

**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.

**APPENDIX TO 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

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Elizabeth A. Brown  
Clerk of Supreme Court

**ORIGINAL PETITION**

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

**APPELLANTS' APPENDIX VOLUME III**

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12/21/2020	Notice of Entry of Order Granting Plaintiff's Ex Parte Application for Order to Show Cause Why Defendants and Jay Bloom Should Not Be Held in Contempt of Court	I	AA0151-0155
01/27/2021	Notice of Entry of Order Granting Plaintiff's Motion for Attorneys' Fees and Costs	II	AA0356-0361
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01/20/2021	Supplement to Plaintiff's Ex Parte Application for Order to Show Cause Why Defendants and Jay Bloom Should Not Be Held in Contempt of Court	I/II	AA0215-0322
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**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, **APPENDIX TO 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  
Las Vegas, Nevada 89119  
*Attorneys for TGC Farkas Funding LLC*

/s/ Brandon Lopipero

An Employee of MAIER GUTIERREZ & ASSOCITES

1 20 -- October 15th, 2020, where you -- you stated in your declaration that  
2 First 100 does not have the employees or the funds to comply with the  
3 order?

4 A I believe so.

5 Q Do you want to look at Exhibit G to refresh your memory  
6 and let me know when you're there.

7 A Yeah, I have my declaration in front of me.

8 Q And paragraph 4, is that where you stated in October of 2020  
9 that First 100 does not have the ability or the employees to effectuate  
10 and comply with the order?

11 A I do. Yes. That's part of 4's -- we -- we were reiterate that --  
12 we're -- we're -- we have very intention of complying with the arbitration  
13 panel and the findings of the Court that -- reduce it to a judgment or an  
14 award but there's a practicality issue that the company can't comply  
15 without funds to effectuate the goal. The operating agreement requires  
16 the requesting member to provide the funds. The arbitration agreement,  
17 or the arbitration finding, requires the provision of the documents, but  
18 does not address -- it's silent as to the costs, I believe. And this Court,  
19 even though it denied the motion to amend, never ordered First 100 to  
20 pay because First 100 doesn't have any money to pay. It would be -- it  
21 would be impractical.

22 Q Okay. And if you go to Exhibit U, which is a response letter  
23 to Mr. Hendrickson.

24 A Okay, I have Exhibit U in front of me.

25 Q It's a letter from Garman Turner Gordon. In this letter, did

1 they accept your request to have -- to pay Mr. Hendrickson to gather  
2 these records?

3 A No. No, they refused to make payment to the third-party to  
4 produce the documents, books and records that they're requesting be  
5 produced.

6 Q And under the First 100 operating agreement, Mr. Bloom,  
7 who would have to pay for the cost of producing company books and  
8 records?

9 A The member requesting the production.

10 MR. GUTIERREZ: Your Honor, I can -- can we take a quick  
11 break? I believe I'm done. I just want to --

12 THE COURT: Let's see. Let's break until -- how about 3:25?  
13 Is that enough of a break?

14 MR. GUTIERREZ: Fine. That's --

15 THE COURT: Okay. 3:25.

16 MR. GUTIERREZ: And I believe I'm done. I'm pretty much  
17 done, Your Honor. So getting ready to pass the witness, so just want to  
18 run to the bathroom.

19 THE COURT: Okay, thanks.

20 [Recess at 3:18 p.m. recommencing at 3:23 p.m.]

21 THE COURT: All right. Back on the record. I see that counsel  
22 and the witness are present. Madelyn and Jennifer, are you present as  
23 well?

24 THE COURT RECORDER: Yes, I'm here.

25 THE MARSHAL: Yes.

1 THE COURT: Okay. You passed the witness, I believe,  
2 correct, Mr. Gutierrez?

3 MR. GUTIERREZ: Yes. Yeah.

4 THE COURT: Okay, cross.

5 CROSS-EXAMINATION

6 BY MS. TURNER:

7 Q Okay, Mr. Bloom, if you could go to Exhibit 28. 28. Oh, I  
8 can't read that. Mr. Gutierrez, do you want me to go one by one on  
9 these? Or are you going to stipulate to the exhibit?

10 MR. GUTIERREZ: Is this just the email creation by Mr.  
11 Nahabedian?

12 MS. TURNER: Yes.

13 MR. GUTIERREZ: I'm looking at it now.

14 MS. TURNER: He produced -- you can see his Bates number  
15 on the bottom.

16 MR. GUTIERREZ: Give me one second. I don't have any  
17 objection.

18 MS. TURNER: Okay.

19 THE COURT: Okay, 28's admitted.

20 [Plaintiff's Exhibit 28 admitted into evidence]

21 BY MS. TURNER:

22 Q Mr. Bloom, the very first page, it's Plaintiff 240 ran number 1.  
23 And we have a January 4th, 2021 email from Raffi Nahabedian to you,  
24 with an attached attorney retainer agreement, Matthew Farkas,  
25 TCG/Farkas. Do you see that? Mr. Bloom, we can't hear you.



1 A I'm sorry, is that better?

2 Q Yep.

3 A Yes, I see it.

4 Q Okay. It says, "Jay, good evening. Here is a retainer  
5 agreement for Matthew. Please have him call me with any questions or  
6 comments." Do you see that?

7 A I do.

8 Q And attached is an attorney retainer fee agreement for  
9 Matthew Farkas as managing member of TCG/Farkas. Not TGC, but  
10 TCG. Do you see that?

11 A I do.

12 Q Now January 4th, 2021, you were the subject of an  
13 application for an order to show cause why you personally should not be  
14 found in contempt of court in this matter. Correct?

15 A Yeah, I believe you filed that.

16 Q Okay. Now let's go to Bates number Plaintiff 245. It's from  
17 Jay Bloom to Joseph Gutierrez, Jason Maier, with a cc to  
18 Raffi@nahabedianlaw.com. Do you see that?

19 A I do.

20 Q And if we go down to the bottom of the -- or about the  
21 middle of the page, you have January 7th, 2021 at 1:58 p.m. Jay Bloom  
22 wrote. Do you see that?

23 A No, you have a different section on the screen.

24 Q Right --

25 A Oh, okay.

1 Q -- there you --

2 A Yes, I see it.

3 Q And it says,

4 "Hi, Cooney. Can you please print one copy of each of these  
5 four documents attached. Matthew Farkas will be by to sign  
6 them and initial each page on the attorney retainer  
7 agreement. And when complete, can you please scan the  
8 four signed documents and email them back to me at  
9 jbbloom@lben.com. And if you could also mail the hard -- the  
10 completed hard copy to Jay Bloom."

11 Did I read that right?

12 A You did.

13 Q And Cooney works at the UPS store, correct?

14 A That's my understanding. I don't know the person  
15 personally.

16 Q That's who you believed you were addressing with this  
17 email, right?

18 A Correct.

19 Q And then the UPS store responded to you at 2:40 p.m. on  
20 that same day, "Documents scanned." Do you see that?

21 A Yes, I see that.

22 Q And if we go to Plaintiff 247, so if you skip two pages. We  
23 see the beginning of the four documents that were assigned -- or  
24 attached. Correct?

25 A I see the first page of the first document, but I'll assume it's

1 correct.

2 Q Okay. We have a release, hold harmless and indemnification  
3 agreement between First 100 Holdings, LLC, First 100, LLC, and Matthew  
4 Farkas. Correct?

5 A Correct.

6 Q And TGC/Farkas Funding, LLC is not mentioned in this  
7 release and hold harmless and indemnification agreement. Am I right?

8 A That's correct.

9 Q Okay. And if we go to Plaintiff 253, this is page 7 of the  
10 release. It has Matthew Farkas' signature. Do you see that?

11 A I do.

12 Q Okay. So you received Matthew's signature to the release at  
13 2:40 p.m. on January 7th, right?

14 A Yeah. The purpose of this document was for the  
15 indemnification of Matthew, because he was concerned about a lawsuit  
16 by Adam Flatto.

17 Q So First 100 was providing a release and indemnification  
18 hold harmless to Matthew Farkas in the event that TGC/Farkas or Adam  
19 Flatto sued him. That's your testimony?

20 A Well, Matthew was concerned about Adam Flatto suing him.  
21 He repeated it many times.

22 Q Okay. If we go to Plaintiff 254 we have the settlement  
23 agreement. And that was executed by you, as manager of the First 100  
24 entities and then Matthew Farkas, correct?

25 A That's correct.

1 Q Okay. We go to the next document, document number 3.  
2 We have the attorney retainer fee agreement that you had received from  
3 Raffi Nahabedian on January 4th, right?

4 A Correct.

5 Q And that was signed by Matthew Farkas at Plaintiff 260,  
6 right?

7 A Yes.

8 Q Okay. And then the fourth document is a letter dated  
9 January 6th, 2021 addressed to me, right?

10 A Yes. I don't know if my microphone picked up a single word  
11 answer, but yes.

12 Q We've been having problems with that all day.

13 A Yes.

14 Q All right. Now when you received those four documents  
15 from the UPS store, within eight minutes you flipped them to Joe  
16 Gutierrez, Jason Merritt and Raffi Nahabedian. Saying here you go,  
17 exclamation point, exclamation point, right?

18 A We don't have that on the screen, but sure. I'm sure we did.

19 MS. TURNER: Michelle. Plaintiff 245.

20 THE WITNESS: They have on the screen, it's Raffi saying,  
21 "Please have Matthew call him with any questions."

22 BY MS. TURNER:

23 Q Here we go. It says, "Here you go, originals in the mail."  
24 Now you only had the UPS store print one copy of each of the four  
25 documents and mail it to you. Correct?

1           A     I didn't direct the to only print one copy. I asked them to  
2 print it. Matthew certainly had an opportunity to ask them to print a  
3 second set if he liked. He could have asked the UPS store to email them  
4 to him, as they emailed the response to me. He could have asked me to  
5 email him a separate copy by email, and not just send them. Instead of  
6 directing me to send them to the UPS store. But no, this is -- I didn't just  
7 direct them to print only one copy. No, that's not accurate.

8           Q     It says, "Can you please print one copy of each of these four  
9 documents attached." Right?

10          A     Yes. But that was not a limitation of one document.  
11 Matthew was there. I was not. He certainly had the ability to ask them to  
12 print a second set. There was one copy, that was for execution.

13          Q     Now under where you say, "Here you go, originals in the  
14 mail." It says, "Let's get the substitution of attorney and stip to dismiss  
15 filed for TGC/Farkas and put this to bed in the next day or two. Let's try  
16 to have this filed the same time GTG [sic] gets their termination letter.  
17 Thanks, Jay."

18          A     Everybody was sick of the litigation, except for your firm.  
19 That's correct.

20          Q     Now Mr. -- Mr. Bloom, I -- you never had a settlement offer  
21 made by your counsel to Garman Turner Gordon to settle this matter.  
22 You went straight to Matthew Farkas to have him execute this  
23 agreement, correct?

24          A     Mathew and I discussed settlement and went back and forth  
25 on what the terms would be. And we did it without the attorneys, to get

1 it done. Because nobody wanted this litigation, except for your firm.

2 Q You and I have never met. Nobody's ever communicated to  
3 you that this firm wants litigation, correct?

4 A Well, your partner did in another matter.

5 Q Okay. "Let's get the substitution of attorney and stip to  
6 dismiss filed for TGC/Farkas." You were referring to the substitution of  
7 attorney for Raffi Nahabedian to substitute in as counsel for my firm,  
8 Garman Turner Gordon, as counsel for TGC/Farkas and dismiss the  
9 lawsuit. Right?

10 A Right. That was a directive of Matthew Farkas, as what we  
11 understood. Including Matthew, when I say we. In his capacity as  
12 manager of TGC/Farkas, correct.

13 Q Now Raffi Nahabedian, on January 7th, 2021, was your  
14 personal counsel, correct?

15 A On an unrelated matter, yes. That's how I know him.

16 Q And you were communicating with First 100 and your  
17 counsel, Maier Gutierrez and Associates, Joe Gutierrez and Jason Maier  
18 as well as Raffi, regarding the substitution of counsel for the other  
19 party --the adverse party TGC/Farkas, correct?

20 A Correct.

21 Q Okay. If we go forward to RAN0022, or Plaintiff 261, the  
22 January 6th letter. Who drafted this letter? In January 6, 2021, that you  
23 sent to the UPS store?

24 A I don't recall. I believe it was Raffi, but I don't recall.

25 Q The settlement agreement you drafted, correct?

1           A     Correct.

2           Q     Who drafted the release?

3           A     I believe I drafted that.

4           Q     Okay, if we can go to the next -- next page, Plaintiff 262. We  
5 have an email from Raffi Nahabedian to you, Jay Bloom, Joseph  
6 Gutierrez, and attached is the substitution of counsel. Do you see that?

7           A     I do.

8           Q     And Raffi Nahabedian is communicating to you, Jay Bloom,  
9 saying he needs to have a substitution of counsel signed by the  
10 respective parties, Farkas and GTG, LLP. Please call me when you're  
11 free. Do you see that?

12          A     I do.

13          Q     And if we go forward to Plaintiff 266, you have a January 8th,  
14 2021 email.

15               MS. TURNER: Blow that up a bit, Michelle, please.

16           BY MS. TURNER:

17          Q     January 8th, 2021 from you, Jay Bloom, to Raffi Nahabedian  
18 with a cc to Joseph Gutierrez saying, "Is there anything else he's going  
19 to need to sign? Getting him to sign stuff is a pain in the ass."

20          A     Correct.

21          Q     That's who you wrote to who you believed was TGC/Farkas'  
22 counsel, right?

23          A     Yes. Yes, Matthew didn't have a printer, didn't have a  
24 scanner, and his wife used the car. So he had to ride his bicycle to the  
25 UPS store back and forth. So yes, it was extremely inconvenient. So I

1 was asking Raffi if there was anything else he would need to sign. And  
2 incorporate everything as a considerate and consideration of Matthew's  
3 lack of a vehicle and -- and method of transportation, by bicycle to get to  
4 the UPS store.

5 Q Now on none of these communications where -- January 4th  
6 through January 8th, Matthew Farkas is not on any of them, right?

7 A No, I guess, no, he wasn't in any of the emails that I  
8 responded to, no.

9 Q Now if we go to Plaintiff 278. It says -- it's January 10th,  
10 2021. It's an email from you to Jason Maier at Maier Gutierrez with Raffi  
11 Nahabedian and Joe Gutierrez and Danielle Barraza, an attorney at -- at  
12 Maier Gutierrez's office, right?

13 A Correct.

14 Q And it says,

15 "Hi, Jason. Raffi wants to supplement the documentation  
16 with a substitution of attorney letter that Matthew needed,  
17 now needs to sign, as well as a conflict waiver letter. I don't  
18 know that Raffi is taking any action with the termination  
19 letter, until these are signed. I'm waiting for the conflict  
20 waiver letter to be drafted, so I can put it together with the  
21 substitution of attorney to put in front of Matthew, for a  
22 second set of signatures."

23 Do you see that?

24 A I do.

25 Q Now you said that it was a pain in the ass to get Matthew to



1 sign. Was there ever any attempt to send any of these documents to  
2 Adam Flatto, or counsel, Garman Turner Gordon, for TGC/Farkas?

3 A So we wouldn't communicate with Adam Flatto because  
4 Matthew Farkas continued to represent up until this point that he was the  
5 manager of TGC/Farkas. I don't communicate to every member of every  
6 entity that's a member of First 100. Just a designated representative,  
7 which Matthew Farkas continued to insist was his role at the time of  
8 these emails.

