IN THE SUPREME COURT OF THE STATE OF NEVADA

JAY BLOOM, an individual,

Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK, AND THE HONORABLE MARK R. DENTON, DISTRICT JUDGE

Respondents.

TGC/FARKAS FUNDING, LLC,

Real Party in Interest.

PETITION FOR WRIT OF MANDAMUS OR PROHIBITION DIRECTING THE EIGHTH JUDICIAL DISTRICT COURT CLARK COUNTY, NEVADA, HONORABLE MARK R. DENTON, DISTRICT JUDGE, TO VACATE (1) AN ORDER FINDING NON-PARTY JAY BLOOM TO BE THE ALTER EGO OF FIRST 100 AND (2) AN ORDER FOR ATTORNEYS' FEES AND COSTS AS RELATED TO NON-PARTY JAY BLOOM

Dist. Ct. Case No. A-20-822273-C

ORIGINAL PETITION

From the Eighth Judicial District Court, Clark County, Nevada
The Honorable Mark R. Denton, District Court Judge

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NRAP 26.1 DISCLOSURE

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

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JURISDICTIONAL STATEMENT

This petition for writ of mandamus is from (1) the district court's post-judgment Findings of Fact, Conclusions of Law, and Order ("FFCL") entered on April 7, 2021, with notice of entry thereof also filed on April 7, 2021; and (2) the district court's post-judgment Order Awarding Attorneys' Fees and Costs ("Fees and Costs Order") entered on June 11, 2021, with notice of entry thereof also filed on June 11, 2021. AA0903-942; AA0990-994.[1]

While this is an original writ petition, the subject of this petition has previously been on appeal, with appellants 1st One Hundred Holdings, LLC and First 100, LLC lodging the appeal. In this Court's respective orders from those appeals (both of which were recently filed on March 17, 2022), this Court indicated as follows with respect to non-party Jay Bloom:

> 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 award. We decline to consider this argument because

[1] "AA" refers to Petitioners' independent appendix.

> 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 appeal to determine whether the district court appropriately held nonparty Bloom personally liable for the fees and costs.

See AA1002-1011. Accordingly, Mr. Bloom now brings this writ petition pursuant to the Court's indication that a writ petition challenging the district court's orders would be the proper route for Mr. Bloom to pursue.

Writ relief is available when there is no "plain, speedy and adequate remedy in the ordinary course of law." NRS 34.170. Under Nevada law, a "writ of prohibition … arrests the proceedings of any tribunal … exercising judicial functions, when such proceedings are without or in excess of the jurisdiction of such tribunal …." NRS 34.320. "Prohibition is a proper remedy to restrain a district judge from exercising a judicial function without or in excess of its jurisdiction." *Smith v. Eighth Jud. Dist. Ct.*, 107 Nev. 674, 677 (1991). "A writ of prohibition may issue when a district court acts without or in excess of its jurisdiction and the petitioner lacks a plain, speedy, and adequate remedy at law." *Nev. State Bd. of Architecture v. Eighth Jud. Dist. Ct.*, 135 Nev. 375, 377 (2019) (citations omitted). "Whether a writ of prohibition will issue is within this [C]ourt's sole discretion." *Id*.

A writ of mandamus will issue to compel the performance of an act, which the law requires as a duty resulting from an office, trust, or station, and where there

is no plain, speedy, and adequate remedy in the ordinary course of law. *Hickey v. District Court*, 105 Nev. 729, 782 P.2d 1336 (1989); NRS 34.160. A writ of mandamus is available when the respondent has a clear, present legal duty to act, or to control an arbitrary or capricious exercise of discretion. *Round Hill Gen. Imp. Dist. v. Newman*, 97 Nev. 601, 637 P.2d 534 (1981). The writ is the appropriate remedy to compel performance of a judicial act. *Solis-Ramirez v. Eighth Judicial Dist. Court ex rel. County of Clark*, 112 Nev. 344, 913 P.2d 1293 (1996).

The Court may, in its discretion, treat a petition for writ of mandamus as one for prohibition, or vice versa, or treat a notice of appeal interchangeably as a Petition for a Writ. *Messner v. District Court*, 104 Nev. 759, 766 P.2d 1320 (1988); *In re Temporary Custody of Five Minors*, 105 Nev. 441, 777 P.2d 901 (1989).

ROUTING STATEMENT

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

RELIEF SOUGHT

This petition seeks a writ of mandamus directing the Eighth Judicial District Court to reverse its orders (1) finding that non-party to the action Jay Bloom "is the

alter ego" of First 100, which was not a cause of action brought against Jay Bloom or First 100, and which was not the subject of the limited evidentiary hearing underlying the district court's FFCL; and (2) determining that the fees and costs payment "must be paid by [First 100, LLC and 1st One Hundred Holdings, LLC] and/or [non-party] Jay Bloom as a condition of purging the contempt," when Jay Bloom was a non-party in the underlying action and was not put on notice of any alter ego claims in the underlying action.

