Limited Liability Company; 5148 SPANISH HEIGHTS, LLC, a Nevada Limited Liability Company; KENNETH ANTOS AND SHEILA NEUMANN-ANTOS, as Trustees of the Kenneth & Sheila Antos Living Trust and the Kenneth M. Antos & Sheila M. Neumann-Antos Trust; DACIA, LLC, a foreign Limited Liability Company; DOES I through X; and ROE CORPORATIONS I through X, inclusive, Defendants. CAPTION CONTINUES BELOW	Case No. A-20-813439-B Dept. No.: 11 **STATUS REPORT REGARDING LIFTING OF BANKRUPTCY STAY**

5148 SPANISH HEIGHTS, LLC, a Nevada limited liability company; and CBC PARTNERS I, LLC, a Washington limited liability company,

Counterclaimants,

v.

SPANISH HEIGHTS ACQUISITION COMPANY, LLC, a Nevada Limited Liability Company; SJC VENTURES, LLC, a Delaware limited liability company; SJC VENTURES HOLDING COMPANY, LLC, a Delaware limited liability company; JAY BLOOM, individually and as Manager, DOE DEFENDANTS 1-10; and ROE DEFENDANTS 11-20,

Counterdefendants.

STATUS REPORT REGARDING LIFTING OF BANKRUPTCY STAY

Defendants/Counterclaimants, 5148 Spanish Heights, LLC, and CBC Partners I, LLC, by and through their attorney, Michael R. Mushkin, of the law firm of Mushkin & Coppedge, hereby submit THIS Status Report to advise the Court that the automatic stay pursuant to 11 U.S.C. §362, in Spanish Heights Acquisition Company, LLC's bankruptcy case was lifted by order of the Bankruptcy Court in Case No. BK-21-10501-nmc and entered on July 27, 2021, attached hereto as Exhibit A.

DATED this 28th day of July, 2021

MUSHKIN & COPPEDGE

/s/Michael R. Mushkin
MICHAEL R. MUSHKIN, ESQ.
Nevada Bar No. 2421
L. JOE COPPEDGE, ESQ.
Nevada Bar No. 4954
6070 South Eastern Ave Ste 270
Las Vegas, NV 89119

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **Status Report Regarding Lifting of Bankruptcy Stay** was submitted electronically for filing and/or service with the Eighth Judicial District Court on this 28th day of July, 2021. Electronic service of the foregoing document shall be upon all parties listed on the Odyssey eFileNV service contact list.

/s/Karen L. Foley
An Employee of
MUSHKIN & COPPEDGE

EXHIBIT “A”

Honorable Natalie M. Cox
United States Bankruptcy Judge

Entered on Docket
July 27, 2021

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UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

In re: SPANISH HEIGHTS ACQUISITION COMPANY, LLC, Debtor	Case No.: 21-10501-NMC CHAPTER 11 **ORDER GRANTING RELIEF FROM THE AUTOMATIC STAY TO PROCEED WITH STATE COURT LITIGATION AGAINST DEBTOR AND NONDEBTOR PARTIES**

Motion for Relief From the Automatic Stay to Proceed With State Court Litigation Against Debtor and Nondebtor Parties [ECF 140] filed by Secured Creditor, 5148 Spanish Heights, LLC, a Nevada limited liability company ("Movant" or "5148"), successor-in-interest to CBC Partners I, LLC, a Washington limited liability company ("Lender") came on for oral ruling before this Court on July 22, 2021, at 9:30 am, the Honorable Natalie M. Cox, United States

Bankruptcy Judge, presiding. Movants were represented by Michael R. Mushkin, of Mushkin & Coppedge, and Debtor Spanish Heights Acquisition Company, LLC was represented by James D. Greene, of Greene Infuso, LLP; Secured Creditor City National Bank was represented by Andrea M. Gandara, of Holley Driggs; and Secured Creditor The Northern Trust Company, successor by merger to Northern Trust Bank, FSB was represented by Blakely E. Griffith, of Snell & Wilmer. The Court having reviewed the Motion, Opposition, Declarations, and related filings and having considered the arguments of the parties, and with good cause appearing,

IT IS HEREBY ORDERED that, for the reasons stated on the record, which the Court adopts as its findings of fact and conclusions of law pursuant to Federal Rule of Bankruptcy Procedure 7052, the Motion is GRANTED.

Respectfully submitted by:

MUSHKIN & COPPEDGE

/s/Michael R. Mushkin
MICHAEL R. MUSHKIN, ESQ.
Nevada Bar No. 2421
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Approved by:

GREENE INFUSO, LLP

/s/James D. Greene
JAMES D. GREENE, ESQ.
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Approved by:

HOLLEY DRIGGS

/s/Andrea M. Gandara
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Approved by:

SNELL & WILMER LLP

/s/Blakeley E. Griffith
BLAKELEY E. GRIFFITH, ESQ.
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Las Vegas, Nevada 89169

LOCAL RULE 9021 CERTIFICATION

In accordance with LR 9021, counsel submitting this document certifies that the order accurately reflects the court's ruling and that (check one):

☐ The court has waived the requirement set forth LR 9021(b)(1).

☐ No party appeared at the hearing or filed an objection to the motion.

☒ I have delivered a copy of this proposed order to all counsel who appeared at the hearing, and any unrepresented parties who appeared at the hearing, and each has approved or disapproved the order, or failed to respond, as indicated below [list each party and whether the party has approved, disapproved, or failed to respond to the document]:

James D. Greene, Andrea M. Gandara, and Blakeley E. Griffith

☐ I certify that this is a chapter 7 or 13 case, that I have served a copy of this order with the motion pursuant to LR 9014(g), and that no party has objected to the form or content of the order.

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA (LAS VEGAS)

IN RE:	.	Case No. 21-10501-nmc
	.	Chapter 11
SPANISH HEIGHTS ACQUISITION COMPANY, LLC,	.	300 Las Vegas Blvd. South Las Vegas, NV 89101
Debtor.	.	Tuesday, September 28, 2021 10:56 a.m.

TRANSCRIPT OF ORAL RULING RE: MOTION TO APPOINT TRUSTEE WITH CERTIFICATE OF SERVICE FILED BY MICHAEL R. MUSHKIN ON BEHALF OF 5148 SPANISH HEIGHTS, LLC, CBC PARTNERS I, LLC, CBC PARTNERS, LLC [136];
ORAL RULING RE: MOTION TO ENFORCE FILED BY JAMES D. GREENE ON BEHALF OF SPANISH HEIGHTS ACQUISITION COMPANY, LLC [176];
ORAL RULING RE: MOTION FOR SANCTIONS FOR VIOLATION OF THE AUTOMATIC STAY AND RELATED RELIEF FILED BY JAMES D. GREEN ON BEHALF OF SPANISH HEIGHTS ACQUISITION COMPANY, LLC [65]
BEFORE THE HONORABLE NATALIE M. COX (VIA TELECONFERENCE)
UNITED STATES BANKRUPTCY COURT JUDGE

TELEPHONIC APPEARANCES:

For the Debtor:	Greene Infuso By: JAMES D. GREENE, ESQ. 3030 South Jones Boulevard, Suite 101 Las Vegas, NV 89146 (702) 570-6000
For 5148 Spanish Heights, LLC, CBC Partners I, LLC, and CBC Partners, LLC:	Mushkin & Coppedge By: MICHAEL R. MUSHKIN, ESQ. 6070 South Eastern Avenue, Suite 270 Las Vegas, NV 89119 (702) 454-3333

APPEARANCES CONTINUED.

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Proceedings recorded by electronic sound recording, transcript produced by transcription service.

TELEPHONIC APPEARANCES (Continued):

For City National Bank:	Holley Driggs Walch Puzey Thompson By: ANDREA M. GANDARA, ESQ. 400 South Fourth St, 3rd Floor Las Vegas, NV 89101 (702) 791 0308
For Larry Bertsch:	Carlyon Cica CHTD. By: DAWN CICA, ESQ. 265 East Warm Springs Road Suite 107 Las Vegas, NV 89119 (702) 685-4444

(Proceedings commence at 10:56 a.m.)