9 Q Now if we go to Plaintiff 281 in this same Exhibit 28. And  
10 here we have an email from Raffi Nahabedian to you, Jay Bloom, and  
11 Jason Maier, with a cc to Joe Gutierrez and Danielle Barraza at the Maier  
12 Gutierrez Law Firm. And it says,

13 "Good afternoon, additionally, Matthew must bring the  
14 operating agreement of the LLC. This is critical to confirm  
15 his authority of the termination as the authorized manager,  
16 as defined in the operating agreement and not just as a  
17 managing member. GTG may be very difficult in this  
18 process, especially since they're owed fees."

19 Do you see that?

20 A I do see it.

21 Q Now it was on or about this date that you learned that  
22 Matthew had signed a September 2020 amendment to the TGC/Farkas  
23 funding operating agreement. Is that correct?

24 A No, that's not correct. It would be another week or ten days  
25 before I learned that he signed an operating agreement amendment. At

1 this point on January 10th, Matthew was still insisting that he was still  
2 the manager of TGC/Farkas.

3 Q So I did understand your -- your testimony earlier with -- with  
4 your counsel questioning you, that you didn't know about any  
5 amendment to the TGC operating agreement until after I sent a letter on  
6 January 15th, 2021. Is that your testimony?

7 A My understanding is you sent the letter on January 15th to  
8 Raffi. You didn't provide it to the company. Adam didn't provide it to  
9 the company. Matthew didn't provide it to the company. I first heard of  
10 it about January 19th. I asked Matthew to provide it for the first time  
11 when I learned about it on January 19th of 2021, and Matthew refused to  
12 provide it at that point.

13 Q Can you go to Exhibit 15.

14 A Contemporaneous -- contemporaneous emails that reflect  
15 those conversations.

16 Q Exhibit 15, please. If we can go to paragraph 19. This is a --  
17 Exhibit 15 is a declaration that your counsel showed you just a few --

18 MR. GUTIERREZ: We're going to object to the admission of  
19 the declaration as hearsay. Just as they objected.

20 MS. TURNER: Well, this is a party opponent, Jay Bloom.

21 THE COURT: I don't think she -- I don't think she's offering  
22 the entire item. She's just directing him to a paragraph in it.

23 MR. GUTIERREZ: Okay.

24 BY MS. TURNER:

25 Q If you go to paragraph 19, I'm going to read it to you, so that

1 we're on the same page. It says,

2 "On or about January 9th, 2021, during a telephone  
3 conference with TGC/Farkas Funding counsel, Raffi  
4 Nahabedian, Joseph Gutierrez and myself, Matthew Farkas  
5 continued to state that he has no recollection of resigning his  
6 position as manager, but he would check his emails."

7 Paragraph 20, "It was not until on or about January 10th,  
8 2021, that Matthew Farkas, for the first time, says that he found an email  
9 where he signed a September 2020 amendment to the TGC/Farkas  
10 Funding operating agreement."

11 So you know about an amendment on or about January  
12 10th, 2021, correct?

13 A On or about January 10th. In reviewing the documents, it's  
14 more like January 19th. So about January 10th is about a week early  
15 in -- in this document.

16 Q Okay. So you're changing your testimony from when you  
17 provided the declaration to the Court and intended for the Court to rely  
18 on it in January, you're changing that now to the 19th?

19 A I'm not changing it. I said on or about. I didn't have an exact  
20 date. And now we have an exact date from the text messages. So it was  
21 about a week later.

22 Q Now when Raffi Nahabedian said, "Matthew must bring the  
23 operating agreement. This is critical to confirm his authority." Certainly  
24 you made an inquiry to obtain the operative operating agreement for  
25 TGC/Farkas, LLC. Did you?

1           A     Can you -- you broke up a little bit in the question in the  
2 middle of your sentence. If you could repeat that.

3           Q     In response to this January 10th email from Raffi  
4 Nahabedian, Matthew must bring the operating agreement of the LLC.  
5 He was referring to the LLC of TGC/Farkas, right?

6           A     Right. But at that point, Matthew was still insisting that he  
7 was the manager and had not resigned that position. That's why Raffi is  
8 not asking for the amendment, because we didn't know about it at that  
9 point. He's asking for the operating agreement to confirm Matthew's  
10 representation at the time that he was the manager.

11          Q     In response to this January 10th, 2021 email from Raffi  
12 Nahabedian, you did not email Garman Turner Gordon. Or cause your  
13 counsel to email Garman Turner Gordon. Or contact Adam Flatto to  
14 obtain the operating agreement. Right?

15          A     No, I understood Raffi Nahabedian to be the new attorney for  
16 Garman Turner Gordon, based on Matthew's representations, and  
17 documents that he signed, terminating Garman Turner Gordon and  
18 retaining Raffi Nahabedian. So this was a settlement that was entered  
19 by the parties, that was given to what we understood were the attorneys  
20 for the parties to record the -- the settlement agreement with the Court.

21          Q     We go to Plaintiff 284. We have your email that same day,  
22 January 10th, 2021, to Raffi Nahabedian, with a cc to Jason Maier, Joe  
23 Gutierrez, and Danielle Barraza. And you say, "I doubt he has it." And  
24 you're referring to Matthew Farkas, right?

25          A     I was referring that to Matthew Farkas having the operating

1 agreement.

2 Q You say,

3 "I doubt he has it. We should be fine with his representation  
4 and his having engaged them in the first place, together with  
5 his signing the subscription agreement and the redemption  
6 agreement on behalf of the entity as manager. We need to  
7 get this done and filed, ASAP."

8 Do you see that?

9 A Correct.

10 Q That was the same authority that you were relying on when  
11 having Matthew sign the subscription -- or the settlement agreement on  
12 behalf of TGC/Farkas, right?

13 A Well, he signed the subscription agreement on behalf of  
14 TGC/Farkas. He signed the redemption agreement on behalf of  
15 TGC/Farkas. He signed the settlement agreement on behalf of  
16 TGC/Farkas. He continued to represent his position as the manager as  
17 of January 10th, as TGC/Farkas. Raffi wanted to see the operating  
18 agreement to confirm it. I said I doubt he has it. But he's continually for  
19 eight years now held himself out as the manager. And we're not aware  
20 of anything that changed that.

21 Q All right. If we could go to Exhibit 2. It's already in evidence.  
22 You've seen this arbitration award, Mr. Bloom, correct?

23 A In these proceedings, yes.

24 Q All right. And if we go to page 2. You recall the arbitrators  
25 saying at the bottom, it says that "First 100's response to the initial May

1 2nd, 2017 demand for documents was the first in a long and bad faith  
2 effort by Respondents, to avoid their statutory and contractual duties to a  
3 member, to produce requested records." You recall seeing that, right?

4 A Yeah, that's a statement that they made based on the false  
5 information that your firm elicited from Matthew Farkas in that August  
6 declaration.

7 Q Okay.

8 A Preceded with the decision by the auditors, based on  
9 misrepresentation, correct.

10 Q Now this is a pretty serious allegation that you're making  
11 that there is a law firm, Garman Turner Gordon, that is suborning  
12 perjury.

13 A Oh, yeah, no, I'm --

14 Q Mr. Farkas -- Mr. Farkas voluntarily executed a declaration  
15 and believed it to be true. Correct?

16 A No, he mis- -- he -- he told me otherwise in my conversations  
17 with him.

18 Q Uh-huh.

19 A Told me that he signed it under duress by Adam Flatto, in  
20 threat of litigation. I believe in -- in these proceedings, it turned out it  
21 was from Michael Busch that made the threat, not Adam Flatto.

22 Q All right. Well, we're going to have to bring Matthew Farkas  
23 back to address your allegations against counsel. They're very serious.  
24 But let's go to the second -- or the third page of the arbitration award,  
25 because you referred to the redemption agreement with Mister -- Mr.

1 Nahabedian and you said that you relied on it as well. If we go to the  
2 fourth paragraph, it says -- well, actually the third. It says, "The  
3 contention that claimant is not a member of Respondents is belied by the  
4 records of the Respondents."

5 If we go to the next paragraph, it says,

6 "It was not clear from the initial briefs and exhibits whether  
7 Matthew Farkas signed a redemption agreement for  
8 claimant. However, the additional evidence clarified he  
9 actually did not" -- or "he actually did sign such an  
10 agreement. However, the evidence also shows two  
11 additional points that render the redemption agreement  
12 irrelevant for the purpose of this proceeding. First, the  
13 evidence shows that Mr. Farkas did not have authority to  
14 bind claimant to the redemption agreement, as he did not  
15 seek and obtain the consent of Mr. Flatto."

16 And then further in that same paragraph, it says, "And  
17 claimant notified Respondents via email on April 18th, 2017, that Mr.  
18 Farkas did not have the authority to bind claimant under the redemption  
19 agreement, unless and until approved by Adam Flatto."

20 You knew from the arbitration award that you had to get the  
21 approval of Adam Flatto, in order for any documents signed by Matthew  
22 Farkas to be binding on TGC/Farkas. Isn't that right?

23 A No, that's not right. Nowhere in that document or paragraph  
24 that you read; does it say all documents. It specifically refers to the  
25 redemption agreement that Matthew signed. You're -- you're expending

1 the finding of the arbitration panel.

2 Q That -- this award didn't give you notice that you had to run a  
3 settlement agreement by Adam Flatto, before it would be valid and  
4 enforceable?

5 A I don't see settlement agreement in the finding. The only  
6 thing I see is that they found that Matthew didn't have the authority to  
7 enter into a redemption agreement. Nothing else. You're -- you're  
8 vastly expanding the finding of the arbitration panel and saying not only  
9 is it the redemption agreement, but it's all documents and every decision  
10 despite the language of their operating agreement that says that he's the  
11 manager of the company. I understood he was the manager. I  
12 understood he was the CEO. And with respect to the settlement  
13 agreement, not only did I have Matthew's representation that this is  
14 what -- what Adam wanted, I have Adam's representation that this is  
15 what Adam wanted.

16 If you remember my testimony, Adam said he wanted the  
17 million dollars back and he also wanted six percent. He told me that  
18 directly. So I incorporated what Matthew wanted and what Adam  
19 wanted into the draft settlement agreement and my discussions with  
20 Matthew.

21 Q Adam didn't talk to you about anything after 2017. Did he?

22 A No, he -- he never changed his position and said I no longer  
23 want my money back, I no longer want six percent. My last conversation  
24 with Adam was several years ago. And I never got an indication from  
25 Adam or from Matthew that it changed. I also never got an indication in



1 writing from Adam, or even a phone call from Adam that he was the new  
2 manager. That's why we were all surprised that Matthew's  
3 representations at the time he signed the settlement agreement turned  
4 out not to be true when we found out two weeks later.

5 Q Did you provide a copy of the arbitration award to Raffi  
6 Nahabedian?

7 A I don't believe so.

8 Q All right. Go to Exhibit 22, please. This is a July 13th, 2017  
9 letter to Joe Gutierrez. Do you see that?

10 A I do.

11 Q And this was subsequent to the redemption agreement.  
12 Subsequent to your calls with Adam Flatto, correct?

13 A Correct.

14 Q And it says bullet point number 3, Matthew Farkas is not the  
15 manager of TGC/Farkas. Bullet point number 4, counsel has previously  
16 sent correspondence explaining that Matthew Farkas does not have the  
17 authority to bind TGC/Farkas Funding, LLC. Do you see that?

18 A I see it and we addressed it in my prior testimony that --

19 Q At the time --

20 A -- Matthew Farkas was not the manager of TGC/Farkas as of  
21 2017. It's a false statement by your firm. Right. Adam Flatto in his  
22 testimony that I heard today said that there was one amendment in  
23 September of 2020 that removed Matthew as the manager. No other  
24 amendments. Matthew never resigned as the manager.

25 Q You were shown Exhibit E by your counsel. Exhibit E is --

1           A     Correct.

2           Q     -- is the declaration of Adam Flatto that was submitted to the  
3 arbitrators.

4           A     I see it.

5           Q     Paragraph number 5 under §3.4 of the operating agreement,  
6 the administrative member can only take action to bind claimant after  
7 consultation with and upon the consent of all claimant members. Do  
8 you see that?

9           A     I do. It's following paragraph 4 where it says Matthew Farkas  
10 was and still is the administrative member of the claimant and Matthew  
11 Farkas represented that the settlement agreement was what Matthew --  
12 was what Adam Flatto wanted. And it comported with what Adam Flatto  
13 told me directly that he wanted. And never -- never withdrew. Now I  
14 don't know what I can do to confirm oral conversations between  
15 Matthew and Adam, other than accept the representations of both of  
16 them.

17          Q     Go to Exhibit 28. Plaintiff 292. We have Jason Maier on  
18 January 11th, 2021 sending an email to Raffi with a cc to you and Joe  
19 Gutierrez and Danielle Barraza. Not sure if this helps, but attached is the  
20 document previously disclosed by GTG, where Matthew signed the  
21 engagement of GTG. So the information that's being provided to Raffi  
22 Nahabedian to show authority of Matthew Farkas is from you and your  
23 counsel and not from TGC/Farkas Funding. Not from Matthew Farkas.  
24 Not from Adam Flatto and not from GTG. Isn't that right?

25          A     No, I think there's another document that we saw, and I can't

1 remember which exhibit, but Raffi references conversations with  
2 Matthew Farkas where Matthew Farkas made the representation on  
3 behalf of -- of TGC/Farkas directly. That he was still the manager. So  
4 you're -- you're cherry picking some of the communications and yes,  
5 everybody says Matthew signed every document for the last eight years,  
6 and continues to make the representation directly to me, to Mr.  
7 Gutierrez, to Raffi Nahabedian. I mean I think -- quite honestly Matthew  
8 didn't realize what he signed in September when you put it in front of  
9 him to sign that amendment.

10 Q It --

11 A He was convinced he was the manager of --

12 MS. TURNER: Move to strike, Your Honor. He's just  
13 rambling at this point and speculating.

14 THE COURT: I'll -- I'll sustain and strike. Just pose the next  
15 question.

16 BY MS. TURNER:

17 Q Go to Plaintiff 311. From Jason Maier, again counsel for --  
18 it's 311, counsel for First 100. Joseph Gutierrez, Danielle Barraza are  
19 cc'd. It's Jason to Jay Bloom saying Raffi, here is a draft of the letter,  
20 giving your back issues. Feel free to edit as you see fit. I'm not sure you  
21 need the sentence highlighted in yellow now that I see the letter written  
22 out. But that's up to you and Matthew. Please send a final copy of  
23 whatever ends up going out. Or winds up going out. Thanks. Jason  
24 Maier drafted the letter purportedly terminating Garman Turner Gordon  
25 as counsel for TGC/Farkas Funding.

1           A     I'm looking for the reference to which letter it was. Okay,  
2 attachment letter to Garman Turner Gordon. It looks like Raffi had a  
3 medical issue and Jason assisted in providing a draft. But was very clear  
4 in saying it was between Raffi and Matthew, as manager of TGC/Farkas  
5 what the final copy winds up going out.

6           Q     You have counsel for the opposing party drafting  
7 correspondence purportedly on behalf of TGC/Farkas Funding. And if we  
8 go to Plaintiff 316, you see the draft letter. You see that?

9           A     I see it.

10          Q     The highlighted portion was the portion that said, "In an  
11 effort to mitigate damages, Mr. Farkas has resolved the TGC Farkas v.  
12 First 100 matter on behalf of TGC Farkas Funding, LLC and a copy of the  
13 settlement agreement is also enclosed here and is a courtesy."

14                 There's some question about whether to provide that  
15 sentence or not. But that was the letter that was drafted by Jason Maier,  
16 counsel for First 100 and you in this matter.