ISSUES PRESENTED

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

Whether the district court erred in ordering that First 100 and non-party to the action Jay Bloom are "jointly and severally responsible for the payment of all the reasonable fees and costs incurred by [TGC/Farkas Funding LLC]."

FACTS NECESSARY TO CONSIDER THE PETITION

This dispute involved a company books and records request, with TGC/Farkas Funding, LLC demanding access to First 100, LLC and 1st One Hundred, LLC's (collectively "First 100") business records, arguing that its status as a purported member of First 100 substantiated the right to examine First 100's company records.

For background purposes, First 100 was in the business of purchasing the beneficial interest in delinquent HOA receivables and then buying the real properties at foreclosure sales. AA0695-696. Jay Bloom served as the Director of First 100. AA0696.

The matter was initiated in arbitration through the American Arbitration Association, where the Arbitration Panel determined that First 100 is required to "make all the requested documents and information available from both companies to [Plaintiff] for inspection and copying." AA0010. The arbitration award was later confirmed by the district court, resulting in a judgment in favor of TGC/Farkas Funding, LLC in the amount of $23,975.00.[2] AA0053-59.

On November 17, 2020, TGC/Farkas Funding, LLC filed a motion for attorneys' fees and costs, seeking additional fees and costs on top of what the arbitration panel already awarded. AA0069-110. That motion was fully briefed, and on January 27, 2021, the district court issued its order granting TGC/Farkas Funding, LLC's motion for additional attorneys' fees and costs. AA0352-355. That order imposed a judgment against only First 100 and 1st One Hundred Holdings (not non-party Jay Bloom) in the amount of $9,060.20. *Id.*

At no point did TGC/Farkas Funding seek to amend either judgment in order

[2] TGC/Farkas Funding, LLC was subsequently awarded another $9,060.20 in additional fees and costs related to the arbitration proceedings. AA0352-0355.

to add non-party Jay Bloom as a judgment debtor. Despite that, on December 18, 2021, TGC/Farkas Funding, LLC filed an *ex parte* application for an order to show cause why First 100 and non-party Jay Bloom should not be held in contempt of court for failure to comply with the order confirming the Arbitration Award. AA0123-130. The district court granted the *ex parte* application that same day. AA0151-155.

Thereafter, TGC/Farkas Funding, LLC moved forward with post-judgment discovery. AA0131-150. TGC/Farkas Funding, LLC was dissatisfied with the discovery responses received, and on January 20, 2021 filed a supplement to its *ex parte* application for an order to show cause. AA0215-0322.

Thereafter, a dispute arose as to whether the parties had settled the matter, which resulted in First 100 filing a motion to enforce a settlement agreement and vacate the post-judgment discovery proceedings. AA0156-0208.

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

agreement signed by the member or manager to be charged, no member or manager of any limited-liability company formed under the laws of this State is individually liable for the debts or liabilities of the company." AA0211. Mr. Bloom also noted that no alter ego findings were made, or even sought in the arbitration action nor before the district court. *Id.*

The district court conducted an evidentiary hearing in March 2021, and issued its Findings of Fact, Conclusions of Law, and Order ("FFCL") on April 7, 2021, with notice of entry thereof also filed on April 7, 2021. AA0903-0942.

In the FFCL, the district court ordered that the motion to enforce settlement was denied, ordered immediate compliance of the books and records request which was the subject of the arbitration award confirmed by the district court, and ordered reimbursement of plaintiff TGC/Farkas Funding, LLC's fees and costs, with First 100 and non-party Jay Bloom being "jointly and severally responsible" for payment of such fees and costs. AA0983.

Thereafter, briefing followed as to the amount of fees and costs to be awarded to TGC/Farkas Funding, LLC. Without taking a hearing on the matter, the district court ultimately awarded TGC/Farkas Funding, LLC $151,525.81 in fees and costs. AA0987-0989.

Thereafter, two separate timely appeals of both the FFCL and the fees and costs order followed (Case Nos. 82794 and 83177). On March 17, 2022, this Court

issued an Order Affirming in Part and Dismissing in Part the appeal of the FFCL, affirming the FFCL insofar as it found the settlement reached to be unenforceable, and dismissing the appeal insofar as it challenged the district court's decision to hold Mr. Bloom personally liable for fees and costs as a civil contempt sanction. AA1007-1011.