THE CLERK: -- through 3 on the Spanish Heights Acquisition Company, Case Number 21-10501.

THE COURT: Good morning. Could I have appearances, please?

MR. GREENE: Good morning, Your Honor. James Greene on behalf of the debtor-in-possession.

MR. MUSHKIN: Good morning, Your Honor. Mike Mushkin on behalf of 5148 and related parties.

MS. GANDARA: Good morning, Your Honor. This is Andrea Gandara appearing on behalf of the bank.

MS. CICA: Good morning, Your Honor. This is Dawn Cica appearing on behalf of Larry Bertsch, the examiner to the manager of the debtor.

THE COURT: All right. Thank you. Is there anything that we need to discuss before I give the rulings?

MR. GREENE: This is James Greene, Your Honor. Not that I'm aware of, and my understanding is you were just going to issue an oral ruling on the three pending matters.

THE COURT: That is correct. All right. I don't hear any. I intend to go first -- forward first with the motion to enforce that is at ECF 176, move on to the sanctions order, and then to the (audio interference) motion.

All right. This is, again, in respect to the motion to enforce at ECF 176. On August 24th, 2021, the Court held a

hearing on debtor's motion to enforce filed at ECF 176. I considered the motion, the opposition filed at ECF 182, the supplement filed at ECF 185, and the arguments of counsel made at the August 24th, 2021 hearing.

Pursuant to Federal Rule of Evidence 201(b), I have also taken judicial notice of any pleadings on the bankruptcy docket in this case and now enter the following findings of fact and conclusions of law pursuant to Federal Rule of Civil Procedure 52 and the Federal Rule of Bankruptcy Procedure 7052.

On February 3rd, 2021, the debtor filed its voluntary Chapter 11 bankruptcy petition. The debtor's voluntary petition contains documentation identifying SJC Ventures Holdings, LLC as its manager and majority member.

As of the petition date, debtor and SJCV, the plaintiffs in a lawsuit they instituted against, in pertinent part, CBC Partners I, LLC and 5148 Spanish Heights, LLC in the District Court for Clark County, Nevada at Case Number A-20-813439.

Throughout this ruling, I'm going to refer to this prepetition lawsuit as the "state court case" and the CBC and 5148 Spanish Heights defendants as the "CBC parties."

On February 10th, 2021, the CBC parties filed a motion with this court to either dismiss the bankruptcy case or grant them relief from the automatic stay to proceed with the state court case. That is at ECF 17.

On March 15, 2021, an evidentiary hearing in the state court case was scheduled regarding five issues previously stipulated by the parties. As of March 15, 2021, the CBC parties' motion before this Court to either dismiss or provide stay relief was still under advisement. Nevertheless, counsel for the CBC parties insisted to State Court Judge Gonzalez that continuation of the March 15, 2021 hearing would not violate the automatic stay, a contention which was challenged in the state court case by counsel for plaintiffs, of which the debtor (indiscernible). Judge Gonzalez accepted the CBC parties' counsel's position and proceeded with the evidentiary hearing on March 15, 2021.

Judge Gonzalez subsequently entered findings of fact and conclusions of law on April 6th, 2021. This prompted the debtor to file a motion with this Court requesting sanctions based on the CBC parties' alleged violations of the automatic stay, at ECF 65.

On May 26, 2021, this Court entered an order granting in part and denying in part the debtor's motion requesting sanctions, which I refer to throughout this ruling as the "partial contempt order."

On June 15th, 2021, the CBC parties filed a second motion with this Court asking for relief from the automatic stay to proceed with the state court case, at ECF 140.

On June 24, 2021, the CBC parties filed a motion in

the state court case seeking the appointment of a receiver over SJCV. ECF 176-1, Exhibit 1.

On July 27, 2021, this Court entered an order granting the CBC parties' motion for relief from the automatic stay to proceed with the state court case. That's at ECF 161.

On August 10th, 2021, Judge Gonzalez entered an order appointing a receiver in the state court case, which I refer to throughout this ruling as the "receiver order," and that's at ECF 176-1, Exhibit 3.

On August 12, 2021, the debtor filed its motion to enforce. By its motion to enforce, the debtor requests that the Court enter an order enforcing its stay violation order and determining that the CBC parties have once again willfully violated the automatic stay by seeking appointment of a receiver and ordering the CBC parties to immediately seek recision of both the April 6th state court ruling and the resulting receivership order based on that ruling. That was at ECF 176 at Page 6, Lines 16 through 20.

Although the legal standard is not identified in the motion to enforce, the debtor essentially asked the Court to find CBC parties in civil contempt on both the partial contempt order and under the automatic stay under 11 U.S.C. 362.

As stated during my May 18, 2021 oral ruling, to hold a party in contempt, the movant must show by clear and convincing evidence that the party violated a specific and

definite court order. The automatic stay qualifies as a specific and definite court order, as does this Court's partial contempt order.

The stay violation also must be willful. For purposes of finding contempt, willfulness does not depend on the parties' intent or subjective belief. All the movant needs to show is that the contemnors knew of the automatic stay and that he or she intended the actions that violated the stay.

As further stated during my May 18, 2021 oral ruling, the Supreme Court recently clarified the legal standard governing contempt in the discharge context. As held in Taggart v. Lorenzen, 139 S. Ct. 1795, the "bankruptcy court can exercise its discretion to impose civil contempt sanctions when the contemnor had 'no objectively reasonable basis for concluding that its conduct might be lawful.' Put differently, when there is no fair ground of doubt as to whether the subject order barred the conduct the violator engaged in, the Court has the discretion to hold the violator in contempt of court."

The debtor argued that the CBC parties' filing of the receiver motion and the state court's entry of the receiver order violates the partial contempt order and/or the automatic stay. The debtor further contends that although purporting to seek relief from the state court solely as to a nondebtor third party, the obvious effect of this effort is to interfere with debtor's reorganization efforts and to undermine debtor's

efforts to complete a Chapter 11 plan that would benefit all creditors.

The debtor clarifies in its motion that the motion seeking appointment of a receiver for SJCV is nothing more than an attempt to interfere with debtor's efforts to reorganize and to exercise control of the debtor's assets in violation of the Bankruptcy Code Section 362(a)(3).

The debtor further argues that to the extent the April 6th ruling or any subsequent ruling, including the newly issued state court order appointing a receiver for SJCV, which is based upon the Court's findings and conclusions issued on April 6th, 2021 was based on the testimony and arguments made on March 15th, those actions and rulings are void, as well.

As an initial matter, and for the avoidance of doubt, the partial contempt order stated only that the motion is granted in part and the Court finds that the CBC parties violated the automatic stay of 11 U.S.C. 362(a) with respect to the items designated as issues A, B, and C on ECF Number 79-2, Page 3, n.1, Lines 17 through 20.

Not stated therein, but recognized by law, and as set forth by debtor in its moving papers is that violations of the automatic stay are void. Therefore, to the extent that the partial contempt order found the CBC parties pursued if certain of the state court claims was a violation of stay, then any of the state court findings of fact and conclusions of law related

solely to those claims may be void.

To the extent that the findings of fact and conclusions of law require clarification as to which claim they relate, it is the state court that is best situated to make that determination and clarify what, if any, findings of fact it relied upon in rendering its conclusions of law.

Notably, the state court acknowledged debtor's Chapter 11 case in Footnote 2 of its findings of act and conclusions of law at ECF 112, Exhibit 9, and stated, quote, "As no order lifting the stay has been entered by the bankruptcy court, nothing in this order creates any obligations or liabilities directly related to Spanish Heights, though factual findings related to Spanish Heights are included in its decision."

Debtor has argued without citation to any analogous authority with a partial stay violation that the entirety of the April 6th state court decision be rendered void as a result of the partial contempt order. Debtor has not offered an alternative to its "all or nothing" treatment of the state court's findings of fact and conclusions of law that resulted from that hearing.