17          A     Well no, I wasn't -- I didn't participate in the drafting of the  
18 letter. That's -- you're now introducing --

19          Q     No, I said Jason's, your lawyer.

20          A     Okay. You said -- and you didn't understand the context.

21          Q     If we got to Plaintiff 318. This is an email from Jay Bloom to  
22 Jason Maier and Raffi Nahabedian with a cc Joseph Gutierrez and  
23 Dannielle Barraza dated January 12th, 2021 and you respond, "I think it  
24 reads great. I would leave in the highlighted sentence. It's best they  
25 know the matter is settled and the signed settlement required and the

1 matter be dismissed. "

2 That was your email to -- in response to Jason's draft,  
3 correct?

4 A Yes, that's correct. The parties settled the matter a week  
5 prior and agreed to the dismissal and the lawyers were working together  
6 to effectuate the settlement agreement entered by the parties.

7 Q All right. Now if we go to Plaintiff 328. This is from Raffi  
8 Nahabedian to Jay Bloom and is cc'd to Joseph Gutierrez with TGC  
9 Farkas substitution letter. And it says, "Jay, I made some minor  
10 revisions. Please read and approve. Also, I would like to speak with  
11 Matthew as soon as possible."

12 You see that?

13 A I do.

14 Q And then if we go Plaintiff 332, Joseph Gutierrez responds  
15 with a cc to you and to Jason Maier, "Letter looks good to me. Thanks."

16 A Okay.

17 Q All right. Then we have Plaintiff 338. These are emails.  
18 Looks like your email is at the top, 338. January 13th, 2021 to Raffi with  
19 a cc to Joseph Gutierrez. "Spoke with Matthew. He's going to go down  
20 and sign around 4:00. I'll have the documents back today."

21 This was the TGC Farkas conflict letter, right?

22 A I don't remember what that's referencing.

23 Q All right. If we go to Plaintiff 341, we have an email from Jay  
24 Bloom to Raffi at Nahabedian Law cc'd to Joseph Gutierrez and Jason  
25 Maier subject Matthew documents. And attached, you have the signed

1 substitution of counsel and a signed conflict waiver, right?

2 A Okay. So it was two documents, not one. So I guess the  
3 answer to your question is the conflict waiver was one of the two  
4 documents that Matthew signed.

5 Q In the conflict waiver of January 12th, 2021, five days after  
6 the initial retention agreement that you asked Matthew to sign for Raffi  
7 Nahabedian, you have a conflict waiver where TGC Farkas Funding  
8 purports to release Raffi Nahabedian from any liability, if you go to 347.  
9 Do you see that?

10 A Yeah. It's pretty standard conflict waiver language, I would  
11 imagine.

12 Q And that's your signature underneath Matthew's, correct?

13 A Yes. I signed on behalf of First 100, LLC and Matthew signed  
14 on behalf of TGC Farkas.

15 Q Actually, you know that in order to sign a release of  
16 professional liability against an attorney, there is a rule of professional  
17 conduct that covers that and requires independent counsel review it.  
18 You know that, right?

19 A Which rule are you referencing?

20 Q The rules of professional responsibility.

21 A Yeah. Which rule?

22 Q 1.8, I believe.

23 A Okay. I'd have to pull the document and read the rule to  
24 reference it.

25 Q Okay.

1           A     Okay. Nevada Rules of Professional Conduct Rule 1.8 deals  
2 with current clients. It says,

3                   "A lawyer shall not enter into a business transaction with a  
4 client or knowingly acquire an ownership, possessory,  
5 security or other pecuniary interest adverse to a client unless  
6 the transaction and terms on which the lawyer acquires the  
7 interest are fair and reasonable."

8           Q     Actually, if you could just go down to H -- H.

9                   "A lawyer shall not make an agreement prospectively limiting  
10 the lawyer's liability to a client for malpractice unless the  
11 client is independently represented in making the agreement  
12 or settle a claim or potential claim for such liability with an  
13 unrepresented client or former client unless that person is  
14 advised in writing of the desirability of seeking and is given a  
15 reasonable opportunity to seek the advice of independent  
16 legal counsel in connection therewith."

17                  Did I read that correctly?

18           A     Right. [Indiscernible].

19                  MR. GUTIERREZ: Too much -- malpractice. Objection, Your  
20 Honor. Misstates the rule.

21                  THE COURT: Counsel, response?

22                  MS. TURNER: I didn't hear him.

23                  MR. GUTIERREZ: My objection was this rule clearly states  
24 that a lawyer is limiting his ability to malpractice. That's not what we're  
25 talking about here, so the objection is she's misstating this rule.

1 THE COURT: Overruled.

2 BY MS. PIKE-TURNER:

3 Q Yeah. If we go to the actual document, it says,  
4 "TGC Farkas Funding will not assert or claim any claim or  
5 allegation of legal malpractice or a violation of the Nevada  
6 Rules of Professional Responsibility, based on your request  
7 for representation of TGC Farkas Funding."  
8 Did I read that correctly?

9 A I believe so.

10 Q If we go to Bates Number Plaintiff 362 in Exhibit Number 28,  
11 we have January 15th, 2021, an email from Dylan Ciciliano of my office  
12 saying, "Mr. Nahabedian claims that your office and he negotiated a  
13 settlement. Please provide that immediately."

14 And Jason Maier forwarded that to you January 15th, 2021.  
15 Do you see that?

16 A I do.

17 Q And you did nothing to provide the executed settlement  
18 agreement to counsel for TGC Farkas Funding until the filing of the  
19 motion to enforce settlement agreement. Isn't that right?

20 A No, that's not right. I provided it to TGC Farkas' manager,  
21 which as of January 15th, we understood was Matthew Farkas, as he  
22 continued to represent at that time. He had the settlement agreement  
23 when he signed it. He certainly had the opportunity to provide it to his  
24 counsel for TGC, which at the time, we believed was Raffi Nahabedian  
25 and not your firm. But no, I wouldn't contact your firm directly with a



1 settlement agreement.

2 Q So you sent the documents to Matthew Farkas at the UPS  
3 Store and received them back within approximately 40 minutes, correct?

4 A I didn't calculate the time difference, but the document -- it's  
5 like six pages of documents. It's not voluminous. There are four  
6 documents that are one or two pages each.

7 Q When you received those documents back within 40 minutes  
8 and -- that was an inadequate amount of time, objectively, for Mr. Farkas  
9 to review the documents, consult with counsel and consult with Adam  
10 Flatto in order to obtain his consent, correct?

11 A I disagree and that's, I think, a subjective question. There's  
12 six pages. Forty minutes is plenty of time to read six pages and then call  
13 Adam Flatto, if that's what he chose to do, and confirm with Adam Flatto  
14 that Adam Flatto still wanted to enter the settlement agreement. And  
15 calling -- I referred him to three attorneys for himself and he had Mr.  
16 Nahabedian for the firm, for the company. Matthew Farkas, he said it  
17 himself. He's a big boy. He chose not to read it. I don't know what he  
18 did for the 40 minutes, but I tend to believe that he probably did read it.  
19 He signed it and he returned it. And he did so in the capacity of what we  
20 understood and I believe what he understood to be him being the  
21 manager for TGC Farkas. None of us knew that there was an  
22 amendment that was signed until several days after this email.

23 Q You hired Raffi Nahabedian, your personal counsel for Matt  
24 Farkas, instructed them to fire Garman Turner Gordon and provide the  
25 settlement agreement to the lawyer you hired and have them dismiss --

1 have that lawyer dismiss this lawsuit with prejudice while contempt  
2 proceedings were pending. Isn't that right?

3 A No. It's not.

4 Q What part of that is incorrect?

5 A The parties on January 6th and 7th agreed to a settlement  
6 agreement. The parties being TCG [sic] Farkas and First 100 through  
7 what we understood, all of us, were there respective managers. The  
8 lawyers were then just brought in to effectuate the recording of the  
9 settlement agreement reached by the parties.

10 Q There's not an email anywhere where you emailed a copy of  
11 that settlement agreement to Matthew Farkas, so that he would have an  
12 opportunity to consult with Adam Flatto and counsel, correct?

13 A I think Matthew Farkas took the hard copies with him when  
14 he left the UPS Store.

15 Q My question is there's not an email from you to Matthew  
16 Farkas where you emailed the settlement agreement for him to confer  
17 with counsel for TGC Farkas or Adam Flatto?

18 A No. He directed me to send them to the UPS store. I  
19 complied with his direction. Had he requested me to send them to him  
20 by email, I would have done so, as I did with the declaration. Had he  
21 asked the UPS store to forward him the email, they would have done so.  
22 He had physical possession of the documents and all the time in the  
23 world to read them.

24 Q Now, these email communications that we've been  
25 reviewing in Exhibit 28, you claimed a privilege over those

1 communications, didn't you? Requiring me to go and seek an order of  
2 the court so that we could review them?

3 MR. GUTIERREZ: Objection, Your Honor. Relevance. And  
4 also calls for legal conclusion.

5 THE COURT: Overruled.

6 THE WITNESS: What I said is that given Bar counsel's advice  
7 to Raffi Nahabedian that to the extent any privilege exists, I'm not willing  
8 to waive it. I didn't specifically assert any privilege.

9 BY MR. GUTIERREZ:

10 Q The record will speak for itself associated with the motion to  
11 compel, but if we can go to Exhibit 24. Do you see where there are  
12 documents, emails and it says, "Privileged Bloom," on the --

13 A I do --

14 Q -- where it -- this is the privilege log that was received from  
15 Mr. Nahabedian. Are you disputing that you claimed a privilege over  
16 those communications, where it indicates, "Privilege Bloom?"

17 A I did not participate in the preparation of this privilege log. I  
18 did not speak to Mr. Nahabedian about any individual privilege. I just  
19 told Mr. Nahabedian to the extent any privilege applies, I'm not willing to  
20 waive it. And he checked, as I understand, with Bar counsel and Bar  
21 counsel told him that a privilege attached, I believe. He wouldn't go into  
22 specifics with me.

23 Q So if Mr. Nahabedian testifies that he asked you if you would  
24 be willing to waive the privilege and you refused to waive it, would that  
25 be a falsehood?

1 MR. GUTIERREZ: Object to the form of the question, Your  
2 Honor. Argumentative.

3 THE COURT: Would that be what? I didn't hear the last  
4 word.

5 MS. TURNER: A falsehood.

6 THE COURT: I'll allow it.

7 THE WITNESS: No, it would not be a falsehood. Your  
8 question to me was did we go document by document. As I understand  
9 your question, we did not. I did not assert privileged documents by  
10 document. Again -- and I testified to this in my deposition last week, I  
11 told Mr. Nahabedian to the extent any privilege applies, I'm not willing to  
12 waive it. He looked for clarification from Bar counsel as to what that  
13 meant.

14 BY MS. TURNER:

15 Q Now, Mr. Bloom, at no point after you received the signed  
16 settlement agreement on January 7th, 2021 did you tender any money to  
17 TGC Farkas, correct?

18 A Correct.

19 Q And when you entered into the agreement, purportedly, with  
20 TGC Farkas Funding, you did not have a sale agreement for the sale of  
21 the judgment against Raymond Ngan and his affiliated entities, did you?

22 A Being negotiated, now finalized.

23 Q You did not have an agreement at the time of the settlement  
24 agreement, did you?

25 A Have an agreement that's in the process of being reduced to

1 writing.

2 Q You would not disclose any potential purchaser or the terms  
3 of the agreement or the -- or provide proof of funds, correct?

4 A Correct.

5 Q And subsequent to TGC Farkas Funding discovering that the  
6 settlement agreement had been entered, there was an offer to enter into  
7 a nondisclosure agreement and you refused, correct?

8 MR. GUTIERREZ: Objection. Lack of foundation.

9 THE COURT: Sustained.

10 BY MS. TURNER:

11 Q Mr. Bloom, at no time before or after the settlement  
12 agreement was entered did you disclose any terms of any prospective  
13 deal with a prospective purchaser to TGC Farkas Funding, right?

14 A That's not correct.

15 Q Who did you communicate that to?

16 A We did disclose to Matthew that the sale was for -- being  
17 negotiated for \$48 million.

18 Q Did you show him any proof of funds?

19 A We did not.

20 Q Was a draft purchase agreement provided?

21 A No.

22 Q Under the settlement agreement, it provided that the -- this  
23 case, the judgment, the underlying award, the contempt proceedings,  
24 those would all be dismissed upon execution, correct?

25 A Correct. All parties wanted the litigation to end and that was

1 incorporated into the final settlement agreement that both entities  
2 signed through their respective managers.

3 Q And that would be without regard to the funding or the  
4 funding of the million dollars plus six percent ever coming to fruition,  
5 right?

6 A Ever is a long time. I expect it's going to happen in the near  
7 future based on the conversations.

8 Q You can't guar --

9 A That has not happened yet.

10 Q You can't guarantee it, correct?

11 A No. That's why there's a contingency and not a date certain.  
12 There's a contingency that the money has to come in before it can go  
13 back out.

14 Q Now this judgment or award that was entered in favor of  
15 First 100, LLC against Raymond Ngan and his affiliated entities, it was  
16 entered in 2017, right?

17 A I believe so.

18 Q And since -- well, it was a default judgment, correct?

19 A Well, it was aggressively litigated and then his answer was  
20 stricken as a sanction after about a year of litigation. So technically it's a  
21 default, but it had been aggressively litigated.

22 Q And subsequently to the judgment being entered, counsel,  
23 Maier Gutierrez, has been diligently attempting to collect on it, right?

24 A Correct.

25 Q I believe you said that -- in your deposition that they've done

1 everything appropriate to try to collect unequivocally. Is that right?

2 A I believe that was in response to your asking me if I sued  
3 them for malpractice, correct.

4 Q And that they have gone above and beyond what most  
5 attorneys would do to collect that judgment, right?

6 A Again, in response to your inquiry as to whether or not we  
7 sued Maier Gutierrez for malpractice, yes, I answered they've gone  
8 above and beyond.

9 Q There's no question in your mind that they've done  
10 everything that they were hired to do and they have not collected a  
11 dime on that judgment?

12 A And they continue to do so and expect to collect, as do we.

13 Q My question was whether or not they've collected anything  
14 to date. Here in 2021, have they collected anything?

15 A Not to date.

16 Q All right. Now, Exhibit 16 -- oh, I'm sorry. Exhibit 2, we were  
17 looking at the arbitration award. The date of the award I'll represent to  
18 you is September 15th, 2020. If you don't believe me, we can refer to it,  
19 but in response to this award, there has been no production of  
20 documents to TGC Farkas Funding, right?

21 A There are documents that were requested that are already in  
22 possession of TGC Farkas and then there are documents that require a  
23 payment to produce to -- for third parties. TGC Farkas has not made the  
24 payment and refuses to do so and unless and until such time the  
25 payment's made, First 100 is not in the position to provide responsive

1 documents. Just doesn't have it and relies on a third party to produce it  
2 and doesn't have any bank accounts, much less the funds to pay the  
3 third party to comply.

4 Q Mr. Farkas -- or Mr. Bloom, this is yes or no question. Have  
5 any documents been produced since entry of the arbitration award on  
6 September 15th, 2020?

7 A From the time of the arbitration award to present, no  
8 documents beyond those provided by Matthew Farkas have been  
9 produced.

10 Q Okay. If we go to Exhibit 3, Plaintiff 11, this is in evidence in  
11 your -- in the Defendant's books, but I don't know the exhibit number.  
12 You were asked about it from your counsel earlier. It says declaration of  
13 Jay Bloom and it's dated October 15th, 2020. Do you recall that?