Similarly, on March 17, 2022, this Court issued an Order Affirming in Part, Reversing in Part and Remanding, and Dismissing in Part the appeal of the fees and costs order, which affirmed the majority of the district court's fee award and the entirety of its cost award, and also dismissed the appeal insofar as it challenged the district court's decision to hold Mr. Bloom personally liable for the fee and cost award. AA1002-1006.

This writ petition follows, with Mr. Bloom contending that the district court erred in holding that he is "jointly and severally responsible" for the payment of fees and costs to TGC/Farkas Funding pursuant to an alter ego finding, despite the fact that no alter ego cause of action was alleged, and the evidence presented did not support an alter ego finding with respect to Mr. Bloom and First 100.

WHY THE WRIT SHOULD ISSUE

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

In its FFCL, the district court held that Mr. Bloom "is the alter ego of

Defendants [First 100 and 1st One Hundred Holdings]." AA0980. The facts that the district court cited to in support of that conclusion of law are: (1) First 100 is in "default" status with the Nevada Secretary of State; (2) First 100 has no continued operations, no employees, no bank accounts, and is no longer maintaining records as it has no active governance of any kind; and (3) there are no writings to reflect that any director or office of First 100 has any authority to bind First 100 instead of Jay Bloom. AA0980. Accordingly, the district court concluded that "equity must be applied such that Bloom will not be immune from consequences for his intentional conduct for the purpose of disobeying and/or resisting the [order confirming the Arbitration Award]." AA0980.

A. The Corporate Cloak is Not Lightly Thrown Aside

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

See NRS 86.376 (stating "[t]he question of whether a person acts as the alter ego of a limited-liability company must be determined by the court as a matter of law.").

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

Although the alter ego doctrine is frequently asserted, its success is "rare," and the "corporate cloak is not [to be] lightly thrown aside." *N. Arlington Med. Bldg., Inc. v. Sanchez Const. Co.*, 86 Nev. 515, 471 P.2d 240 (1970); *see also In re Giampietro*, 317 B.R. 841, 846 (Bkrtcy. D. Nev. 2004).

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

B. No Independent Alter Ego Action Was Ever Set Forth

A party who wishes to assert an alter ego claim must do so in an independent action against the alleged alter ego with the requisite notice, service of process, and

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

Here, there is no question that TGC/Farkas Funding, LLC never initiated an independent alter ego action against Jay Bloom. There is also no question that the evidentiary hearing was limited to two distinct issues: (1) the motion to enforce the Settlement Agreement, and (2) the show-cause hearing. AA0514. As such, the alter ego ruling raises separate due process questions as Mr. Bloom was not entitled to put on evidence on behalf of himself during the evidentiary hearing, or to conduct discovery during the discovery period prior to the hearing, nor was he on notice that he would potentially be subjected to an alter ego finding and personally liable for a fees and costs. Mr. Bloom was not able to take depositions or file dispositive motions as to himself personally, and was therefore precluded from exercising his right to due process under Section 1 of the Fourteenth Amendment to the Constitution of the United States.

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

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

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

In *N. Arlington Med. Bldg*, the Nevada Supreme Court held that although a corporation ultimately defaulted on its obligations, it cannot be inferred from that fact that it was initially inadequately financed, as there needs to be a showing of how the default sanctioned a fraud or promoted an injustice. *Id.* at 522; 244. The Court also held that although stock certificates were not delivered and formal meetings were not held, those are factors to be considered by the trial court, but the record still needs to reveal "in what manner they sanctioned a fraud or promoted an injustice towards the respondent." *Id.* at 522-523; 244-245. The Court also held that while

ultimately the respondent's decision to sell real property to the corporation "resulted in a very unprofitable venture," the Court found "nothing in the record that would indicate that adherence to the fiction of the separate entity of North Arlington would sanction a fraud or promote injustice." *Id.* at 523; 245.

Similarly, in this case, no evidence was presented indicating that First 100 was initially or thereafter inadequately financed. It should go without saying that First 100's business model of purchasing the beneficial interest in delinquent HOA receivables and then buying the real properties at foreclosure sales was profitable for a period of time following the 2008 recession and subsequent foreclosure boom, and then business was not as active as the economy recovered and the Nevada legislature instituted various amendments to NRS 116 which limited HOA's ability to extinguish a lender's interest in a property resulting from a borrower's delinquency in HOA assessments, such as the right of redemption period codified in 2015 as NRS 116.31166(3)-(6). The mere fact that the business has not been operational since about 2017, and therefore has no office, no employees, no active bank accounts, no cash, does not in and of itself signal the sanctioning of a fraud or promotion of injustice. AA0919. *See also, Lipshie v. Tracy Inv. Co.*, 93 Nev. 370, 377, 566 P.2d 819, 823 (1977) ("It is not reasonable to conclude that [the parent organization] undercapitalized [the subsidiary organization] in order to frustrate the payment of its obligation.").