This argument is flawed. This Court did not find the entirety of the March 15, 2021 state court hearing to be in violation of the automatic stay. Indeed, the Court spent a significant amount of time analyzing the claims as they related

to this debtor to determine that the CBC parties were in violation of the stay for proceeding with some but not all of the claims.

The automatic stay did not prevent the state court hearing from proceeding with respect to claims against the nondebtor parties. Therefore, determining which findings and conclusions of law, if any, that resulted from that April 6th hearing is not an "all or nothing" proposition.

Were the only parties to the state court case the debtor and the CBC parties, or if the only claims pursued by the CBC parties at the hearing on April 6th were those which this Court ultimately found to be in violation of the stay, only then would debtor's suggestion that the entire hearing and the resulting findings of fact and conclusions of law are void to be accurate.

Because those are not the facts, and I only found a partial violation of the automatic stay, however, a blanket finding that the entirety of the April 6th hearing and resulting findings and conclusions of law is not appropriate.

It appears that the state court came to the same conclusion when SJCV made the same argument to the state court via its opposition to the receivership motions at ECF 176-1, Exhibit 2. SJCV's opposition to the receivership motion raised similar arguments to the state court about violations of the automatic stay and the voidness of the findings of fact and

conclusions of law that resulted therefrom. Yet, even with this knowledge, the state court judge proceeded to appoint a receiver with respect to SJCV, utilizing findings it made on April 6th.

From this, I can infer that the state court judge presumably did not deem the findings of fact argued as relayed by SJCV to foreclose her ability to enter the receiver order.

For all these reasons, I find and conclude that the debtor has not satisfied its burden by clear and convincing evidence to show that the filing of the receivership motion and/or the entry of the receiver order in the state court case constituted civil contempt with the partial contempt order. Therefore, the Court denies, without prejudice, the motion to enforce to the extent it asked the Court to enforce the partial contempt order.

The debtor's second request for relief asks that I find that the filing of the receivership motion and/or the entry of the receiver order constituted a willful violation of the automatic stay. The receiver order stated, in pertinent part, the following, Paragraph 2: "The receiver shall collect the business records of SJCV and any subsidiary and affiliated entities in which SJCV have an ownership interest, specifically First 100, LLC, and Spanish Heights Acquisition Company, LLC" -- (audio interference) --

Thank you.

Paragraph 3: "The receiver shall determine the efforts made to collect upon the judgment in the matter styled as First 100, LLC v. Raymond" -- I'm not sure how to pronounce the last name, It's spelled N-G-A-N -- "Case Number A-17-753459-C in the Eighth Judicial District Court for Clark County, Nevada and report the financial condition of SJCV to the Court."

Paragraph 6: "Absent further order from the Court, the receiver shall have no other powers, authorities or responsibilities aside from those explicitly stated in this order."

8: "The receiver shall be the agent of the Court and shall be accountable directly to the Court. This Court hereby asserts exclusive jurisdiction. The receiver is authorized to perform a review and accounting of all SJCV's assets, holdings, and interests. The receiver is empowered to use any and all lawful means to identify the assets, rights, holdings, and interests of SJCV and any subsidiary and affiliated entities with which SJCV has an ownership interest, specifically First 100, LLC, and Spanish Heights Acquisition Company, LLC."

Paragraph 9: "The receiver and the interested parties of the receivership estate may petition this Court for instructions in connection with this order and any further orders which this Court may make."

As an initial matter, it is true that as a general

rule, the automatic stay does not protect nondebtors, and it protects only debtors, debtors' property, and property of the estate. Debtor concedes that the receivership motion and receiver order was only directed against a nondebtor party, SJCV.

Case law reflects that the debtor has the option to ask the Court to extend the automatic stay as to nondebtors based on a variety of legal standards, including injunctive relief and/or an unusual circumstances test.

However, debtor has never asked this Court to extend the automatic stay as to the nondebtor, SJCV. The automatic stay was therefore not violated simply because an action in state court proceeded against debtor's nondebtor manager and member SJCV.

Contrary to debtor's further arguments, I find and conclude that the receiver's order does not violate Section 362(a)(3), which makes the automatic stay applicable to any act to obtain possession of property of the estate, or property from the estate, or to exercise control over property of the estate.

Debtor argues that SJCV has provided all necessary funds to: (1) provide insurance on debtor's property; (2) make adequate protection payments to debtor's secured lenders, City National Bank and Northern Trust Bank; (3) pay homeowner's association dues; and (4) pay U.S. Trustee fees and other

administrative expenses.

By seeking to have a receiver appointed, the CBC parties seek to interfere with SJCV's ability to provide funding to debtor to make the foregoing payments, which in turn puts debtor's ability to reorganize in jeopardy and places its property at risk.

Thus, the receiver's motion directly seeks the control of debtor's property and to terminate its ability to reorganize in furtherance of the CBC parties' stated goal of gaining, quote, "a straight line to foreclosure" on the debtor's property. That was at ECF 176, Page 6, Lines 6 through 14.

I discussing with debtor's argument for the following reasons. First and foremost, the receiver order requires the receiver to quote, "use any and all lawful means" in carrying out his obligations under the order. Clearly, any lawful means as it relates to the debtor and/or property of the estate would involve ensuring that any action taken by the receiver did not violate the automatic stay.

To accept the debtor's premise that a stay violation occurred when the state court entered the receiver order with respect to debtor's nondebtor manager SJCV's interest in the debtors would require the Court to assume without factual or legal evidence that any action taken by the receiver could not be conducted by lawful means. I'm not going to so find.

Likewise, I am not going to find that the CBC parties' blackline draft of the receiver order is evidence of a violation of the automatic stay.

Debtor argued that this proposed order exchanged between counsel for the CBC parties and counsel for SJV supports its argument that the CBC parties sought to obtain greater rights than awarded by the state court. I have reviewed the blackline order and find that this draft, subject to debtor's counsel review and ultimately rejected in large part by the state court, does not demonstrate by clear and convincing evidence that the CBC parties violated the automatic stay.

A court order is generally required to extend the automatic stay to nondebtor parties, even where there exists a close relationship between a debtor and nondebtor parties, such that the debtor alleges that absent the extension of the automatic stay to such nondebtor parties the debtor's chances of a successful reorganization would be adversely affected.

My point here is -- and I'm repeating from earlier -- it is not otherwise automatic. Debtor has never asked the Court, again, for relief -- such relief, and the Court is not going to grant such relief sua sponte. So in light of the foregoing, I find and concludes that the debtor has not satisfied its burden by clear and convincing evidence that the filing of the receiver motion, the proposed language including

the blackline draft of the receiver's order, or the entry of the final version of the receiver order, violated 11 U.S.C. 362(a)(3). For all the reasons, I deny debtor's motion to enforce.

At this point, Mr. Mushkin, will you please prepare an order incorporating by reference my findings and making sure that you circulate to the parties on the call before it gets uploaded.

MR. MUSHKIN: Yes, Your Honor. I will.

THE COURT: Thank you. I'm going to take a sip of water here and I'm going to move on to the next one, the sanctions motion.

All right. I'm ready to proceed.

On May 26, 2021, I entered an order granting in part and denying in part motion for sanctions for violations of the automatic stay (indiscernible) Bankruptcy Code Section 362(a) and related relief at ECF 119, which I shall refer to as the "contempt order."

The contempt order fully incorporated by reference my findings of fact and conclusions of law stated at the May 18th, 2021 hearing. For the avoidance of doubt, my findings at the May 18, 2021 hearing are also fully incorporated by reference in this oral ruling.

The contempt order stated that, quote, "The debtor is entitled to an award of sanctions against the CBC parties for

their stay violations under the standards of Taggart v. Lorenzen, 139 S. Ct. 1975 (2019)."