14 MR. GUTIERREZ: Counsel, I think it's Exhibit G as in George,  
15 for the record.

16 MS. TURNER: Thank you.

17 BY MS. TURNER:

18 Q Exhibit G. Now, this declara --

19 A Yes, I recall.

20 Q This declaration was made in support of First 100 and First  
21 100 Holding's limited opposition to the motion to confirm arbitration and  
22 the countermotion to modify the arbitration award, right?

23 A I believe so.

24 Q And in this declaration, you say,

25 "The only way for First 100 to obtain the requested the



1 documents and information will be to retain a third party, to  
2 obtain and furnish the records of First 100 as being  
3 compelled to produce and First 100 therefore respectfully  
4 requests that the Court order the Plaintiffs to first pay the  
5 reasonable costs associated with obtaining and furnishing  
6 the company records and then such records will be  
7 provided."

8 That's the same position you're taking today, correct?

9 A Well, that's the situation we found ourselves in. The  
10 company has no bank and no money. To provide the documents  
11 requires a third party to produce them. Third party requires  
12 compensation and the operating agreement provides for the member  
13 making the request to provide for that cost. The arbitration said that  
14 First 100 has to provide the documents. First 100 is agreeing to provide  
15 the documents. It's silent as to cost and also this Court would not grant  
16 the modification to the arbitration award, this Court, I believe, was also  
17 silent in its order on costs. I don't think there's anywhere where First 100  
18 is ordered to pay the cost when it has no bank accounts and no money  
19 and wouldn't be able to comply with such an order anyway.

20 Q Okay. If we go to Exhibit 4, you've seen this order granting  
21 Plaintiff's motion to confirm arbitration award and denying Defendant's  
22 countermotion to modify award and judgment. You've seen this, right?

23 A Yes.

24 Q And if we go to page 2, it refers to the countermotion.  
25 Defendant's countermotion requests that the Court modify the final

1 award to require Plaintiff to pay in advance fees and costs associated  
2 with Defendant's production of the requested records. And that  
3 countermotion was denied, correct?

4 A That countermotion was based on NRS statute and not on  
5 the operating agreement and it was denied in requiring payment, but it  
6 also never stated that the First 100 required -- was required to pay. And  
7 again, First 100 wouldn't be able to comply anyway. And how I got  
8 wrapped in individually is just malicious.

9 Q Okay, Mr. Bloom. In the arbitration, the demand for records  
10 under the operating agreement was what was arbitrated. There was  
11 nothing else in the arbitration, was there?

12 A No. There was nothing addressing cost in the arbitration, I  
13 don't believe.

14 Q No. We go to Exhibit 7. We have the first amended  
15 operating agreement of First 100, LLC. And if we go to page 55, you  
16 testified earlier that you were the director that participated in  
17 management. That's what you testified earlier. Mr. Bloom, as set forth  
18 in Plaintiff 55, SJC Ventures Holding Company, LLC, a Delaware limited  
19 liability company, is the sole manager of First 100, LLC, correct?

20 A Correct.

21 Q And Jay Bloom is the sole manager of SJC Ventures Holding  
22 Company, LLC, correct?

23 A Correct.

24 Q And SJC Ventures Holding Company is also a member of  
25 First 100, LLC, right?

1 A Correct.

2 Q It's a 45.625 percent member, right?

3 A Not correct.

4 Q Okay. If we go to Plaintiff 59, do you see where it says SJC,  
5 LLC?

6 A I do.

7 Q That refers to SJC Ventures Holding, LLC, correct?

8 A It does.

9 Q And it says 45.625 percent, Series A, right?

10 A Yes.

11 Q Now, if that amount changed, it would be reflected in the  
12 books and records of First 100, right?

13 A Yeah. Actually, as I testified to earlier, all of this membership  
14 interest transferred to First 100 Holdings and First 100, LLC. This entity  
15 has a single member, First 100 Holdings and then that interest was  
16 diluted down to about 25 percent in First Holdings. So I have no  
17 interest -- well I have no interest, but SJC specifically has no interest in  
18 First 100, LLC directly and has interest in its parent entity of about 25  
19 percent.

20 Q That change would be reflected in the books and records of  
21 First 100, correct?

22 A Correct.

23 Q Now --

24 A Correct. I believe your question was is SJC a 45 percent  
25 owner and if your question was was SJC a 45 percent owner, the answer

1 would have been yes. It is a 45 percent owner in First 100, LLC, the  
2 answer is no.

3 Q Now, SJC Ventures Holding Company was at the time of this  
4 operating agreement and still is the only manager of the company that's  
5 ever been elected by the members, correct?

6 A Correct.

7 Q And if we go to the Secretary of State documents, we can see  
8 that SJC ventures is listed with the Secretary of State as the manager of  
9 First 100, right?

10 A I believe so.

11 Q And if we go to page -- just walk through here. Page 4 of the  
12 operating agreement. It refers to meetings, all meetings of the  
13 members. There's annual meetings, which shall be held each year and  
14 then special meetings can be called. Do you see that?

15 A I do.

16 Q There have been no member meetings held for First 100,  
17 LLC, right?

18 A I believe we had annual member meetings.

19 Q When was the last time there was an annual member  
20 meeting?

21 A For First 100, it would have been probably 2014 or so,  
22 roughly, when the membership interest transferred to the holding  
23 company, in which case this became a single member LLC and  
24 membership meetings were no longer required for First 100, LLC as a  
25 wholly owned subsidiary.

1 Q All right. Let's go to Exhibit 8.

2 MS. TURNER: And actually, per Exhibit 7, before I move on,  
3 any objection to its admission?

4 MR. GUTIERREZ: No.

5 MS. TURNER: Okay.

6 BY MS. TURNER:

7 Q Okay. Exhibit 8 is the operating agreement First 100 --

8 THE COURT: So 7 was -- 7 is admitted.

9 [Plaintiff's Exhibit 7 admitted into evidence]

10 MS. TURNER: Thank you, Your Honor. I don't mean to step  
11 over you.

12 THE COURT: No problem.

13 MS. TURNER: Exhibit 8 is the operating agreement of First  
14 100 Holdings, LLC. Any objection, counsel?

15 MR. GUTIERREZ: No. I think it's already admitted, but it is  
16 mine, so no objection.

17 MS. TURNER: Okay.

18 BY MS. TURNER:

19 Q And --

20 THE COURT: So it's admitted now, if it hasn't been.

21 [Plaintiff's Exhibit 8 admitted into evidence]

22 MS. TURNER: Thank you.

23 BY MS. TURNER:

24 Q And for First 100 Holdings, LLC, if we go to page 23 of the  
25 document, there's a signature line for the manager. You're also the

1 manager, the sole manager of -- the sole manager for First 100 Holdings,  
2 LLC, correct?

3 A Yeah. Just to clarify in answering your question that I think  
4 you're asking, I am the sole manager of SJC Ventures Holding, SJC  
5 Ventures Holding is the sole manager of First 100 Holdings. I am not the  
6 manager of First 100 Holding.

7 Q Right. And you may not have heard me. I said the manager  
8 of the manager.

9 A Right. And that's -- I just wanted to make sure I did hear you  
10 right, but that's what I heard and I said yes and I just wanted to clarify I  
11 heard you correctly.

12 Q And then we have SJC Ventures Holding Company, the  
13 manager, is also a member, right?

14 A Yes.

15 Q And then SJC 1, LLC and SJC 2, LLC are also members of  
16 First 100 Holdings, LLC, correct?

17 A They are, correct.

18 Q And if we go to page 29 of this agreement with the cap table,  
19 we have SJC, LLC that's actually SJC Ventures Holding, LLC, right?

20 A That's correct.

21 Q Has 23.709 percent membership?

22 A That's correct.

23 Q SJC 2 has 12.208 percent, right?

24 A It does.

25 Q And SJC 1, LLC, has 6.708 percent, right?

1           A     It does.

2           Q     Okay. When was the last time there was an annual member  
3 of the -- annual meeting of the members of First 100 Holdings, LLC?

4           A     Probably in -- from recollection, 2015.

5           THE COURT: All right. Counsel, as I indicated at the outset  
6 of the proceedings today, this one-day evidentiary hearing must adjourn  
7 at 4:45. It's now 4:36 and I think what we need to do is use the balance  
8 of the time available to us today to identify the date and time for  
9 resumption, because we're obviously not going to finish today by 4:45.  
10 I'm looking at -- I can give part of the day on Tuesday, March 9th from  
11 9:00 until about 2:30. I can give March -- Wednesday, March 10th from  
12 9:00 until about 3:30. Okay. How much more ti -- we may need both  
13 days. I'm not sure, but --

14           MS. TURNER: I have probably another 10 minutes, 15  
15 minutes with Mr. Bloom and then we have Raffi Nahabedian, the -- my  
16 estimated questioning of him is less than an hour. Then we also have  
17 Matthew Farkas in rebuttal to these allegations that he --

18           THE COURT: Okay.

19           MS. TURNER: -- he was forced into executing declarations.  
20 That shouldn't take more than 15 minutes.

21           THE COURT: It's also not closing arguments.

22           MS. TURNER: And closing arguments. So probably half a  
23 day.

24           THE COURT: Okay. What do you think, Mr. Gutierrez?

25           MR. GUTIERREZ: Your Honor, I'm out of town Tuesday, but

1 Wednesday, the 10th, I think we can get it done then, if you want to  
2 schedule it then. If not --

3 THE COURT: All right. Is that all right with you, Ms. Turner?

4 MS. TURNER: Yes, Your Honor.

5 THE COURT: Okay. So what we'll do now is we'll adjourn  
6 and reconvene on Wednesday, March 10th at 9:00 a.m., all right?

7 MS. TURNER: Thank you.

8 MR. GUTIERREZ: Thank you, Your Honor.

9 THE COURT: Okay. Thank you.

10 THE WITNESS: Thank you, Your Honor.

11 THE COURT: Everybody stay safe and I'll hear from you --  
12 see you on screen and hear from you again on the 10th.

13 MS. TURNER: Thank you.

14 THE COURT: Okay. Thank you.

15 MR. GUTIERREZ: Thank you, Judge and counsel.

16 [Proceedings adjourned at 4:38 p.m.]

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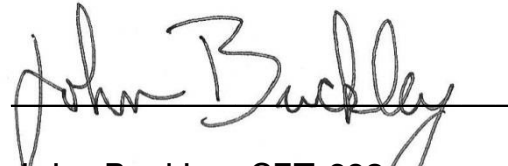
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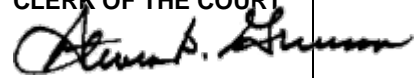
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1                    ATTEST: I do hereby certify that I have truly and correctly  
2 transcribed the audio/video proceedings in the above-entitled case to the  
3 best of my ability.

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7 John Buckley, CET-623  
8 Court Reporter/Transcriber  
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4 DISTRICT COURT

5 CLARK COUNTY, NEVADA

6 TGC/FARKAS FUNDING, LLC,

7 Plaintiff,

8 vs.

9 FIRST 100, LLC, a Nevada Limited  
10 Liability Company; FIRST ONE  
11 HUNDRED HOLDINGS, LLC, a  
12 Nevada Limited Liability Company,  
aka 1st ONE HUNDRED  
Liability Company,

13 Defendant.

CASE#: A-20-822273-C

DEPT. XIII

14  
15 BEFORE THE HONORABLE MARK R. DENTON  
16 DISTRICT COURT JUDGE  
WEDNESDAY, MARCH 10, 2021

17 **RECORDER'S TRANSCRIPT OF EVIDENTIARY HEARING**

18  
19 APPEARANCES:

20 For the Plaintiff:

Erika Pike Turner, ESQ.  
Dylan Ciciliano, ESQ.

21  
22 For the Defendant:

Joseph A. Gutierrez, ESQ.

23 For Matthew Farkas:

Kenneth E. Hogan

24 RECORDED BY: JENNIFER GEROLD, COURT RECORDER

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Las Vegas, Nevada, Wednesday, March 10, 2021

[Case called at 9:01 a.m.]

THE COURT: Good morning. We're reconvening the evidentiary hearing in case number A-822273, TGC Farkas Funding, LLC, v. First 100, LLC. Please state appearances by counsel, identify parties, party representatives who are present.

MS. TURNER: Good morning, Your Honor. Erika Pike Turner of Garman Turner Gordon on behalf of Plaintiff and judgment creditor, TGC Farkas Funding, LLC.

MR. GUTIERREZ: Good morning, Your Honor. Joseph Gutierrez on behalf of First 100, First 100 Holdings, LLC and Jay Bloom in his individual capacity. Joining us today will be Jay Bloom on behalf of First 100, LLC.

THE COURT: All right. Are counsel ready to proceed?

MS. TURNER: Yes, Your Honor.

THE COURT: All right.

MS. TURNER: As a matter of initial housekeeping, we've conferred with Ms. Kearney [phonetic] and she has the stipulation of the parties on the admission of additional exhibits.

THE COURT: All right.

THE CLERK: They -- do you want them, Judge?

THE COURT: Beg your pardon?

THE CLERK: Do you want the numbers?

THE COURT: Yes. Please state the numbers for the record.

1 THE CLERK: 2, 3, 5, 6, 12, 13, 14, 17, 20, and A.

2 THE COURT: Those -- admission of those exhibits is  
3 stipulated. Is that correct?

4 MS. TURNER: Yes, Your Honor.

5 MR. GUTIERREZ: That's correct, Your Honor.

6 THE COURT: All right. So ordered.

7 [Plaintiff's Exhibits 2, 3, 5, 6, 12, 13, 14, 17 and 20 admitted into evidence]

8 [Defendant's Exhibit A admitted into evidence]

9 THE COURT: All right. Anything else for housekeeping?

10 MS. TURNER: No, Your Honor.

11 MR. GUTIERREZ: No, Your Honor.

12 THE COURT: I believe Mr. Bloom was on the stand when we  
13 adjourned the last time.

14 MS. TURNER: Yes.

15 THE COURT: Okay. He will be retaking the stand at this time.

16 Mr. Bloom, you realize you're still under oath?

17 MR. BLOOM: Good morning, Your Honor. Yes, I do.

18 THE COURT: All right. Counsel, do you accept the  
19 admonishment or do you require him to be re-sworn?

20 MS. TURNER: Mr. Bloom, do you understand you're still  
21 under oath?

22 MR. BLOOM: I do.

23 MS. TURNER: Okay. No need, Your Honor.

24 THE COURT: Okay. Very well. Thank you. You may  
25 proceed.

1 MS. TURNER: All right.

2 JAY BLOOM, DEFENDANT'S WITNESS, PREVIOUSLY SWORN

3 CROSS-EXAMINATION CONTINUED

4 BY MS. TURNER:

5 Q When we left off last week, we were discussing the  
6 provisions of the operating agreements of the First 100 entities. If we  
7 could pull up Exhibit 8, the operating agreement for First 100 Holdings,  
8 LLC. Mr. Bloom, do you have -- can you see this on the screen or do you  
9 have a copy that was previously emailed to you?

10 A I can see it on the screen.

11 Q Okay. Now, the provisions of the operating agreements for  
12 First 100 Holdings, LLC and First 100, LLC are identical in -- on most of  
13 the provisions, albeit the name and the membership has changed, right?

14 A Correct.

15 Q Okay. If we go to Section 4.2 of this operating agreement,  
16 this is, I believe, where we left off on Wednesday. Section 4.2 is  
17 subsequent contributions.