Finally, the district court's finding that there were "no writings to reflect that any director or officer had any authority to bind First 100 instead of Bloom" (AA0980) is misplaced, as that also does evidence the sanctioning of a fraud or promotion of injustice, especially where zero evidence was presented as to the commingling of funds and assets, or the unauthorized diversion and/or use of funds and assets. *See N. Arlington Med. Bldg*., 86 Nev. at 521; 471 P.2d at 244 (1970) ("Although John W. Isbell influenced and governed North Arlington, there is no such unity of interest and ownership between him and the corporation that their identities are inseparable."). At no point was evidence introduced indicating that Jay Bloom treated First 100's corporate assets as his own.

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

Similarly, here, Mr. Bloom testified that when it was operational, First 100 did have separate financial records, which were managed not by Mr. Bloom

personally but by a controller, Michael Henriksen. AA0631. Emails were also introduced showing that financial statements and separate tax returns existed back when First 100 was operational. Further evidence indicated that Mr. Henriksen was the one who handled First 100's finances – not Mr. Bloom. Crucially, no evidence was presented showing that the financial setup of First 100 was only a sham and caused an injustice.

This is not a case where there is evidence of withdrawals of corporate funds for Mr. Bloom's personal use, nor would such evidence exist. And even if such evidence did exist, those actions would need to be the cause of TGC/Farkas Funding, LLC's injury and must have sanctioned a fraud or promoted an injustice before the corporate veil can be pierced. *See Polaris Indus. Corp. v. Kaplan*, 103 Nev. 598, 602, 747 P.2d 884, 887 (1987). ("The record does not reflect how failure to issue stock or keep proper corporate minutes sanctioned a fraud or promoted an injustice to Polaris. It also does not establish that an injustice necessarily resulted from the corporation's payment of Kaplan's personal debts. Kaplan testified the payments were in lieu of salary. We also note the district court did not specifically find that the corporations were undercapitalized."). Similarly, here, the district court did not specifically find that First 100 was undercapitalized, and no causal link was presented showing how First 100 going into "default" status with the Nevada Secretary of State and no longer continuing operations specifically sanctioned a

fraud or promoted an injustice to TGC/Farkas Funding, LLC.

Accordingly, there is not substantial evidence in the record to support the district court's determination that Mr. Bloom is the alter ego of First 100. As such, there is no basis to hold Mr. Bloom personally, along with First 100, "jointly and severally responsible for the payment of all the reasonable fees and costs incurred by [TGC/Farkas Funding, LLC] since entry of the [order confirming the Arbitration Award] for the purpose of coercing compliance with that order in order to make them whole . . . ." AA0983.

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

In addition to ruling that Mr. Bloom is the "alter ego" of First 100, the district court also held that the "responsible party" rule applies to contempt proceedings, and Mr. Bloom "could not delegate" the responsibility for performance of providing First 100's books and records, which makes him personally subject to contempt proceedings. AA0979. Respectfully, the common law cited in support of this "rule" is all from non-binding federal court cases which are not factually analogous to this case.

For example, in *Luv N' Care, Ltd. v. Laurain*, a subpoena was issued to a nonparty company, and the issuing party argued that the nonparty company's managing member should be held in contempt, because he allegedly communicated

that he "possessed potentially responsive documents, but failed to review and produce them by the deadline." No. 2-18-cv-02224-JAD-EJY, 2019 WL 4279028, at *2 (D. Nev. Sept. 10, 2019). The U.S. Magistrate Judge for the District of Nevada held that It is undisputed that the nonparty company's managing member "did not take any reasonable steps to comply with this Court's Order, and therefore, should be held jointly and severally liable with Blue Basin for contempt on this basis alone," as the evidence showed that he "looked for and found potentially responsive Blue Basin documents before the Court issued its Order, but did not turn them over for review or seek a deadline extension." *Id.* at *5. The Court also cited to *United States v. Laurins*, 857 F.2d 529, 535 (9th Cir. 1988), in which the Ninth Circuit affirmed a managing director's conviction of obstruction of justice and aiding, abetting, and causing contempt of court, based on the fact that the director had "taken up the task of locating documents potentially responsive to the subpoena" and failed to do so.