The contempt order also established a briefing schedule regarding sanctions. I've reviewed and considered all pleadings filed relating to sanctions in response to the contempt order, including Debtor's Second Supplemental Brief at ECF 120, the declaration of Joseph Gutierrez, Esq. at ECF 121, and the declaration of James D. Greene, Esq. at ECF 122. And finally, the Second Supplemental Opposition Brief filed by 5148 Spanish Heights, LLC, CBC Partners I, LLC, and CBC Partners, LLC, at ECF 148, and debtor's reply at ECF 150. I have also considered the arguments of counsel at the July 13th, 2021 hearing.

Pursuant to Federal Rule of Evidence 201(b), I also take judicial notice of both of my orders at ECF 133 and 134, including interim fees for Greene Infuso, LLP and Maier Gutierrez, both of which expressly state that the allowance of fees pursuant to this order shall not act as a waiver of any right of Creditors 5148 Spanish Heights, LLC, CBC Partners I, LLC, or CBC Partners, LLC to challenge the amount of fees that may be requested as sanctions by debtor in connection with the order granting in part and denying in part motion for sanctions for violation of the automatic stay (audio interference) Bankruptcy Code 362(a) and related relief.

I further note that my ruling herein does not

predetermine the final amount of compensation that may be awarded to either Greene Infuso or Maier Gutierrez and does not otherwise foreclose them from seeking final approval of fees that may not be awarded as sanctions pursuant to this order.

In the case of In Re Cascade Roads Inc., 34 F.3d 756 (9th Cir. 1994), the Ninth Circuit recognized that a corporate debtor may recover damages for purported violation of the automatic stay pursuant to general principles of ordinary civil contempt and under 11 U.S.C. Section 105(a).

In its reply, the debtor cites to In Re Pace, 67 F.3d 187 (9th Cir. 1995), which also cites to Cascade Roads and recognizes this principle for purposes of Chapter 7 Trustee's ability to recover damages for a party's violation of the automatic stay.

Both Cascade Roads and Pace further recognize that an award of damages under Section 105(a) is discretionary. To the extent the Court exercises its discretion and power to award damages under Section 105(a), such damages should be compensatory and not punitive, though I observe that the Ninth Circuit has also noted that mild non-compensatory damages may be appropriate, cited by In Re Dyer, 322 F.3d 1178 (9th Cir. 2003) and In Re Urwin, 2010 WL 148645 (Bankr. D. Idaho January 14, 2010).

Compensatory damages include those damages that are sufficient in amount to indemnify the injured person for the

loss suffered, essentially placing the injured party in as good a position as it would have been absent the violation.

In order to recover such damages, the party asserting compensatory damages must specifically prove not only the right to damages but also the amount of damages. In proving compensatory damages, the existence and amount of damages must be based upon more than mere conjecture.

The party seeking contempt sanctions may recover as compensatory damages all fees included in enforcing the automatic stay, including those incurred in pursuing damages resulting from the stay violation. In re Moo Jeong, 2020 WL 1277575 (B.A.P. 9th Cir. March 16, 2020).

In its reply, the debtor states that it has incurred significant attorneys' fees and expenses as a direct and proximate result of the CBC parties' stay violation. These damages fall under two basic categories: (1) attorneys' fees and costs incurred as a result of the wrongful continuation of the state court trial on March 15, 2021, and the resultant April 6, 2021 state court order which were incurred primarily but not exclusively by debtor's court-approved special counsel Maier Gutierrez; and (2) attorneys' fees and costs including prosecuting the sanctions motion arising from the efforts of debtor's general bankruptcy counsel, Greene Infuso, LLC, and by Maier Gutierrez, who prepared and submitted a declaration in support of the sanctions motion at ECF 66 and assisted in the

drafting of the sanctions motion and the subsequent briefing requested by the Court.

The Court first focuses on Maier Gutierrez's attorneys' fees and costs requested from March and April of 2021. I further observe that although Mr. Gutierrez indicated an intention in his declaration to supplement the record with fees and expenses incurred in May 2021, he did not do so.

In his supporting declaration, Joseph A. Gutierrez, a partner with the law firm of Maier Gutierrez and Associates, attests that the firm incurred $12,143.13 in attorneys' fees and costs for March and April 2021 as a result of the violation of the automatic stay. ECF 121, Paragraph 6.

Attached to Mr. Gutierrez's declaration are various billing records and invoices which aggregate to thousands of dollars more than the requested declaration. The declaration, however, does not specify which costs and expenses identified in the attached exhibits add up to the $12,143.13 in attorneys' fees and costs requested.

Invoice Numbers 22628 and 22689 attached to the Gutierrez declaration include $3,951 in fully redacted time entries. Mr. Gutierrez attests in Paragraph (indiscernible) of his declaration that the redacted fees are unrelated to (indiscernible) on behalf of debtor as a result of the violation of the bankruptcy stay. For the avoidance of the doubt, the Court therefore denies these $3,951 in fully

redacted time entries.

Invoice Number 22628 attached to the Gutierrez declaration includes $2,660 in attorneys' fees and $225 in costs incurred prior to the March 15, 2021 hearing. The Court's findings of fact and conclusions of law read into the record at the May 18, 2021 hearing determined that a partial violation of the automatic stay occurred at the March 15, 2021 state court hearing.

The Court did not make any finding regarding the (indiscernible) stay violation at any time prior to such date. Mr. Gutierrez represents nondebtor parties in the state court action and would have nevertheless been obligated by his representation to prepare for the March 15, 2021 hearing. Counsel did not specify the amount of time, if any, that he spent solely in anticipation of his representation of the debtor at the March 15th hearing. For these reasons, to the extent counsel is requesting $2,660 in attorneys' fees and $225 in costs incurred prior to March 15, 2021, I deny such a request.

Invoice Numbers 22628 and 22689 attached to the Gutierrez declaration include the following expenses: On 3/18/2021, $160 for court fees/Clark County Treasurer. March 31, 2021, 51 cents for postage. March 31, 2021, $33.95 for copies and prints. On the same date, March 31, 2021, $24.70 for color copies and prints. April 30, 2021, $3.50 for court

fees. April 30, 2021, $6.65 for copies and prints. Same date, $1.30 for color copies and prints. Same date, $250 for court fees in 201722/Bloom Jay A-0-813439-B and $500 for court fees, same reference numbers, 201722 Bloom Jay A-20-813439-B.

These expenses aggregate to $980.61. Neither Mr. Gutierrez's declaration nor the debtor provide an explanation for these expenses in relation to the partial stay violation (indiscernible) in the identifying language and invoices not otherwise show in this case that these expenses were incurred to remedy the partial violation of stay. Such expenses are therefore denied.

Also attached to the Gutierrez declaration is a past due invoice dated December 1st, 2020 from Oasis Reporting Services for $225. The Court assumes this expense relates to the previously denied March 5, 2021 expense for $225 identified on Invoice Number 22628. To the extent it is not, and for the avoidance of doubt, this expense reflected in an invoice dated more than three months prior to the March 15, 2021 hearing is denied as it cannot, as a matter of law and fact, relate to a future (indiscernible).

This leaves the Court with the remainder of the requested fees and expenses not previously denied. First, Invoice 22628 identifies $5,401 in attorneys' fees and $23 in expenses incurred on the day of the March 15, 2021 state court hearing. The Court is persuaded that the entirety of such fees

and expenses were incurred at the applicable March 15, 2020 [sic] state court hearing, the continuation of which the Court previously found constituted a partial violation of the automatic stay.

Invoice 22628 identifies $968.99 in expenses, as further evidenced by attached invoices regarding expedited orders of transcripts of the March 15, 2021 state court hearing. The Court is persuaded that the entirety of such expenses incurred in relation to the March 15, 2021 state court hearing and prosecution of the partial stay violation.

Invoice 22689 identifies $1,190 incurred by Daniel -- Danielle -- sorry -- Barraza and $891 incurred by Mr. Gutierrez doing essentially the same thing, i.e. reviewing the March 15, 2021 state court transcript and discussing the same with their clients and the debtor's bankruptcy counsel.