18 MS. TURNER: Can you blow that up, Michelle, please?

19 BY MS. TURNER:

20 Q And it provides, if necessary and appropriate, to enable the  
21 company to meet its costs, expenses, obligations and liabilities and if no  
22 lending source is available, then the manager shall notify each Class A  
23 member of the need for any additional capital contributions. I believe we  
24 read that last Wednesday. My follow up question is whether or not you  
25 exhausted the ability to obtain a loan on behalf of First 100, LLC or First

1 100 Holdings, LLC.

2 A I believe that Matthew testified that he attempted to obtain  
3 loans against the judgment that we had and was unable to do so.

4 Q Okay. His testimony was from 2017. Has there been any  
5 effort to obtain a loan to pay for any expenses associated with the  
6 production of the books and records since entry of the judgment  
7 November 17th, 2020?

8 A As Section 4.2 says, it's necessary and appropriate and this  
9 operating agreement also calls for the requesting party to pay for any  
10 record requests, then it would not be necessary and appropriate to do a  
11 capital call among the membership.

12 Q Mr. Bloom, that was a yes or no question that I asked you.  
13 Was there any effort since November 17th, 2020 to obtain a loan on  
14 behalf of First 100, LLC or First 100 Holdings, LLC?

15 A No. It was necessary and appropriate and therefore, none  
16 was sought.

17 Q And the next question. There's been no capital call that's  
18 been made to the members of either entity, correct?

19 A Correct.

20 Q All right. Now, go to Section 2.3 of this same agreement.

21 MS. TURNER: And blow it up a little bit.

22 BY MS. TURNER:

23 Q Section 2.3 provides for the registered office, registered  
24 agent and principal office in the United States. The registered office of  
25 the company is to be maintained in the State of Nevada and shall be the



1 office of the initial registered agent or as the manager may designate  
2 from time to time in the manner provided by law. The registered office  
3 of First 100 Holdings, LLC is on Tropicana Avenue, 10170 Tropicana  
4 Avenue, Suite 156 to 290 in Las Vegas in care of the registered agent,  
5 SJC Ventures, LLC, correct?

6 A Correct. That was one of the offices.

7 Q Okay. If we could go to Exhibit 27. And if you can take a look  
8 at Exhibit 27, which is the documents from the Secretary of State office  
9 for First 100 Holdings, LLC.

10 A I see it.

11 MS. TURNER: Mr. Gutierrez, any objection to Exhibit 27?

12 MR. GUTIERREZ: No objection.

13 MS. TURNER: Or 26 that relates to First 100, LLC?

14 MR. GUTIERREZ: I don't see 26.

15 MS. TURNER: It's the Secretary of State documents for First  
16 100 Holdings or First 100, LLC.

17 MR. GUTIERREZ: Oh. No objection.

18 MS. TURNER: Okay.

19 THE COURT: It's admitted.

20 [Plaintiff's Exhibits 26 and 27 admitted into evidence]

21 BY MS. TURNER:

22 Q If you could jump back to 27. And Bates Number Plaintiff  
23 236, the bottom right. Here we have a certificate of reinstatement dated  
24 May 18th, 2017 within a few days of the initial demand for books and  
25 records that was sent by TGC Farkas. Is that your signature at the

1 bottom of the page?

2 A Yes.

3 Q Okay. And if we can go to the page that precedes it, filed on  
4 that same date. This is Plaintiff 235. That's your handwriting there as  
5 well?

6 A Correct.

7 Q And the registered agent is, as of May 18, 2017, was Maier  
8 Gutierrez and Associates, correct?

9 A That is what I put, yes.

10 Q All right. If we go to Bates Number 234, the preceding page  
11 filed on the same day -- 234. That's your handwriting, sir?

12 A Yes.

13 Q All right. And it indicates that the manager or managing  
14 member is Jay Bloom, 10620 Southern Highlands Parkway in Las Vegas,  
15 correct?

16 A Correct.

17 Q Okay. And then if we go to page 232, Plaintiff 232. Sorry,  
18 233, working backwards. Okay. We have a filing with the Secretary of  
19 State March 8th, 2018 and it indicates that Maier Gutierrez is resigning as  
20 the registered agent and the new registered agent is Jay Bloom at 10620  
21 Southern Highlands for First 100 Holdings, LLC and for First 100, LLC, it's  
22 SJC Ventures Holding Company in Delaware. Do you see that?

23 A I do.

24 Q Okay. And if we can back up another page to 232, Bates  
25 Number Plaintiff 232. We have a filing that's dated October 28th, 2019

1 indicating that the registered agent for First 100 Holdings, LLC, was  
2 changed from Jay Bloom to the SJC Ventures Holding, LLC, with an  
3 address at 10170 West Tropicana Avenue, Suite 156. Do you see that?

4 A I do.

5 Q Okay. And then go back one more page, 231. Same day that  
6 the -- there was a certificate of reinstatement that was filed with your e-  
7 signature at the bottom. Do you see that?

8 A I do.

9 Q And this is, again, for First 100 Holdings, LLC and it indicates  
10 above the e-signature, "I declare under the penalty of perjury that the  
11 reinstatement has been authorized by a court of competent jurisdiction  
12 or by a duly selected manager or managers of the entity." Do you see  
13 that?

14 A I do.

15 Q Okay. There was no court of competent jurisdiction that  
16 authorized the reinstatement. It was you as manager of First 100  
17 Holdings, correct?

18 A It was SJC as manager, but me on behalf of SJC, yes.

19 Q Okay. And then if we go to the first page of Exhibit 27, Bates  
20 Number Plaintiff 229, we have the most recent filing of October 29th,  
21 2019 and it indi -- this is another certificate of reinstatement revival  
22 indicating the registered agent is SJC ventures, LLC, with an address on  
23 Tropicana Avenue and the managing member is Jay Bloom with an  
24 address on Southern Highlands. Do you see that?

25 A I do.

1 Q Okay. Go to Exhibit 26. This is relating to First 100, LLC and  
2 again to that relevant May 18th, 2017 date that followed the first request  
3 for production of documents from TGC Farkas. If you go to Plaintiff 219,  
4 Plaintiff 219 is the Bates number. The certificate of reinstatement, that's  
5 your signature at the bottom with the date, 5/18/17. Is that right?

6 A It is.

7 Q Okay. If we go to the preceding page, Plaintiff 218, we have  
8 your signature at the bottom, correct?

9 A Correct.

10 Q And this is where First 100 appoints Maier Gutierrez and  
11 Associates the role of registered agent?

12 A Okay.

13 Q All right. And if we go to the preceding page, 217, Plaintiff  
14 217, we have your signature identifying SJC Ventures Holding Company,  
15 LLC as the manager, correct?

16 A Correct.

17 Q And then if we go to the preceding page, 216, we have the  
18 registered agent resigning, Maier Gutierrez resigning and First 100, LLC  
19 going to SJC Ventures Holding in Delaware that changed in the Bates  
20 Number Plaintiff 215 filed with the Secretary of State June 14th, 2018.  
21 The registered agent became Jay Bloom at 2485 Village View Drive in  
22 Henderson. Do you see that?

23 A I do.

24 Q Okay. There's been no subsequent change though the  
25 registered agent, but the manager has filed -- and if you look at the Bates

1 Numbers 214, we have the last known address for SJC Ventures Holding  
2 Company in Delaware. Do you see that?

3 A I see that.

4 Q And that's your e-signature at the bottom?

5 A Yes.

6 Q Okay. I'm going to pass those exhibits.

7 THE COURT: Say that again?

8 MS. TURNER: We can move past those exhibits. Thank you.

9 BY MS. TURNER:

10 Q Mr. Bloom, there's no filing that we could obtain from the  
11 Secretary of State designating another custodian of records for First 100  
12 or First 100, LLC. There's been no designation of any custodian of  
13 records other than Jay Bloom as manager and registered agent for SJC  
14 Ventures Holding Company, LLC, your entity that you manage or Maier  
15 Gutierrez, who resigned. Am I missing anybody that was designated  
16 with the Secretary of State as having been given the role of custodian of  
17 records?

18 A I was designated with the Secretary of State, but as  
19 delegated under the operating agreement, yes.

20 Q All right. Let's go to NRS 86.2411. Number 1. It says,  
21 "Each limited liability company shall continuously keep at its  
22 principal office in this state or with its custodian of records,  
23 whose name and street address are available at its registered  
24 office, unless otherwise provided by the operating  
25 agreement."

1 MS. TURNER: You can take that down.

2 BY MS. TURNER:

3 Q You're saying that there is some provision in the operating  
4 agreement that provides for the designation of the custodian of records  
5 other than at the principal place of business or registered office?

6 A Yes. My recollection of the operating agreement is that the  
7 manager is allowed to delegate responsibilities to officers of the  
8 company and those responsibilities would include the keeping of the  
9 books and records.

10 Q If we can go to the Section 2.3 in Exhibit 8. It indicates three  
11 lines from the bottom, "The company shall maintain records," there.  
12 And there's -- there is referring to the principal office of the company.

13 "As required by NRS 86.241 and shall keep the street address  
14 of such principal office at the registered office of the  
15 company in the State of Nevada. The company may have  
16 such other offices as the manager may designate from time  
17 to time."

18 As indicated in the Secretary of State records, there have  
19 been multiple addresses, but there's nothing in this provision that states  
20 that the company can designate somebody other than the manager to be  
21 the custodian, outside of what's designated with the principal office,  
22 registered office. So can you please advise what you're referring to?

23 A Yeah. In the operating agreement -- and I don't know the  
24 paragraph from memory, but in this document, it references the  
25 delegation of responsibilities to officers of the company.

1 Q Okay. So there are no officers designated with the Secretary  
2 of State. Do you agree with me on that?

3 A Correct.

4 Q And there is no -- nothing in either operating agreement  
5 designating an officer as the custodian of records, correct?

6 A No. The officers were designated, I believe, by employment  
7 agreement.

8 Q An employment agreement kept where?

9 A Well, when the company was operational, at the offices of  
10 the company. When the company ceased to be an operating entity and  
11 strictly became a holding company for holding ownership of a judgment  
12 as an asset, then the company no longer maintained a physical office  
13 presence and the officers responsible for each of their responsibilities  
14 took those responsibilities home with them. So I know Michael  
15 Hendrickson took some of the records in his accounting computer to  
16 safeguard them, because there was no office, because there is no  
17 operating business. And I believe Matthew took some records with him  
18 as well.

19 Q Is it your contention that Michael Hendrickson was an officer  
20 of the company, First 100 Holdings, LLC, who you designated as a  
21 custodian of records of the -- business records of First 100 Holdings, LLC  
22 or First 100, LLC?

23 A He was a financial controller. I don't know if that constitutes  
24 and officer or not, but he was the one who worked with Matthew on  
25 keeping the books and records. Matthew was an officer in his capacity

1 as vice president of finance and initially as CFO.

2 Q Matthew Farkas, it is your position that he has records. He  
3 has testified he has no records. You heard his testimony on that?

4 A I did. I also saw the emails from him to Adam Flatto for  
5 books and records of the company, so you know, clearly he had them  
6 and he has them, notwithstanding his testimony to the contrary.

7 Q Are you referring to those emails from 2015 and '17?

8 A Correct, where he provided books and records to Adam  
9 Flatto from his possession and control.

10 Q The judgment was entered in November of 2020 and as of  
11 November, 2020, the principal office of First 100 and First 100 Holdings  
12 and -- was designated by you with the Secretary of State as being at  
13 locations other than Mr. Farkas' address that would be under your  
14 control or Mr. Hendrickson's address, where you would have control,  
15 correct?

16 A If you're referencing the designations in 2017, once we  
17 obtained the judgments, I wanted to bring the companies in good  
18 standing and maintain the companies in good standing with the state.  
19 Notwithstanding, the company has no physical office, because there are  
20 no operational activ -- there's no operational activity. So there is no  
21 address to update, because there's no office, because there's no  
22 operations. The 2017 recordings were the last addresses for proffers for  
23 service in the event of any litigation, but there's no physical office.  
24 Books and records are kept by the people who maintain the books and  
25 records to be safeguarded.



1 Q If we could go to Exhibit 32. Mr. Bloom, you've seen this  
2 payment direction letter that was executed on behalf of First 100  
3 Holdings, LLC and SJC Ventures, LLC?

4 MR. GUTIERREZ: Your Honor, I would object to the  
5 admission of this document as to relevance.

6 THE COURT: Let me see. I'll overrule it at this time.

7 MS. TURNER: All right.

8 BY MS. TURNER:

9 Q Mr. Bloom, do you recognize the document?

10 A I do.

11 Q All right. And it's executed by you on behalf of both First 100  
12 Holdings, LLC and SJC Ventures, LLC, correct?

13 A Correct.

14 Q And you have at the top First 100 Holdings, LLC, care of  
15 Maier Gutierrez and Associates, right?

16 A Correct.

17 Q And SJC Ventures care of Maier Gutierrez and Associates,  
18 right?

19 A Correct.

20 Q All right. And this payment direction letter, if we go to page  
21 3 of the document or Plaintiff 579 or 4 at the bottom, it indicates, "Upon  
22 receipt of any judgment funds." That's the first phrase. And judgment  
23 funds refers to those funds that would be obtained by First 100 Holdings  
24 following the sale of the judgment it holds against Raymond Ngan,  
25 correct?

1 A Correct.

2 Q All right. "Upon receipt of those judgment funds, Maier  
3 Gutierrez and Associates shall contemporaneously notify CBCI that Maier  
4 Gutierrez and Associates has received the judgment funds", and number  
5 4,

6 "Maier Gutierrez, PLLC, shall contemporaneously provide  
7 CBC with an accounting of how Maier Gutierrez and  
8 Associates intends to distribute the judgment funds amongst  
9 the collection professionals, the First 100 priority creditors  
10 and the members of First 100, including the distribution of  
11 the creditor's judgment interest."

12 Do you see that?

13 A I do.

14 Q Now, Maier Gutierrez is the collection professionals, right?

15 A They are one of a number of firms.

16 Q Okay. Maier Gutierrez would have information on who those  
17 professional -- or collection professionals include, correct?

18 A They would.

19 Q All right. And then you have the reference to First 100, LLC's  
20 priority creditors. Do you see that?

21 A I do.

22 Q And priority creditors would be those who would be paid  
23 ahead of the members, if there was any distribution of funds from the  
24 sale of the judgment to First 100 Holdings, LLC, correct?

25 A Correct.

1 Q And Maier Gutierrez and Associates has information relating  
2 to who constitutes the priority creditors and the extent of their claim,  
3 right?

4 A Correct.

5 Q And then there's the members of First 100, the contact  
6 information and the extent of their equity interest would be -- related to  
7 those members would be included in the information in the possession  
8 of Maier Gutierrez and Associates, right?

9 A The managing members and the amount of their ownership  
10 are in the possession of Maier Gutierrez, so that they can calculate the  
11 amount that the members would be entitled to subsequent to paying the  
12 bills and the attorneys. I don't know that they have all of the  
13 communication information. I wouldn't say they have phone number,  
14 address, email. They probably have emails, but that's about the extent  
15 of it.

16 Q They have an amount of information sufficient to provide an  
17 accounting to this creditor, CBCI, if there were any funds to distribute,  
18 pursuant to this payment direction letter, right?

19 A Yeah. They have the membership interest amounts for each  
20 of the members.

21 Q And if there was any agreement with any member for the  
22 payment of priority -- of a priority interest, something above their --  
23 pursue payment as a member, that would be in the possession of Maier  
24 Gutierrez and Associates, correct?