Here, the facts are different, as Mr. Bloom explicitly testified that when First 100 wound up its operations in 2017, "Michael Henriksen, the [former First 100] financial controller . . . did take the . . . accounting computer to safeguard the information. And has that in his possession. The documents that they requested, would need to be reconstructed by Michael Henriksen." AA0719-720. Far from obstructing the district court's order confirming the Arbitration Award, Mr. Bloom testified that he conferred with Mr. Henriksen about compiling the business records,

and Mr. Henriksen prepared an outline as to what would need to be collected and sought further clarification from TGC/Farkas Funding, LLC's counsel as to funding and the timeline for such production. AA0720.

Ultimately, TGC/Farkas Funding, LLC refused to make any payment despite the fact that no court order says TGC/Farkas Funding, LLC is absolved from having to pay for the production of books and records pursuant to First 100's Operating Agreement. AA0032-33. Mr. Bloom testified that First 100 "never denied [TGC/Farkas Funding, LLC] access" to the books and records documents from the time of the arbitration award and forward, it simply clarified that the company does not have bank accounts, much less any capital to pay the third-party (Mr. Henriksen) to compile the records. AA0720. There were no records being withheld whatsoever, especially not by Mr. Bloom who has no access to such records anyway. *Id.*

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

It is particularly inappropriate to disregard NRS 86.371, while at the same time relying on federal common law which does not apply because the evidence

shows that the books and records are not in Mr. Bloom's possession, and Mr. Bloom made an effort to comply with the district court's order by conferring with First 100's former Controller regarding the records and seeking his assistance. As such, the district court's findings related to Mr. Bloom being the "responsible party" and personally subjecting himself to contempt sanctions were made in error.

CONCLUSION

Based on the foregoing, this Court should find that the district court erred in (1) holding Jay Bloom to be the alter ego of First 100; (2) holding Jay Bloom to be jointly and severally liable for the six-figure attorneys' fees and costs award issued to TGC/Farkas Funding, LLC as a contempt sanction when he was never a party to the case who was subjected to the order confirming the Arbitration Award; and (3) denying the motion to enforce the Settlement Agreement. This Court should reverse the district court's FFCL accordingly.

DATED this 13th day of May, 2022.

Respectfully submitted,

MAIER GUTIERREZ & ASSOCIATES

/s/ Danielle J. Barraza

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CERTIFICATE OF COMPLIANCE

1. I certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word 2016 in 14 point Times New Roman.

2. I further certify that this brief complies with the page- or type-volume limitations of NRAP 21(d) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points or more, and contains 4,901 words.

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

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

DATED this 13th day of May 2022.

Respectfully submitted,

MAIER GUTIERREZ & ASSOCIATES

/s/ Danielle J. Barraza

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VERIFICATION

On January 28, 2022, the affiant, Danielle J. Barraza, Esq. appeared in person before me, a notary public, who knows the affiant to be the person whose signature appears on this document, who stated:

I am counsel for Petitioner Jay Bloom. I have read the foregoing petition for writ of mandamus and all factual statements in the petition are either within the affiant's personal knowledge and true and correct or supported by citations to the appendix accompanying the petition.

The exhibits in the appendix are true and correct copies of the original documents.

DANIELLE J. BARRAZA, ESQ.

SUBSCRIBED and SWORN to before me this 13 day of May, 2022.

Notary Public for Said County and State

BRANDON LOPIPERO
NOTARY PUBLIC
STATE OF NEVADA
My Commission Expires: 04-01-24
Certificate No: 08-6468-1

CERTIFICATE OF SERVICE

Pursuant to NRAP 21(a) and 25(c), I certify that I am an employee of MAIER GUTIERREZ & ASSOCIATES, and that on May 13 2022, **PETITION FOR WRIT OF MANDAMUS OR PROHIBITION DIRECTING THE EIGHTH JUDICIAL DISTRICT COURT CLARK COUNTY, NEVADA, HONORABLE MARK R. DENTON, DISTRICT JUDGE, TO VACATE (1) AN ORDER FINDING NON-PARTY JAY BLOOM TO BE THE ALTER EGO OF FIRST 100 AND (2) AN ORDER FOR ATTORNEYS' FEES AND COSTS AS RELATED TO NON-PARTY JAY BLOOM** was served via electronic means by operation of the court's electronic filing system:

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

Filed and electronically served via Eighth Judicial District Court electronic filing system Odyssey on May 13, 2022, of **NOTICE OF FILING PETITION FOR WRIT OF MANDAMUS IN THE NEVADA SUPREME COURT:**

Honorable Judge Mark R. Denton
Eighth Judicial District Court
RJC Courtroom 16D
200 Lewis Avenue
Las Vegas, Nevada 89155

/s/ Brandon Lopipero
An Employee of MAIER GUTIERREZ & ASSOCIATES