The Court believes that these fees are not compensable here because, (A) the primary purpose for special counsel is to litigate the state court matters, which also included representation of several nondebtor clients, special counsel who was not intended to overlap with the role of bankruptcy counsel who has a role of vindicating alleged violations of the automatic stay, and debtor's bankruptcy counsel spent substantial time and incurred substantial fees reviewing the same transcript for which special counsel now seeks remuneration from creditor.

To summarize, the Court has little doubt Maier Gutierrez has asserted fees and expenses to $5,401 in attorneys' fees and $991.99 in expenses. This aggregates to $6,392.99, but this is not the amount the Court will award. As previously noted, Maier Gutierrez represents other nondebtor parties, and the issues relevant to nondebtor parties were also decided at the March 15, 2021 hearing indeed are the five stipulated issues the Court decided at the March 15, 2021 hearing. This Court found a partial stay violation as to three of them, or 60 percent of the issues.

The Court, in utilizing its discretion under Section 105(a) and case law -- and as supported by case law, will therefore only award 60 percent of these fees and expenses. This amounts to $3,835.79.

I now turn my attention to the fees and expenses asserted by debtor's bankruptcy counsel, Greene Infuso, LLP. In the initial declaration of James D. Greene at ECF 122, Mr. Greene contends that Greene Infuso incurred $19,375 in fees through May 28, 2021. In its reply at ECF 150, Greene Infuso asserts an additional $1,612.50 in fees through June 30, 2021. The total requested fees aggregate to $20,887.50.

Greene Infuso's requested fees are nearly three times the amount of the unobjectionable fees and nearly five times the awarded fees the Court found regarding Maier Gutierrez's time. I further observe that Maier Gutierrez essentially

conducted (indiscernible) its attorneys have higher hourly billing rates than does Mr. Greene.

I am familiar with Mr. Greene, as he is a regular participant before this Court, and I find him to be a very experienced (indiscernible) and highly-competent bankruptcy professional. Seeking contempt from an automatic stay violation is a relatively common endeavor in bankruptcy court and one in which I am confident Mr. Greene has substantial prior knowledge.

After thoroughly reviewing all of Greene Infuso's invoices and the pleadings on the docket and being mindful of the discretion and nature of my authority that is constrained by my obligation to not veer too far away from (indiscernible) compensatory damages, and further taking into account my historical knowledge of the time it should take experienced counsel of Mr. Greene's caliber to prosecute such motions to conclusion, I find and conclude that an overall award of $3,750 is appropriate.

In conclusion, pursuant to my prior holding that creditor partially violated the automatic stay, and my discretionary authority to award sanctions under 11 U.S.C. Section 105(a), the precedential case law previously discussed, I award $3,750 in attorneys' fees to Greene Infuso and $3,835.79 in attorneys' fees and costs to Maier Gutierrez.

I did note that my ruling here is limited solely to

the matter before memory today and does not otherwise predetermine any final award of fees to Greene Infuso and Maier Gutierrez.

Debtor's bankruptcy counsel, Mr. Greene, shall prepare, circulate, and upload an order for my signature, incorporating my findings of fact and conclusions of law, and I would like the order to require that creditors pay the sum no later than 30 days after entry of that order.

MR. GREENE: Thank you, Your Honor. This is James Greene. I will do so.

THE COURT: Thank you.

All right. Give me one more moment here while I take a drink of water and I'll move on to the last decision.

All right. I'm ready to proceed. On July 22nd, 2021, the Court held a hearing on the motion to appoint a Chapter 11 Trustee, or in the alternative motion to convert or dismiss bankruptcy case, filed by 5148 Spanish Heights, LLC, CBC Partners I, LLC, and CBC Partners, LLC. I'll now render my oral ruling on this matter.

As an initial matter, I would like the parties to understand what was going on in the background. I did not -- I have taken some time, as you know, to consider this motion, and I do not take that -- my consideration lightly. I spent a significant amount of time reviewing the papers, and that includes the 650 pages of exhibits that were filed in support

of the motion.

I will note that I don't think the parties were as helpful as they could be in making the connections between the admissible evidence or even (indiscernible) that was offered in their arguments, but I want you to understand that I did take that time that was spent and spent a considerable amount of it really going through and making sure that I understood the whole world of evidence that I had before me.

And I want to also point out that -- although time has passed since the July 22nd hearing, I have only considered the record as it existed at the time I took this matter under advisement on July 22nd, 2021, and I have not considered anything that has occurred after that date.

Throughout this oral ruling, I will refer to the moving parties as the "CBC parties." I have considered the arguments of counsel, as well as the pleadings and all supporting exhibits, declarations, and exhibits filed at ECF 136, 137, 138, 139, 151, 152, 156. Pursuant to Federal Rule of Evidence 201(b), I also take judicial notice of all pleadings on the bankruptcy docket in this case. I now enter the following findings of fact and conclusions of law pursuant to Federal Rule of Civil Procedure 52 and Federal Rule of Bankruptcy Procedure 7052.

By their motion, the CBC parties asked the Court to appoint a trustee under 11 U.S.C. 1104(a) or, in the

alternative, dismiss or convert the case under 11 U.S.C. 1112(b). Section 1112(b) states that on request of a party in interest, and after notice and a hearing, the Court shall convert a case under this chapter to a case under Chapter 7, or dismiss a case under this chapter, whichever is in the best interest of creditors and the estate, for cause, unless the Court determines that the appointment under 1104(a) of a trustee and examiner is in the best interest of creditors and the estate.

The burden of establishing cause rests with the party seeking the relief under Section 1112(b)(1). That's -- that was stated in In Re Rosenblum, 609 B.R. 854 (Bankr. D. Nev. 2019) citing In Re Labankoff 2010 WL 6259969, (B.A.P. 9th Cir. June 13, 2010).

Section 1112(b)(4) provides a nonexclusive list of circumstances that may constitute cause to dismiss or convert. The operative command in Section 1112(b)(1) that the court shall convert a case to Chapter 11 proceeding is subject to the exceptions set forth in 1112(b)(2). The exception commonly characterizes a defense to conversion (indiscernible) because the burden of establishing its requirements rests on the opponent.

Under Section 1112(b)(2), if the moving party establishes the existence of cause under Section 1112(b)(1), then the opponent can prevent conversion and dismissal if four

requirements are met: (1) The Court identifies unusual circumstances establishing that such relief is not in the best interest of creditors and the estate; (2) the opponent establishes that there is a reasonable likelihood of confirming a plan in a reasonable amount of time; (3) the opponent establishes that the grounds for relief include an act or omission of the debtor for which there is a reasonable justification; and (4) the opponent establishes that the act or omission can be cured within a reasonable time.

Because these provisions are in the conjunctive, the opponent to conversion and dismissal under Section 1112(b)(1) has the burden of proving all four elements, citing In Re Rosenblum 609 B.R. 854 (Bankr. D. Nev. 2019).

Section 1104(a) states that the Court shall order the appointment of a trustee for one of two reasons: One, for cause, including fraud, dishonesty, incompetence, or gross mismanagement of affairs of debtor by current management either before or after the commencement of the case or similar cause but not including the number of holders of securities of the debtor or the amount of assets or liabilities of the debtor, or if such appointment is in the interest of creditors in the equity security holders and other interest of the estate without regard to the number of holders of securities of the debtor or the amount of assets or liabilities of the debtor.

The moving party has the burden to show that one or

both of these independent bases support the appointment of a Chapter 11 Trustee. I observed that the CBC parties made a lot of allegations and arguments in their motion, a "throw everything but the kitchen sink" approach. Although some arguments were more developed than others, I have considered all arguments that arguably could be claimed as support for the relief requested under Section 1104(a) and 1112(b).

Notably, several of the factual assertions advanced by the CBC parties are directly challenged by Jay Bloom via a declaration he signed under penalty of perjury. The CBC parties have not rebutted the statements made by Mr. Bloom's declaration by declaratory or other admissible evidence.