25 A That's a hypothetical question addressing something that

1 doesn't exist outside of the settlement agreement with TCG [sic] Farkas,  
2 who's getting a disproportionately largely distribution than what their  
3 equity would represent because of the six percent and because of the  
4 valuation that TCG brought in at the end. So to make TCG whole, they  
5 have to have a disproportionately largely distribution. But there are no  
6 other members in your hypothetical that have a disproportionately  
7 largely distribution outside of your client under the --

8 MS. TURNER: Your Honor, I move to admit Exhibit 32.

9 MR. GUTIERREZ: Same objection, Your Honor. Relevance.  
10 Lacks foundation.

11 THE COURT: Overruled. It's admitted.

12 [Plaintiff's Exhibit 32 admitted into evidence]

13 MS. TURNER: All right.

14 BY MS. TURNER:

15 Q Now, if we go to the first page of Exhibit 32, there's a  
16 reference to secure the parties obligations under the forbearance  
17 agreement, CBCI and CJCVC, which is your entity, SJC Ventures, LLC, are  
18 also parties to a certain security agreement. Do you see that reference?

19 A I do.

20 Q If we go to Exhibit 31, the last page, that's your signature?

21 A It is.

22 Q Okay. And if we go to the first page, there's a description of  
23 collateral and the collateral is SJC Ventures beneficial interest in the  
24 judgment. Do you see that?

25 A I do.

1 Q Okay. Now, SJC Ventures, LLC not only has a membership  
2 interest, but was a manager who was paid compensation for those  
3 management duties and has a claim for additional compensation,  
4 correct?

5 A That would be my wages as -- I think -- no, I don't think SJC  
6 got a management fee. I received wages, together with the rest of the  
7 management team.

8 Q There's no fee or other remuneration that's being claimed by  
9 SJC Ventures, LLC?

10 A It's been a while since I've looked at it, but not to my  
11 recollection.

12 Q Okay. The records would reflect whether or not there's a  
13 claim by SJC Ventures, LLC as a priority creditor, correct?

14 A They would.

15 Q Okay.

16 A And again, collections that -- is not that SJC has a claim as a  
17 priority creditor.

18 Q Now, if we go to Section 8, 2H, which is on page 3 or Bates  
19 Number Plaintiff 372, we have settlement of accounts. "The debtor is not  
20 authorized or empowered to compromise or extend the time for  
21 payment of any of the collateral without the prior written consent of the  
22 secured party." Was the settlement agreement with TGC Farkas  
23 providing a priority of payment above its equity position, was that the  
24 subject of a prior written consent of CBCI?

25 A No. It's not subject to a prior written consent of CBCI,

1 because this agreement references just SJC's portion and entitlements  
2 under the judgment, not the judgment in its entirety. This is no  
3 different -- SJC pledging its interest in proceeds realized from the  
4 judgment would be no different than TCG Farkas pledging its million  
5 dollar when it got it. Neither one addresses the entirety of the judgment,  
6 just the beneficial interest in proceeds realized thereunder --

7 Q Did --

8 A -- by that individual party.

9 Q Since November of 2020, when the judgment was entered,  
10 was there any effort by you as manager of First 100 Holdings, LLC and  
11 First 100, LLC, to pledge an interest in the judgment proceeds as  
12 collateral for a payment to cover the expenses associated with  
13 production of the documents?

14 MR. GUTIERREZ: Object to the form of the question.

15 THE COURT: Overruled.

16 THE WITNESS: Not sure I understand what you're asking  
17 me.

18 BY MS. TURNER:

19 Q You pledged the judgment proceeds on behalf of First 100,  
20 LLC or First 100 Holdings, LLC, in order to pay the obligations that are set  
21 forth in the judgment entered November 17th, 2020.

22 MR. GUTIERREZ: Same objection, Your Honor.

23 THE WITNESS: Are you asking me if I -- I'm sorry.

24 BY MS. TURNER:

25 Q Did you pledge --

1 THE COURT: Put it in the form of a question.

2 MS. TURNER: Okay.

3 BY MS. TURNER:

4 Q Did you -- well, did you make any effort to pledge the  
5 judgment interest to Michael Hendrickson or anybody else as a means of  
6 obtaining cooperation and providing the books and records of First 100  
7 Holdings, LLC or First 100, LLC?

8 A The judgment interest is not pledged anywhere, no.

9 MS. TURNER: Your Honor, I move for the admission of  
10 Exhibit of Exhibit 31, the security agreement that's referenced in Exhibit  
11 32.

12 MR. GUTIERREZ: Your Honor, object as to relevance and  
13 outside the scope of this hearing.

14 THE COURT: Overruled. It's admitted.

15 [Plaintiff's Exhibit 31 admitted into evidence]

16 BY MS. TURNER:

17 Q And with respect to the settlement agreement, if we go to  
18 Exhibit P, P as in party, paragraph 36, Mr. Bloom, you have testified that  
19 given Matthew Farkas was the signer in his capacity as manager for both  
20 the initial subscription agreement, the redemption agreement and the  
21 settlement agreement and no person or entity has ever indicated or  
22 notified First 100 that there was a change in management, both Matthew  
23 Farkas and I believed that Matthew Farkas continued to have the  
24 authority to sign the settlement agreement, which he negotiated on  
25 behalf of TGC Farkas Funding, LLC. That -- was there anything else that

1 you purportedly relied on in order to determine that Matthew Farkas had  
2 authority to execute the settlement agreement and bind TGC Farkas  
3 Funding?

4 A Yes.

5 Q What?

6 A He signed the operating agreement. He signed the  
7 Greenburg Charlie -- I'm sorry -- the Garman Turner engagement letter.  
8 His continued representations up to and through signing the settlement  
9 agreement on subsequent, that he was the manager. He was the point  
10 of contact for the last eight years for TGC Farkas. He signed the  
11 subscription agreement, the operating agreement. He signed the  
12 redemption agreement. He was the CEO and manager of TCG [sic]  
13 Farkas and then even as recently as August 13th, 2020, there was a  
14 declaration from Adam Flatto where he says Matthew was and still is the  
15 administrative member of TCG Farkas.

16 So as of August, 2020, Adam was testifying under penalty of  
17 perjury that Matthew was the manager. Both Matthew and Adam have  
18 each testified that neither one of them notified First 100 of the change in  
19 management. They relied on representa -- in fact, Matthew continually  
20 affirmed that he was the manager. We have Adam's representation to  
21 me that he wanted a million dollars plus six percent as a settlement  
22 several years prior. But there's no indication that that was withdrawn or  
23 changed in any way.

24 So I understood that the settlement that Matthew negotiated  
25 and signed accomplished the goals of TCG Farkas for both members. So



1 yeah, I mean, every contact, every document, every conversation was  
2 Matthew was and still is the manager up until about January 19th of  
3 2021, where Matthew first learned of what he signed without reading  
4 back in September of 2020.

5 BY MS. TURNER:

6 Q All right. Now let me go through this list. The subscription  
7 agreement that was executed in 2013 by Matthew Farkas as CEO of TGC  
8 Farkas Funding, correct?

9 A Correct.

10 Q And at the same time that the subscription agreement was  
11 executed, Adam Flatto funded First 100 \$100 million, correct?

12 A TGC Farkas funded First 100 \$100 million.

13 Q You know that was paid by -- that wasn't paid by Matthew  
14 Farkas. That was paid by the other member, TGC investor, correct?

15 A I don't know. Apparently Marshal Rose has some role in it,  
16 too. Even though he's not a member, apparently Marshal Rose is  
17 involved and put up capital, so I do not believe that Adam Flatto put up  
18 the million dollars.

19 Q Now, with respect to the -- well, it wasn't Matthew Farkas,  
20 correct, sir?

21 A I don't know. I don't know if Marshal Rose lent Matthew  
22 500,000 for him to contribute his half. I just don't know the internal  
23 dealings of TCG Farkas, because I'm not a member and I wasn't included  
24 on their internal communications.

25 Q Let's talk about the redemption agreement that you've

1 referred to. If we go to Exhibit A at Bates Number First 5. And we have  
2 a copy -- no, that's -- sorry. That's the wrong page. It's -- has to be  
3 further along in that exhibit. A -- First 17 is the Bates number. All right.  
4 No. That's the subscription agreement. First 32. That should be right.  
5 First 32 is the -- First 32 attached to Exhibit A and the prior page is First  
6 31. We have Matthew Farkas signing VP finance, correct?

7 A We have Matthew signing on behalf of the redeemer, which  
8 would be TCG Farkas and the final document signed by me on behalf of  
9 First 100 and the company. So yes, Matthew Farkas signed as VP of  
10 finance on behalf of TCG Farkas, the redeemed membership interest  
11 back in 2017.

12 Q That's not the first time that you've taken that position, Mr.  
13 Bloom, is it? You took that position in the arbitration.

14 A Right.

15 Q Right?

16 A And as far as subsequent documentation and you elicited  
17 testimony from Matthew that he signed that on behalf of the company  
18 and he signed a declaration for you for the arbitration with false  
19 information that tipped the arbiters to decide in your favor. But this  
20 clearly was his signature on behalf of the redeemer and not First 100. I  
21 think the arbiters made a mistake.

22 Q Matthew Farkas, VP Finance --

23 A For the redeemer.

24 Q For the redeemer. And if we go to Exhibit 2 page 3, you were  
25 told in no uncertain terms that your position was wrong by the

1 arbitrators. Three arbitrator panel, correct?

2 A The arbiters relied on the false declaration that you  
3 submitted that you obtained from Matthew without him reviewing it. He  
4 testified in the declaration that you put in front him was signed that he  
5 was signing on behalf of First 100 and not the redeemer and that's just  
6 not the case.

7 Q All right.

8 A He wouldn't sign on behalf of First 100. I would. But yes,  
9 you fooled the arbiters.

10 Q Let's get to Exhibit 2, that paragraph. And it actually  
11 indicates that the arbitrators relied on much more than that. The  
12 evidence shows two additional points that rendered the redemption  
13 agreement irrelevant for the purpose of this proceeding. First the  
14 evidence shows that Mr. Farkas did not have authority to bind claimant  
15 to the redemption agreement, as he did not seek and obtain the consent  
16 of Mr. Flatto. And there's a reference to Exhibit 1 to the supplemental  
17 declaration of Flatto. The supplemental declarations of Flatto and  
18 Farkas, subsequent. And if we go to those documents, you have them in  
19 your book. Go to first F, Exhibit F.

20 A I don't have the documents in front of me from last week.  
21 Can you pull it up on the screen?

22 Q Exhibit F. We have the supplemental declaration of Matthew  
23 Farkas. It says in April, 2017, at the request of Jay Bloom, I signed the  
24 attached relating to First 100, LLC, with the notation VP under my  
25 signature. I do not recall otherwise executing the form of redemption

1 agreement or documents related to the redemption agreement beyond  
2 what is attached. Adam Flatto did not consent to the terms of the  
3 redemption agreement or consent to me signing the redemption  
4 agreement on behalf of claimant. And then it goes on to say, "As far as I  
5 know, no distribution of funds were ever made to claimant. There was  
6 no accounting prepared or provided or other performance under the First  
7 100, LLC redemption agreement."

8 Now, the next page is the authorization for the signature of  
9 Matthew Farkas, correct?

10 A Yes. That is the document that you wrote for Matthew to  
11 sign, which he again signed without reading. Or authorized the  
12 signature to sign electronically and he apparently never had -- even had  
13 the document to sign.

14 Q You see he said,

15 "As per our conversation, you have my permission to put a  
16 digital signature on the document you sent. According to my  
17 understanding, my signature is at the bottom I signed  
18 reclaiming the First 100 stock and that no one received any  
19 payments or payouts or financials from First 100. Please  
20 don't add my signature to any other documents without  
21 email or handwritten authorization."

22 If we go to Exhibit EE -- there's the declaration of Adam  
23 Flatto that you said that you relied on to indicate that Matthew Farkas  
24 still had authority. It says, "Matthew Farkas was and still is the  
25 administrative member of claimant as that term is defined in the

1 operating agreement." That's at part 4. But then at part 5, it says, under  
2 Section 3.4 of the operating agreement, "The administrative member can  
3 only take action to bind claimant after consultation with and upon the  
4 consent of all claimant members, correct?

5 A Correct.

6 Q Okay. Now, if we go back to Exhibit 2, the arbitration award,  
7 page 3, after the reference to, "Those declarations," it says, "And  
8 claimant notified respondent via email on April 18th, 2017 that Mr.  
9 Farkas did not have the authority to bind claimant under the redemption  
10 agreement, unless and until approved by Adam Flatto."

11 And you have seen that email and it was referenced not only  
12 in the arbitration but in these proceedings, correct?

13 A It seems to me like you're conflating two issues. The  
14 arbitration --

15 Q Sir --

16 A I'm trying to answer your question.

17 Q -- sir, my question --

18 A All right. I'll -- if you want to give testimony, go ahead and  
19 I'll just listen.

20 Q My question is whether or not you saw that email of April,  
21 2017 in the arbitration --

22 MR. GUTIERREZ: Object to the form --

23 BY MS. TURNER:

24 Q -- case as well as these proceedings.

25 MR. GUTIERREZ: Object to the form. Lacks foundation.

1 THE COURT: Overruled. It's a question.

2 THE WITNESS: Which email are you referencing?

3 MS. TURNER: All right. If we go to -- well, Exhibit 22.

4 BY MS. TURNER:

5 Q This is the July 13th, 2017 letter to your counsel. First page  
6 saying -- it's four dots down. "Counsel has previously sent  
7 correspondence explaining that Matthew Farkas does not have the  
8 authority to bind TGC Farkas Funding, LLC. See Exhibit 3."

9 If you go to that Exhibit 3, which is at Plaintiff 190, that's the  
10 Bates number, there's an email.

11 MS. TURNER: Can you blow it up at the top?

12 BY MS. TURNER:

13 Q Says, "Please be advised that Matthew Farkas does not have  
14 the authority to unilaterally bind TGC Farkas Funding." Do you see that?

15 A I do see that.

16 Q And that is the email that was provided in the arbitration and  
17 is referenced in the arbitration award, correct?

18 A Yes, but all of these exhibits reference the redemption  
19 agreement and not the settlement agreement, which has a different fact  
20 set.

21 Q You indicated that you relied on the Garman Turner Gordon  
22 engagement letter that was signed by Matthew Farkas. Is that right?

23 A My recollection.

24 Q Matthew Farkas signed that redem -- that agreement as a  
25 member of TGC Farkas Funding, correct?

1           A     I don't recall the title, but let's pull the exhibit up and take a  
2 look.

3           Q     If we go to your exhibit -- I believe it's P. You didn't attach it.

4                   MS. TURNER: Indulgence, Your Honor.

5 BY MS. TURNER:

6           Q     Go to Exhibit 28. Jason Maier is sending it. And we have it  
7 up on the screen.

8                   MS. TURNER: What Bates number is that? Let's see the  
9 bottom. It's Bates Number First 0393 or TGC104. And if we can show  
10 the last page.

11 BY MS. TURNER:

12           Q     We have Adam Flatto signing as a member of TGC 100  
13 Investor, LLC. There's a line. Matthew Farkas, title member. If we go  
14 the next page. This is from 2017, April 27th, 2017 and that's where  
15 Matthew Farkas signs with the member. It's a little more faded in this  
16 one, but he signed as a member, correct?

17           A     Can you zoom in? Looks like it says manager and then  
18 A-B-E-R.

19           Q     Okay. Turn to the page preceding it. This is --

20           A     Yeah. Here you can see Adam Flatto signed. Manager was  
21 titled and it's crossed out and he handwrote member in.

22           Q     Let's go to Exhibit 28, Bates Number Plaintiff 300. There's a  
23 copy issue. You said you relied on this. This is what Jason Maier  
24 provided Raffi Nahabedian, part of Exhibit 28. Do you see above  
25 Matthew Farkas' signature and below it, it says member?