Although the CBC parties' motion stated that if the Court determines sufficient facts do not exist to grant the relief requested in the motion, the movants respectfully request the opportunity to conduct discovery and set this matter for an evidentiary hearing.

I do not find this to be an express request for an evidentiary hearing obligating the Court to first review their motion, analyze the facts, (indiscernible) argument -- and only in the event I find that additional evidence is required, then detail what evidence is required and schedule an evidentiary hearing. It is not the Court's role to litigate the motion, but it is instead movant's obligation to determine what evidence may be required and proceed accordingly.

Although I have considerable discretion in deciding whether to conduct an evidentiary hearing in contested matters -- see, for example, In Re Weisband, 2011 WL 3303453 (B.A.P. 9th Cir. June 13, 2011), I decline to do so in this case for the aforementioned reasons.

It is undisputed that debtor's real property is leased to SCJV [sic]. It is undisputed, as identified in the voluntary petition, that SJCV is the manager and majority member of the debtor. It is undisputed that Jay Bloom is a self-professed manager and owner of SJCV. And that comes from the voluntary petition, Page 6, of (indiscernible) declaration Paragraph 2.

It is undisputed that a state court judge in a prepetition state court case unrelated to the CBC parties found and/or concluded that, quote, "Bloom is the alter ego of defendants, which were (audio interference) First 100, LLC, and First 100 Holdings, LLC." And that comes from ECF 137-1, Exhibit A, Page 33, Paragraph 29.

Neither First 100, LLC or First 100 Holdings, LLC appear to be parties to this case. It is undisputed that the same state court judge found that the defendants, quote, "have been single manager managed with SJ Ventures Holding Company, LLC, appointed the sole manager with Bloom as the sole manager of SJC." That's at ECF 137-1, Exhibit A, Page 2, Paragraph 2.

It is unclear from the record if SJ's Interest

Holding Company, LLC is the same entity as SJCV, but the parties appear to be proceeding as if they are. Specifically, the CBC parties argue that this constitutes a finding that Mr. Bloom is the alter ego of SJC. Debtors and Bloom respond that the case that I just mentioned did not involve SJCV, the alleged alter ego finding was, in fact, a responsible party finding and the ruling on the findings therein are the subject of a pending appeal.

There is no evidence from which I can determine which of the arguments to be true, to the extent it is even relevant here. Therefore, I am not relying on these assertions in making my decision. It is undisputed that Mr. Bloom and his family reside in the property. Mr. Bloom contests via his declaration the CBC parties' contention regarding other people living on the property, though the CBC parties have not made clear the significance of the dispute regarding the CBC parties' contention that two domestic employees reside on the property along with Mr. Bloom and his family. That's in the motion at Page -- Paragraph 5.

The CBC parties further appear to argue that the rental obligation under the applicable lease is below market value, stated in Paragraph 5 of the motion, that quote, the lease provided for rent of $4,375 per month, which seems an inordinately low rent for a property the debtor values at $6.2 million. However, the CBC parties did not present any evidence

in support of their contention that this monthly rental obligation is below market rate.

The CBC parties further cite to the debtor's initial statement of financial affairs, pointing out that they do not identify the payment of any rent by SJCV for calendar years 2019 and 2020. In its opposition, the debtor argues without evidentiary support that movants are well aware that because of the amount of rent provided for (indiscernible) was not sufficient to cover the first and second mortgage payments, SJC Ventures as tenant made the prepayments of rent through December 2024 wherein (indiscernible) prepayments were tendered to or on behalf of debtor prior to March of 2020 by making mortgage payments directly to CNB and NTB for the benefit of debtor. Movants were well aware of this fact because the issue had been raised and explored in the state court action. That's at ECF 151, at Page 6 -- let's see, Paragraph 28, Lines 7 -- I'm sorry, Lines 28 through 7 [sic].

The debtor further cites to a March 5, 2021 amended statement of financial affairs identifying more than $360,000 of revenue issued from SJCV for calendar years 2019 and 2020, which included monthly rental obligations. ECF (indiscernible).

The amended statement of financial affairs was signed by Jay Bloom under penalty of perjury and therefore constitutes admissible evidence that has not been rebutted by the CBC

parties via admissible evidence.

While there is case law to support the proposition that the appointment of a trustee is warranted under 1104(a)(2) based on, among other things, the debtor's failure to collect rents from insiders and/or the debtor's providing of rent credits and setoffs to insider tenants -- there I'm referring to case In Re Royal Alice Properties, LLC, 2020 WL 5357795 (Bankr. E.D. La. September 4, 2020).

In those cases, the court was able to make such a ruling based on a strong evidentiary record. By contrast here, as I just pointed out, the only admissible evidence that is made under penalty of perjury is by Mr. Bloom. The CBC parties offered no admissible evidence refuting the debtor's statements regarding SJCV's prepayments of rents during prepetition period.

For these reasons, I find and conclude that the CBC parties have failed to satisfy their burden under Section 1104(a) and Section 1112(b) to the extent they argue that the alleged insider relationship (indiscernible) debtor, Mr. Bloom, and/or SJCV either standing alone or in conjunction with the allegations involving a below market rental obligation and/or failure to pay rent rises to the level of cause.

The CBC parties' arguments additionally rely in large part on the debtor's original schedules. Yet, as debtor points out, it has since filed amended schedules with the most recent

version appearing at ECF 53. The CBC parties do not address whether it is their position that the amendments are irrelevant or whether alleged omissions in the initial filings are fatal regardless of subsequent amendment.

Notwithstanding the CBC parties' failure to define for the Court the basis for their objections (indiscernible), the Court notes that the issue is one of bad faith. Numerous courts have found that dismissal of a Chapter 11 case for bad faith is appropriate where the Court has found numerous factual misrepresentations and omissions made by debtor on financial statements and bankruptcy pleadings.

Those cases, however, tend to include egregious behavior much more than just anything alleged here where the only objecting party is immersed in a lengthy state court battle that began before this case was filed regarding, among other things, debtor's challenge to CBC parties' claim as a secured creditor and even the debtor's manager status as a co-obligor.

To the extent that CBC parties take issue with the manner in which disclosures were made regarding its alleged claim and the co-obligor status of SJCV (indiscernible) that the CBC parties were identified even in the initial schedules, the CBC parties' claim appears to be the subject of considerable dispute pursuant to a currently pending state court case initiated prepetition, and the CBC parties' claim is

still subject to considerable dispute in this bankruptcy case.

Indeed, I granted stay relief to the CBC parties to continue with the state court litigation for the purpose of resolving that dispute once and for all. For these reasons, I find and conclude that the CBC parties have not satisfied their burden to show that any of the disclosures or omissions in the debtor's initial schedules rise to the level of cause under either Sections 1104(a) or 1112(b).

I also find and conclude that the CBC parties have not satisfied their burden regarding any such disclosures or omissions in debtor's amended schedules for the aforementioned reasons, and further because the CBC parties did not address the amended schedules in the pleadings.

Next, the CBC parties attach as Exhibit B to their motions charts of summaries of other prepetition cases they allege contains findings of fact and/or conclusions of law by judges regarding Mr. Bloom's alleged wrongdoings. This chart is not supported by a declaration of the person or persons who prepared the summary, and therefore essentially (audio interference) to inadmissible hearsay for the purposes of this motion.

Additionally, I cannot take judicial notice of these summaries under Federal Rule of Evidence 201(b). Therefore, I cannot determine if Mr. Bloom was found to have committed any wrongdoing and how many such alleged wrongdoings translates to

this case.

Another of the CBC parties' many arguments is that cause exists under Section 1112(b)(4)(I) which defines cause to include failure to timely pay taxes owed after the date of the order for relief or to file tax returns due after the date of the order for relief.

I deal with the failure to pay postpetition taxes (indiscernible) focus now on the alleged failure to file postpetition tax returns. In order to prevail under this section, the moving party must establish that the debtor failed to file postpetition tax returns. Once that burden is met, debtor may avoid dismissal if it can establish an excusable reason for the failure to comply with the Bankruptcy Code.

Here, the CBC parties submitted evidence that Mr. Bloom previously admitted under oath that he had failed to file tax returns for debtor. In support therefore, the CBC parties cite to their Exhibit C, transcript of proceedings preliminary injunction hearing and trial, March 15, 2021, Day 4, Volume 2, Page 13, Lines 5 through 11.

Assuming without deciding that the testimony is not rendered void by this Court's prior order finding a partial violation of stay at such hearing, I find the cited reference to be misleadingly incomplete.

March 15, 2021, just one month after the petition date, is the date the CBC parties assert Mr. Bloom made his

admission regarding the filing of tax returns for debtors. Thus, the only admissible evidence in the record is that Mr. Bloom never filed for tax returns for the debtor at least through March 15, 2021, the date of his testimony.

There is no evidence in the record, however, that establishes that with the requisite proof that debtor failed to file his tax returns after March 15, 2021. Mr. Bloom's statement potentially preceded the postpetition filing deadlines, rendering Mr. Bloom's statement inconclusive as to whether the debtor complied with the Bankruptcy Code with respect to the filing of tax returns.

This alone requires denial of this argument; but even if it was not, the argument still fails because the CBC parties have failed to refute Bloom's testimony setting forth an arguably reasonable justification for his failure to file tax returns for debtors.

A review of the aforementioned transcript which the CBC parties rely upon to suggest the violation of 1123(b)(4)(I) shows additional language not cited by the CBC parties that pertinent and unless, in addition to admitting to never having filed tax returns for debtors, Mr. Bloom's testimony goes on to explain the reason for failing to file tax returns. It would only have losses, that is no tax liability, and the cost of preparation would have been more than the losses realized.

It is this qualifying language that can be construed

as a justifiable excuse that CBC fails to cite and fails to refute. For these reasons, I find and conclude that the CBC parties have failed to satisfy their burden under Sections 1104 or 1112 for failure to file tax returns on its behalf.

Next, the CBC parties argued that they commissioned an inspection of the debtor's real property and provided a report of repairs to the debtors, SJCV, and/or Mr. Bloom. The CBC parties allege that such repairs, which aggregate to approximately $150,000, have not been done. Although it is unclear from the motion to which subsection of 1112(b) this allegation relates, movants again, however, have not sustained their burden to prove this fact with admissible evidence. In Paragraph 13 of his declaration, Mr. Bloom does not dispute the existence of the report, but states that he met with the property manager and we disagree with many of the items (indiscernible).

There are many items in the report that were very minor and readily fixed or that do not need to be repaired. There are also numerous items in the report that have been repaired in the over 14 months since it was issued. Nothing in the report indicates what the anticipated cost of the repairs would be.

In the absence of a rebuttal by the CBC parties with admissible evidence, and without the ability to judge the necessity, severity, and costs of the repairs identified on the

report as admissible evidence presented by the CBC parties as compared to the credibility of Mr. Bloom's declaratory testimony, I cannot find and conclude that the CBC parties have satisfied their burden with respect to these alleged repairs under either Sections 1104(a) or 1112(b).

The CBC parties further claim that the Spanish Hills [sic] Community Association recorded with the Clark County Recorder a prepetition health and safety lien for nuisances and hazardous activities relating to fireworks that (indiscernible) in the amount of $19,000, although it is unclear from the motion to which subsection of Section 1112(b) this allegation relates. Movants again, however, have not sustained their burden to prove this fact with admissible evidence.

In his declaration, Mr. Bloom attests that a neighboring resident was the violating party and he disputes the propriety of the HOA's fine and lien against debtor's real property. At the July 22, 2021 hearing, debtor's counsel stated that he intended to file an objection to the HOA's claim. Disputes regarding prepetition claims are a regular occurrence in bankruptcy proceedings. In the absence of a rebuttal by the CBC parties with admissible evidence and without the ability to judge the credibility of Mr. Bloom's testimony as it occurred during an evidentiary hearing, I cannot find and conclude that the CBC parties have satisfied their burden with respect to alleged such repairs under either

Sections 1104(a) or 1112(b).

The CBC parties further allege that they have a valid lien against debtor's real property, as well as an assignment of all rents paid under the lease with SJCV. The CBC parties argue that the debtor has not made a single postpetition payment to it, and the CBC parties have not authorized the debtor to use its cash collateral that would be generated via rental payments.

As previously noted, the CBC parties have not presented any admissible evidence to refute the debtor's assertion that SJCV prepaid its rent during the prepetition period, and the debtor therefore has not generated cash collateral during the course of this case. This is supported by the debtor's monthly operating reports which only show capital infusion.

Additionally, as previously noted, the validity and amount of the CBC parties' claim has been in dispute since the inception of its bankruptcy case and indeed well prior to the filing of the bankruptcy case, as evidenced by the parties' pending state court lawsuit (indiscernible) same.

Specifically in its Amended Schedule D, the debtor lists CBC Partners I, LLC, as holding a contingent and disputed secured claim in the amount of $5.5 million. The CBC parties have since filed Proof of Claim 8 alleging a secured claim in excess of $6.2 million.

Disputes regarding the validity and extent of a disputed secured creditor's claim are an ordinary part of bankruptcy cases, and the CBC parties have not satisfied their burden to show that the current dispute is an extraordinary event that requires anything more than the normal claims allowance and objection process available under the Bankruptcy Code.

The CBC parties additionally take issue with what they claim are debtor's incomplete and/or incorrect disclosures asserted in its schedules and disclosure statement. Regarding the disclosure statement, I agree with the debtor that any alleged deficiencies are more appropriately addressed via motion practice pursuant to the standards annunciated under the Bankruptcy Code, and more specifically 11 U.S.C. Section 1125. To address the alleged deficiencies via motion alleging (indiscernible) under the facts of this particular case would require me to render an impermissible advisory opinion that the disclosure statement failed to contain adequate information under Section 1125. I decline that request.

Regarding the schedules, I've previously addressed the debtor's filing of amended schedules and the CBC parties' failure to address the same.

Finally, the CBC parties point to the debtor's schedules to highlight the listing of prepetition taxes and utilities that remained unpaid as of the petition date. It is

unclear if the CBC parties are relying on prepetition indebtedness as a basis for their contention that Section 1112(b) is (indiscernible) warranted. To the extent it is, I disagree and do not find that such prepetition indebtedness rises (indiscernible) cause.

The CBC parties further emphasize that debtor's failure to pay taxes has extended to the postpetition period. If proven, that would constitute cause under 11 U.S.C. Section 1112(b)(4)(I). In support thereof, the CBC parties attach as Exhibit L to their motion a document titled, quote, "Property account inquiry for 5148 Spanish Heights Drive" printed from the following website: URL https://trtitle.co.clark.nv.us, which appears to show a postpetition tax indebtedness. However, as previously noted, the CBC parties did not support any of their factual contentions with declaratory evidence. It is unclear to the Court the basis for the CBC parties' arguments that I may consider Exhibit L as admissible evidence.

My independent research has uncovered case law stating that a court may take judicial notice of the contents of government websites. That's a district court out of Nevada, U.S. v. Kane 2013 WL 5797619 (D. Nev. October 28, 2013). And Exhibit L does appear to be information obtained from the Clark County Treasurer's website.

Yet, even were I to take judicial notice of the content, there are still factual gaps unanswered by the CBC

parties. For example, when were the postpetition taxes owed by the debtor? A date is not identified anywhere in the record. 11 U.S.C. Section 1112(b)(4)(I) applies to a failure to file or to pay postpetition taxes.