1           A     I do, but where it says title, it says manager member. Hey, it  
2 -- yes

3                   MS. TURNER: Man -- blow it up.

4 BY MS. TURNER:

5           Q     Manager is crossed off. Do you see that? Manager is  
6 crossed off. It says member next to it. There's a signature and then  
7 underneath, it says, "Title member."

8           A     Okay.

9           Q     Go to Exhibit 6, which is also QQ in the Defendant's books.  
10 We have Exhibit 13 to the arbitration brief. If you can go to the next  
11 page, which is also QQ. I want to make sure that we are on the same  
12 page. This is the list of the documents that is incorporated into the  
13 judgment entered November, 2020. And it's a subsequent demand to  
14 Joe Gutierrez with the list of documents that were awarded as  
15 reasonably produced. If you go through that list of documents to be  
16 produced pursuant to the judgment, isn't it true that there is not one of  
17 those documents that has been produced since entry of the judgment  
18 November 17th, 2020?

19           A     It depends on what you mean by produced, because  
20 Matthew Farkas, as the VP of finance, was in possession of those  
21 documents at the time he made the request. So to the extent that he  
22 was also the manager at TCG Farkas, TCG Farkas was in possession of  
23 those documents. It would be Matthew who would have provide them  
24 to Matthew. And then if there are any documents that Matthew doesn't  
25 have, then what we did is we said we're happy to produce them. There's



1 a third party that needs to compile them. He needs to be paid.

2 First 100 doesn't have bank accounts, much less money at  
3 this point, and the operating agreement provides for the requesting  
4 member to pay for the production of documents that need to be  
5 produced. That was conveyed to TCG Farkas after the judgment. TCG  
6 Farkas elected to spend more on legal fees than it would have cost to  
7 compile the documents, for some reason. I don't think this is about the  
8 documents.

9 Q Sir, you didn't cause any documents to be produced by you  
10 or your counsel in response to the judgment entered November 17th,  
11 2020, correct?

12 A To the extent that I have documents, I did. There are no  
13 documents in my possession. The ones to produce them would be  
14 Matthew and Michael Hendrickson and Matthew is already in possession  
15 of them, which means TCG Farkas is in possession of them. And what I  
16 did for the production of documents that they don't have is I identified  
17 who has them. I identified the cost to procure them and I communicated  
18 that information and said the third party needs to be paid to procure the  
19 documents to the extent of my ability to comply with the order on behalf  
20 of First 100.

21 Q Go to Exhibit 5. In addition to receiving notice of the  
22 judgment, you received notice of the order granting Plaintiffs ex parte  
23 application for order to show cause why the Defendants and you, Jay  
24 Bloom, should not be held in contempt of court, right?

25 A Yeah. This again is further evidence this is not about the

1 documents.

2 Q Now, if you go to -- now, at -- when you received notice of  
3 the order to show cause, there was pending post judgment discovery  
4 requests to you, Jay Bloom, correct?

5 A Well, you don't have a judgment against me individually. I'm  
6 not a party.

7 Q Sir, if you could listen to my question. There were pending  
8 post judgment discovery requests to you, Jay Bloom. There was a  
9 subpoena for information that had been served on you, correct?

10 A I can't recall what the request was. I can't recall if there was  
11 a subpoena served on me individually or for the company or both.

12 Q If we can go to Exhibit 9. Does this refresh your recollection  
13 that nonparty, Jay Bloom, objected to the subpoena on -- and that was  
14 served January 7th, 2021, the same date that the settlement agreement  
15 was executed. Do you see that?

16 A I do see it.

17 Q And pursuant to the objections that were provided, you, Jay  
18 Bloom, through your counsel, Maier Gutierrez, objected to the subpoena  
19 and did not provide any responsive information, right?

20 A I believe so.

21 Q Okay. Now if we go to Exhibit 10. First 100 and First 100  
22 Holdings, LLC, that you manage, objected to the discovery request that  
23 had been served on them and indicated they would not be attending the  
24 judgment debtor exams. Do you see that?

25 A I do. This is two weeks after the settlement was signed by

1 the manager of TCG Farkas, as we understood it.

2 Q Was the same reason that the Defendants and you were not  
3 providing discovery was the basis, the settlement agreement that had  
4 been executed January 7th?

5 A Yeah. And that has been settled. So two weeks after  
6 settlement, to continue to try and do post-judgment discovery on a  
7 settled matter seemed -- again, I keep coming back to this isn't about the  
8 documents.

9 Q Okay.

10 MS. TURNER: We're -- I'm going to pass the witness.

11 THE COURT: All right. So it's five after 10:00.

12 MS. TURNER: I'm sorry. I'm sorry. Judge, I'm so sorry. I  
13 have one more question. I apologize. I can't read my own handwriting.

14 BY MS. TURNER:

15 Q If we go to Exhibit 12 that's in evidence, I think multiple  
16 times. There -- it might be in the Defendant's books as well. This is the  
17 attorney retainer fee agreement that was sent by Raffi Nahabedian to  
18 you and executed by Matthew Farkas with the settlement agreement. Do  
19 you recall that?

20 A Yeah. This would be another document I relied on, because  
21 Matthew Farkas signed it as managing member of TCG Farkas. But yes, I  
22 remember this.

23 Q All right. If we could go to the last page. Matthew Farkas  
24 signing January 7th, 2021. This execution was provided at the very  
25 same time that Matt Farkas executed the settlement agreement, correct?

1           A     I believe so.

2           Q     Okay. Now, you testified at deposition that you were going  
3 to pay the retainer to Raffi Nahabedian, if one was charged. He just  
4 ultimately did not charge one as a professional courtesy. Is that right?

5           A     I was going to lend Matthew the retainer agreement amount,  
6 so that Matthew could retain counsel for TCG Farkas and he didn't  
7 require one, because he never entered the case. As soon as we found  
8 out that Matthew signed that September resignation as manager and  
9 had -- didn't know about it, Raffi never entered the case. He immediately  
10 withdrew his representation and took the position that Matthew  
11 represented he was the manager up to the point of engagement and  
12 when we found out in January, like January 19th or so, that Matthew  
13 misrepresented his position, Raffi didn't continue forward, so he didn't  
14 require a retainer. He never entered an appearance. Total involvement  
15 was maybe 15 minutes and you want to spend eight hours deposing  
16 him. Again, I keep coming back to this is now about the records.

17               MS. TURNER: Pass the witness, Your Honor.

18               THE COURT: All right. It's about eight after 10:00. Anybody  
19 like to take a recess before we reconvene, before we resume?

20               MR. GUTIERREZ: I'm fine on my end, Your Honor.

21               THE COURT: Do you want to go right into your cross?

22               MR. GUTIERREZ: Sure. Yeah, Your Honor. I'll be brief on  
23 redirect.

24

25     ///

1 REDIRECT EXAMINATION

2 BY MR. GUTIERREZ:

3 Q Mr. Bloom, prior to entering the January 6th, 2021 settlement  
4 agreement, did TCG [sic] Farkas ever send First 100 notice that Matthew  
5 Farkas was no longer the administrative member of TGC Farkas?

6 A No. And that's the confusing part. I think that's why we're  
7 getting lost here. Matthew Farkas proactively asserted that he continued  
8 to be the managing member and up to and through January 6th and  
9 even for a week or two subsequently. And Adam Flatto never contacted  
10 us and as he testified. He was supposed to send a certified letter return  
11 receipt requested. Not only didn't he do that, he never called us to tell us  
12 there was a change in September. So no, TCG -- nobody from TCG  
13 Farkas ever sent a notice that Matthew was no longer the administrative  
14 member. One member was silent and the other member was asserting  
15 that Matthew was still the manager.

16 Q Did TCG Farkas send any written notification via certified  
17 mail pursuant -- to First 100 pursuant to the terms of the subscription  
18 agreement that it executed from October of 2013, if there was a change  
19 in the member status?

20 A No. Adam Flatto's testimony that he didn't send a  
21 notification and Matthew's testimony that he didn't send notification  
22 both comport with our not having received any notice.

23 Q When you were -- when you sent the settlement documents  
24 to Matthew Farkas and he was at the UPS Store, did he ever tell you he  
25 needed Adam Flatto's consent to sign the settlement agreement?

1           A     No. He never made that representation. And in fact, Adam  
2 Flatto told me what he wanted directly, so I would have -- if anybody  
3 asked me at the time, I would have assumed Adam's consent, because  
4 what Matthew asked for matched what Adam asked for directly.

5           Q     And Mr. Bloom, why didn't you talk to Adam Flatto about the  
6 TGC Farkas settlement agreement prior to Matthew signing it?

7           A     Adam Flatto asserted that the Matthew was still the manager  
8 in August of 2020, so there was nothing that changed. All of our  
9 communications for eight years have been directly with Matthew. Email  
10 communications even were with Matthew and then Matthew would  
11 communicate internally with Adam. So it would be extraordinary for us  
12 to reach out to Adam without cause. You know, if -- this is what I don't  
13 get. If Adam just said pick up the phone or sent us a letter and said I'm  
14 the new manager, we would have just negotiated the settlement  
15 agreement with Adam.

16          Q     Were you, Jay Bloom, ever privy to the internal to the  
17 internal TGC Farkas member discussions for consent between the TGC  
18 Farkas members?

19          A     No.

20          Q     I think you testified on -- earlier that First 100 had close to 50  
21 members. Is that right?

22          A     Yeah. And the member -- the members of corporate entities  
23 with multiple members within those corporate entities that held  
24 membership interest in First 100 Holdings.

25          Q     So did First 100 have the time to get involved with internal

1 consent issues with its members who were entity -- who were entities?

2 A No. Everything I've heard in terms of the testimony from the  
3 last day of the hearing, due to the -- this is more of an internal TCG issue,  
4 where Adam may have claims against Matthew. But this is not a First  
5 100 issue.

6 Q And First 100 saw the operating agreement for TCG Farkas,  
7 correct?

8 A I believe so.

9 Q And as part of that operating agreement, did you rely on  
10 Section 4.4, which was reliance on third parties with Matthew Farkas  
11 deemed the administrative member?

12 A Yes.

13 Q Now, do you believe that Matthew Farkas was under any  
14 duress when he signed the January 6, 2021 settlement agreement?

15 A Zero. He was standing alone in a UPS Store. We sent the  
16 documents to the address he provided us. He could have asked us to  
17 email them. He could have asked the UPS store to email them. He could  
18 have scanned them and sent them to Adam. He could have forwarded  
19 and email that he requested. He could have said, I'm taking the  
20 documents home and I'm going to read them. He could have said I'm  
21 going to go hire an attorney. He could have -- I mean, he was standing  
22 there alone, you know. It's not like I showed up at his house in Saturday  
23 morning with documents and said sign these.

24 Q And Mr. Bloom, do you subjectively believe that Matthew  
25 Farkas had the authority to bind TGC Farkas Funding when he signed the

1 January 6th, 2021 settlement agreement?

2 A Yeah. Absolutely.

3 Q And have we covered all the reasons why you believe that?  
4 Is there anything else you want to add to that?

5 A I would reiterate everything I've testified before, but you  
6 know, there's just -- there's no indication of any other manager at any  
7 time prior to the settlement agreement. We have an eight-year history  
8 where Matthew spoke on behalf of the company. Adam certainly had an  
9 opportunity to put his hand up and say I'm the new manager. Talk to me  
10 in August. And then in January, we would have been negotiating the  
11 settlement with Adam. You know, their operating agreement says that  
12 Farkas is the CEO of the company with full authority.

13 You know and then we've got to keep coming back to that  
14 August, 2020 declaration of Adam Flatto, where he says Matthew is and  
15 continues to be the manager, right? I don't know that I have a  
16 responsibility or even the ability to confirm Adam Flatto's verbal  
17 authorization of a decision of Matthew's. If they have an internal issue  
18 between them, that's between them, but this is not a First 100 issue.

19 Q And did you believe that the January 6, 2021 settlement  
20 agreement accomplished the goals of TGC Farkas?

21 MS. TURNER: Objection. Lack --

22 THE WITNESS: I do.

23 MS. TURNER: -- of foundation. Lack of foundation. Calls for  
24 speculation.

25 THE COURT: Overruled. He can state his belief.



1 THE WITNESS: I do believe that it does, because Matthew  
2 asked for a million dollar settlement to get Adam his money back. I  
3 recall my conversation with Adam directly, where he said he wanted a  
4 six percent return. That number didn't come from me. It came from  
5 Adam Flatto and I incorporated into the settlement agreement that it  
6 reflected or it accomplished the goals of both members of TCG Farkas,  
7 based on my direct discussions with each.

8 BY MR. GUTIERREZ:

9 Q Mr. Bloom, can you explain -- you were asked several  
10 questions about the order to produce books and records. Can you  
11 explain why First 100 did not comply with the order to produce to the  
12 books and records in late 2020?

13 A Yeah. I mean, it all comes back to the cost. As I mentioned  
14 earlier, First 100 doesn't have a bank account, much less money. It can't  
15 pay a third party. A lot of the documents are in the possession of  
16 Matthew Farkas, who is apparently the VP of finance for First 100 and  
17 what we understood to be the manager, but certainly at least a 50  
18 percent member of TCG Farkas. So it would be Matthew providing some  
19 of the records to Matthew. We already saw the emails, where Matthew  
20 sent Adam Flatto P and L statements, cashflows, balance sheets from  
21 First 100. And to the extent Matthew doesn't have certain of the  
22 documents, the person who does is not longer employed by us and  
23 needs to be compensated to produce it.

24 So I think we've complied with the order in saying here's  
25 what we need and what your obligations are under the operating

1 agreement you signed to pay for the cost of the production. And TCG  
2 Farkas elected not to provide for the cost of third parties to produce the  
3 documents and First 100 was unable to.

4 Q And Exhibit V as in Victor, which was the February 12th,  
5 2020 letter from my firm to Ms. Turner and Mr. Bloom, that included the  
6 estimates on Michael Hendrickson. Do you believe that's an accurate  
7 estimate as to what it would cost to gather the books and records and  
8 recreate some of the records that needed to be created?

9 A I do. He actually gave several scenarios and he gave a lower  
10 cost that was only, I believe, a couple thousand dollars, if they wanted all  
11 the stuff that had been produced up to the time of his departure and then  
12 a higher figure if they wanted him to recreate books and records  
13 subsequent to his departure. So they had several options to choose  
14 from in terms of how much documentation they wanted and what the  
15 cost would be relative to each option.

16 Q Okay.

17 MR. GUTIERREZ: No further questions. Thank you, Your  
18 Honor.

19 THE COURT: All right. Recross?

20 MS. TURNER: Very briefly.

21 **RECROSS-EXAMINATION**

22 **BY MS. TURNER:**

23 Q You generally referred to conversations with Adam Flatto  
24 regarding the million dollars. To be clear, those communications were in  
25 2017 before the arbitration and before the judgment, correct?

1           A     Yes. And I never received any subsequent communication  
2 that said I'm withdrawing what I was asking modify it or I want more.  
3 Those are my last communications and those were the requests made by  
4 Adam Flatto that were met by the settlement agreement.

5           MS. TURNER: I think everything else was covered  
6 previously. I'll pass the witness.

7           THE COURT: Any redirect?

8           MR. GUTIERREZ: No, Your Honor.

9           THE COURT: Okay. Thank you. Do you want to go with your  
10 next witness, or would you like a recess, first?