Exhibit L shows a substantial tax liability owed by the debtor, but it does not provide this Court with a clear indication that any of the tax liability was a result of debtor's failure to timely pay postpetition taxes. As with the CBC parties' other arguments, (indiscernible) allegations but did not give me enough of admissible factual record to put them over the goalpost. For this reason, I cannot reach any other conclusion than to find and conclude that the CBC parties have not satisfied their burden to show cause under 11 U.S.C. Section 1112(b)(4)(I) based on the debtor's failure to pay postpetition taxes, and I therefore deny the motion without prejudice.

I'll ask debtor's counsel, Mr. Greene, to upload an order (audio interference) incorporates my findings of fact and conclusions of law by reference.

MS. GREENE: This is James Greene. I will do that, Your Honor.

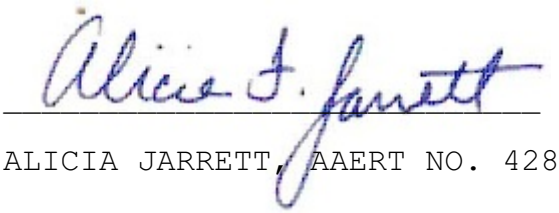
THE COURT: All right then. This concludes the 10:30 calendar. We can go off record.

MR. GREENE: Thank you, Your Honor. Have a good day.

(Proceedings concluded at 11:56 p.m.)

C E R T I F I C A T I O N

I, Alicia Jarrett, court-approved transcriber, hereby certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter, and to the best of my ability.



ALICIA JARRETT, AAERT NO. 428 DATE: October 2, 2021

ACCESS TRANSCRIPTS, LLC

IN THE SUPREME COURT OF THE STATE OF NEVADA

FIRST 100, LLC, A NEVADA LIMITED LIABILITY COMPANY; AND FIRST 100 HOLDINGS, LLC, A NEVADA LIMITED LIABILITY COMPANY, A/K/A 1ST ONE HUNDRED HOLDINGS, LLC, A NEVADA LIMITED LIABILITY COMPANY,
Appellants,
vs.
TGC/FARKAS FUNDING, LLC,
Respondent.

No. 82794

FILED

MAR 17 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER AFFIRMING IN PART AND DISMISSING IN PART

This is an appeal from a post-judgment order denying a motion to enforce a settlement agreement and holding appellants and a nonparty in civil contempt. Eighth Judicial District Court, Clark County; Mark R. Denton, Judge.[1]

On January 7, 2021, Matthew Farkas executed a Settlement Agreement on behalf of respondent wherein respondent agreed to dismiss the underlying litigation against appellants. Following an evidentiary hearing, the district court entered an order finding that the Settlement Agreement was not a valid contract because Farkas lacked actual or

[1]Pursuant to NRAP 34(f)(1), we have determined that oral argument is not warranted in this appeal.

apparent authority to bind respondent.[2] The district court's order also held appellants and nonparty Jay Bloom in civil contempt for their failure to comply with a previous order requiring them to produce appellants' books and records. As a sanction for the contempt, the district court indicated that it would award respondent a to-be-determined amount of attorney fees and costs.

On appeal, appellants contend (1) the district court erred in finding that Farkas lacked apparent authority to bind respondent to the Settlement Agreement, and (2) the district court erred in holding nonparty Bloom personally liable for the fees and costs.

With respect to appellants' first argument, appellants contend that the district court overlooked an August 2020 declaration from respondent's manager, Adam Flatto, wherein he stated that Farkas was and continued to be respondent's "Administrative Member." However, Flatto's declaration also stated that "[u]nder Section 3.4 of [respondent's] Operating Agreement, the Administrative Member can only take action to bind [respondent] after consultation with, and consent of, all [respondent's] members," i.e., Flatto. Thus, Flatto's declaration is consistent with the district court's finding that Farkas lacked authority to bind respondent without Flatto's consent and provides no support for appellants' argument. To the extent that appellants argue that they (via Bloom) thought Farkas

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[2]The district court also appears to have found that the Settlement Agreement was invalid due to a lack of consideration or, alternatively, because it was not negotiated in good faith. In light of our resolution of this appeal, we need not address the parties' arguments regarding these findings.

had obtained Flatto's consent to execute the Settlement Agreement despite that consent having not been communicated to them, substantial evidence supports the district court's finding that such a belief would have been objectively unreasonable. *See Mack v. Estate of Mack*, 125 Nev. 80, 95, 206 P.3d 98, 108 (2009) ("[T]he question of whether a contract exists is one of fact, requiring this court to defer to the district court's findings unless they are clearly erroneous or not based on substantial evidence." (internal quotation marks omitted)); *Great Am. Ins. Co. v. Gen. Builders, Inc.*, 113 Nev. 346, 352, 934 P.2d 257, 261 (1997) ("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."). In particular, the district court's order identified multiple previous instances wherein Flatto had communicated to Bloom that Farkas could not bind respondent without Flatto's consent, with the most notable instance being a 2020 arbitration award wherein the panel invalidated a different agreement between respondent and appellant that Farkas had purported to execute on behalf of respondent.[3] Accordingly, we conclude

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[3]In this respect, the only evidence appellants identify to support their position that Farkas represented to Bloom that he *had* obtained Flatto's consent to execute the Settlement Agreement is a fleeting comment made by Bloom at the evidentiary hearing. However, Farkas testified at the evidentiary hearing that he *did not* make any such representations to Bloom and that he had "made it clear to [Bloom] over the years that he needs to speak to [Flatto] and the lawyers" because Farkas "was not in a position to make any decisions on behalf of [respondent]." To the extent that the district court's findings weighed the credibility of this competing testimony, we decline to reweigh those findings. *Ellis v. Carucci*, 123 Nev.

that substantial evidence supports the district court's finding that Farkas lacked apparent authority and, consequently, that the Settlement Agreement was invalid and unenforceable.

With respect to appellants' second argument, respondent contends that this court lacks jurisdiction because Bloom, who is the only person aggrieved by the district court holding him personally liable, was not a party to the underlying proceedings and did not file a writ petition challenging the district court's order. *Cf. Mona v. Eighth Judicial Dist. Court*, 132 Nev. 719, 724-25, 380 P.3d 836, 840 (2016) ("[W]here the sanctioned party was not a party to the litigation below, he or she has no standing to appeal."); *Detwiler v. Eighth Judicial Dist. Court*, 137 Nev., Adv. Op. 18, 486 P.3d 710, 715 (2021) ("Where no rule or statute provides for an appeal of a contempt order, the order may properly be reviewed by writ petition."). Appellants do not meaningfully refute respondent's contention but instead argue that they are challenging the district court's order insofar as it held *them* liable for the fees and costs. We decline to consider this argument because appellants' opening brief did not allude to any such argument. *See Francis v. Wynn Las Vegas, LLC*, 127 Nev. 657, 671 n.7, 262 P.3d 705, 715 n.7 (2011) (observing that this court generally declines to consider arguments raised for the first time in a reply brief). Accordingly, we agree with respondent that we lack jurisdiction in the context of this

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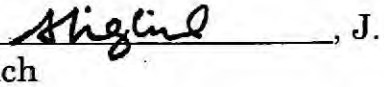
145, 152, 161 P.3d 239, 244 (2007) ("[W]e leave witness credibility determinations to the district court and will not reweigh credibility on appeal.").

appeal to consider whether the district court appropriately held nonparty Bloom personally liable for the fees and costs.

In light of the foregoing, we affirm the district court's challenged order insofar as it found the January 7, 2021, Settlement Agreement to be unenforceable. We also dismiss this appeal insofar as it challenges the district court's decision to hold nonparty Bloom personally liable for fees and costs as a civil contempt sanction.

It is so ORDERED.[4]

_____, C.J.
Parraguirre



_____, J.
Stiglich

_____, Sr. J.
Gibbons

cc: Hon. Mark R. Denton, District Judge
Persi J. Mishel, Settlement Judge
Maier Gutierrez & Associates
Garman Turner Gordon
Eighth District Court Clerk

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[4]The Honorable Mark Gibbons, Senior Justice, participated in the decision of this matter under a general order of assignment.