11          MS. TURNER: Your Honor. At your convenience. We're  
12 ready to go. We have the witness on, Mr. Nahabedian.

13          THE COURT: Okay. Let's take a brief recess until 25 after  
14 10:00.

15          MS. TURNER: Okay.

16          THE COURT: Twenty-five after 10:00. That's not even a 10  
17 minute recess, okay? Just a brief recess for -- okay?

18          MS. TURNER: Thank you, Your Honor.

19          MR. GUTIERREZ: Thank you, Judge.

20          [Recess at 10:18 a.m. recommencing at 10:25 a.m.]

21          THE COURT: All right. We're back on the record. Have you  
22 called your next witness?

23          MS. TURNER: Yes, Your Honor. Raffi Nahabedian.

24          THE COURT: All right. The witness will be sworn.

25          THE CLERK: I'm sorry. I was on mute. Can you please take

1 down screen sharing, so I can swear in the witness? Thank you. Please  
2 raise your right hand. I think you're on mute as well.

3 MR. NAHABEDIAN: Can you hear me now?

4 MS. TURNER: Yes.

5 THE CLERK: Yes.

6 MR. NAHABEDIAN: Oh, gosh. I've never done this before.  
7 Well, I did it for the deposition on this zoom thing. Okay.

8 RAFFI NAHABEDIAN, PLAINTIFF'S WITNESS, SWORN

9 THE CLERK: And please state your full name, spelling your  
10 first and last name for the record.

11 THE WITNESS: Yeah. It's Raffi. I use my middle initial, A,  
12 Nahabedian. R-A-F as in Frank, F as in Frank-I. Middle initial A. Last  
13 name Nahabedian, N-A-H-A-B-E-D-I-A-N.

14 THE CLERK: Thank you.

15 THE COURT: You may proceed.

16 DIRECT EXAMINATION

17 BY MS. TURNER:

18 Q Mr. Nahabedian, just to set the stage. It was January 4th,  
19 2021 you were first contacted by Jay Bloom to discuss your retention on  
20 behalf of TGC Farkas Funding, LLC as counsel, right?

21 A That sounds accurate, correct.

22 Q And then the purported attorney-client relationship or your  
23 representation of TGC Farkas Funding ended by January 20th, 2021. Is  
24 that right?

25 A I believe that's correct in terms of the correspondence that

1 was sent, but there might have been a telephone call. And again, I'd  
2 have to go back, but there might have been a telephone call that stated  
3 that the representation was over before that, based upon your letter.  
4 You had sent a letter that indicated there was a change in the operating  
5 agreement. And when that was verified, at that point, I had notified Mr.  
6 Farkas that the relationship was to end. And then after I notified him of  
7 such orally, I think prepared a document to confirm such termination.

8 Q All right. If we could go to proposed Exhibit 30 -- and I  
9 believe you have it, Mr. Nahabedian.

10 A Yes.

11 Q We have a call log. And who prepared this call log?

12 A So I prepared this log based upon the telephone numbers  
13 that I was able to pull up on my mobile device, my cellphone.

14 Q Okay. And it indicates Farkas call log, Bloom call log and  
15 MGA call log. Farkas refers to Matthew Farkas?

16 A Correct. That does refer to Matthew Farkas and that  
17 reflects -- as it relates to Matthew Farkas, one on one telephone  
18 communications that pertained and included just him. The other call  
19 logs, I just want to make certain for the record, the MGA call log and the  
20 bloom call log may have included other people in those -- those logs, but  
21 I just want to make sure that that's clear. I could not decipher what on  
22 those two other groups of Bloom and MGA, but on the Farkas call log, I  
23 do specifically know that that just included Mr. Farkas.

24 Q All right. And Blook refers to Jay Bloom?

25 A It does.

1 Q And MGA refers to Maier Gutierrez?

2 A Yes. And Associates. And I wanted to make certainly I  
3 included the parenthetical there, because there were other calls to the  
4 firm that were unrelated to this matter.

5 Q And just to -- by way of background. You represented Jay  
6 Bloom in a case pending in this court, at least during the relevant  
7 timeframe of January, 2021, correct?

8 A There was a lawsuit that I was representing Mr. Bloom in  
9 unrelated to this matter. I have since withdrawn my representation in  
10 that case.

11 Q Okay. So in the time period of January 4th through at least  
12 January 20th, you represented Jay Bloom in an unrelated matter. And  
13 it's titled Nevada Speedway v. Police Chase and Jay Bloom, right?

14 A Correct.

15 Q And MGA or Maier Gutierrez, right?

16 A Correct.

17 Q And MGA or Maier Gutierrez was codefendant's counsel in  
18 that case?

19 A That is correct.

20 Q And prior to that unrelated matter, you did previously  
21 represent First 100 and its derivative entities?

22 A In the past, correct.

23 Q And Maier Gutierrez has represented you and your wife  
24 personally?

25 A They have represented myself in a bodily injury matter as

1 well as are representing my wife in a bodily injury matter, correct.

2 Q And there are other matters where you represent either  
3 codefendants or co-plaintiffs with Maier Gutierrez, so you may have had  
4 communications with that firm and its members that are unrelated to  
5 this action. Is that right?

6 A That is correct and we tried to address that during my  
7 deposition that I do have other cases with them, plaintiff matters with  
8 them that were co-counsel.

9 MS. TURNER: Now Your Honor, I move to admit Exhibit 30.

10 THE COURT: It's admitted.

11 [Plaintiff's Exhibit 30 admitted into evidence]

12 BY MS. TURNER:

13 Q And Mr. Nahabedian, before we turn away from this Exhibit  
14 30, you said that there may have been a phone call with Mr. Farkas  
15 before you sent your formal termination letter following my provision to  
16 you of the amendment to the operating agreement of TGC Farkas  
17 Funding. Is that right?

18 A Please repeat that. I'm sorry.

19 Q Sure. A few minutes ago, you said that you thought the  
20 termination of your purported retention on behalf of TGC Farkas  
21 Funding, it may have been terminated pursuant to a phone call with Mr.  
22 Farkas --

23 A That is correct.

24 Q -- prior to January 16 --

25 A That is correct. I'm sorry. I didn't mean to talk over you. I

1 thought you were finished. My apologies.

2 Q No, that's fine. It's tough on this Zoom. If water trucks go to  
3 the call log at Exhibit 30, if you look at January 16th, does that refresh  
4 your recollection that that was on or about the time that you told Mr.  
5 Farkas that you would no longer be acting on behalf of TGC Farkas  
6 Funding?

7 A I don't know if it was on the 16th. I think on the 16th there  
8 was the discussion about -- it was a lengthy discussion and I don't want  
9 to go into that -- the realm of that discussion just for preserving his right  
10 to have confidences and communications with counsel. But it -- I don't  
11 believe it was that telephone conversation that it was definitive, but in  
12 that conversation, it may have included that if the contents of your letter  
13 are accurate and when that would be verified that a termination would  
14 take place. And then we have later calls, I believe on the 18th and 19th,  
15 which were definitive communications that I believe it was on the 19th,  
16 where it was definitively stated that it was over -- without getting into  
17 more of the substance, but it was a termination relationship call. And  
18 after that, there was a letter that was sent to him that documented the  
19 telephonic communication.

20 Q As counsel, you were convinced, as least of January 19th,  
21 that Matthew Farkas did not have authority to terminate Garman Turner  
22 Gordon and hire you to dismiss this action. Is that accurate?

23 A That is accurate. That's when I was provided a document  
24 that reflected an amended operating agreement. It was troubling to me,  
25 because up until that point, there was not a hint about such document's



1 existence whatsoever in earlier phone calls, so on and so forth. And so  
2 once that was presented, that's when I was -- it was definitively  
3 expressed that he didn't have the authority to retain me and that what I  
4 had understood and believed in good faith to be an ability to retain me,  
5 that it was no longer valid, so I terminated it.

6 Q And if we could look at the call log with respect to January  
7 4th, it indicates a call with Mr. Bloom -- between you and Mr. Bloom at  
8 5:25 p.m. Do you see that?

9 A I do.

10 Q For 12 minutes, 13 seconds?

11 A I do.

12 Q Now, if we go to Exhibit 28 that is already in evidence, the  
13 first page, RAN001.

14 A I'm looking at it.

15 Q We have at 6:15 p.m., which was -- I mean, less than 45  
16 minutes later following that call, where you, Raffi Nahabedian, sent to  
17 Jay Bloom an attorney retainer agreement for Matthew and you have  
18 that form attached, correct?

19 A That's correct. There was the email and attached to the  
20 email was the retainer, which is the next document going down,  
21 RAN0002.

22 Q So it says, "I, Matthew Farkas, managing member of TGC  
23 Farkas -- or TCG client as the client, hereby retains Raffi Nahabedian to  
24 represent client, TCG Farkas in relation to a business dispute lawsuit  
25 currently filed pending on Clark County."

1                   And you have the case number, this case number, right?

2           A     Correct.

3           Q     Now prior to sending out this attorney retainer fee  
4 agreement, you did not review the arbitration award or the judgment  
5 that had been entered in this case, correct?

6           A     I had not reviewed those documents, correct.

7           Q     Or that there was an order to show cause issued regarding  
8 Mr. Bloom as well as the Defendants on contempt, right?

9           A     Never reviewed and completely unaware of such documents.

10          Q     How did you receive the case number?

11          A     That's a good question. I might have simply typed in  
12 Matthew's -- the last name per search for Farkas and it popped up with a  
13 case number.

14          Q     Now, if we go to -- a little further down in this attorney  
15 retainer fee agreement, it discusses the retainer. Do you see that?

16          A     Yes.

17          Q     Now, if we go to Exhibit 29, proposed Exhibit 29. It's not in  
18 evidence yet. Can you describe what Exhibit 29 is?

19          A     Exhibit 29, those were just -- over a period of time -- or  
20 they're email -- or text messages -- sorry-- between myself and Mr.  
21 Bloom.

22          Q     Okay. And the intent --

23          A     That came from my phone. I'm sorry. These are text  
24 messages that I provided Mr. Larson [phonetic], my attorney, that were  
25 text message communications between myself and Mr. Bloom.

1 Q All right. And these text messages all relate to this action  
2 and not your other actions, correct?

3 A This pertains to the -- Matthew Farkas, yes.

4 Q All right.

5 MS. TURNER: Your Honor, I move to admit Exhibit Number  
6 29.

7 MR. GUTIERREZ: Your Honor, my objection is it lacks  
8 foundation as to time and date.

9 THE COURT: Sustained. Lay foundation relative to time.  
10 BY MS. TURNER:

11 Q Mr. Nahabedian, when were these text messages sent and  
12 received that are reflected in Exhibit 29?

13 A These were during the month of January, which would be  
14 the duration of my involvement in terms of -- from -- between January 4  
15 until January 20th or something to that effect.

16 Q Of 2021?

17 A Of 2021, correct.

18 MS. TURNER: Your Honor, I renew my offer.

19 MR. GUTIERREZ: No objection, Your Honor.

20 THE COURT: Okay. It's admitted.

21 [Plaintiff's Exhibit 29 admitted into evidence]

22 BY MS. TURNER:

23 Q Mr. Nahabedian, Jay Bloom was going to pay your retainer  
24 required under this attorney retainer fee agreement with TGC Farkas,  
25 correct?

1           A     No, I never understood that to be the case.

2           Q     Okay.

3           A     I believed that Mr. Farkas would be paying my retainer fee.

4           Q     Okay. Do you see Exhibit 29 about three-quarters of the way  
5 down. And then it says, "You're going to have to send me a retainer or  
6 transfer. Can you confirm wire instructions for the retainer?"

7           A     Yeah. That is on my part -- there -- you know, text  
8 messaging isn't always a perfect science. You're going to have him send  
9 me a retainer fee or transfer. So I was understanding that he would be  
10 sending me, meaning Mr. Farkas, a payment for my services. And in  
11 fact, in one of the other exhibits that you have, my termination letter with  
12 Mr. Farkas, I actually say to Mr. Farkas given the circumstances, as a  
13 professional courtesy, I will not be seeking an attorneys or compensation  
14 from you in relation to this matter.

15          Q     These text messages are not with Matthew Farkas. They're  
16 with Jay Bloom regarding your retainer, correct?

17          A     Jay was serving as a conduit. It was his brother-in-law. And  
18 so my communications with Mr. Bloom were with the understanding  
19 that he was serving as a conduit, until I have the opportunity to meet  
20 with Mr. Farkas. And anyway, so that is my recollection and it's a  
21 distinct one. Like I said, you can -- it's verified in the termination letter,  
22 where I say I won't charge you for these fees. I'll waive my retainer feet.

23          Q     Okay. Exhibit 28, 29 and 30 were all produced by you last  
24 Tuesday, March 2nd, correct?

25          A     I provided these documents to Mr. Larson and Mr. Larson

1 then provided you with a privilege log. And if I'm not mistaken, the  
2 privilege log was provided to you -- well, by Mr. Larson. And then after  
3 the privilege log issue was resolved by the Court and/or the parties, I  
4 believe Mr. Larson disclosed these documents to you.

5 Q Do you recall that the information was being withheld in your  
6 deposition as well as the writings until after the Court ruled on whether  
7 or not there was a privilege that would justify the withholding?

8 A Yeah. For clarification, when you had initially demanded me  
9 to produce these documents and information, I contacted the State Bar  
10 of Nevada and was unambiguously and unequivocally informed by State  
11 Bar counsel to not produce and disclose anything until further notice  
12 relating to a court order and/or -- and emphasize and/or and as the  
13 emphasis should be on and. He was very expressive that I send a  
14 correspondence to the parties involved, meaning Mr. Farkas and Mr.  
15 Bloom, notifying them of the demand and requesting that they provide  
16 an unequivocal waiver or no waiver of the disclosure of the information.

17 Q All right. And if we could look at RAN0355 in Exhibit 28.  
18 RAN0355. We have a February 8th, 2021 email from you, Raffi  
19 Nahabedian, to Mr. Bloom indicating, "Please confirm you have  
20 consulted with counsel and based on our discussion, are instructing me  
21 to not disclose confidential communications." Do you see that? Is this  
22 the email that you were referring to?

23 MS. TURNER: Scroll down, Michelle.

24 THE WITNESS: I'm having a problem here finding it on my  
25 computer. Give me one second.

1 BY MS. TURNER:

2 Q Can you see on the screen, Mr. Nahabedian?

3 A It's -- okay, so I wear glasses and I don't have bifocals, so it's  
4 very difficult for me to go back and forth. And so what I've done is I just  
5 want to make sure. You're saying 0055?

6 THE COURT: What's the exhibit reference on this, counsel?

7 MS. TURNER: It's Exhibit 28.

8 THE COURT: 28. Okay. Uh-huh.

9 MS. TURNER: And it's RAN0355 is the Bates number or  
10 Plaintiff 480. It's marked twice.

11 THE WITNESS: Oh, 0355?

12 MS. TURNER: Yes, sir.

13 THE WITNESS: Oh. My apologies. I was looking at the  
14 wrong document altogether. 0355. The February 8 correspondence  
15 from me to Mr. Bloom?

16 MS. TURNER: Yes.

17 THE WITNESS: Okay. There it is.

18 BY MS. TURNER:

19 Q Is that the email that you were just referring to in your  
20 testimony?

21 A This is the email string, correct.

22 Q Okay. And there was a prior email February 2nd, 2021, right?

23 A Correct, yes.

24 Q That's on the next page? Yeah.

25 A Yes. I'm looking at that one right now.

1 Q Okay. And Mr. Bloom responded to you on February 8th,  
2 directing you that you should not disclose any communications to any --

3 A Yeah.

4 Q With regard to any discussion you had, whether they be an  
5 oral or -- whether they be oral or in writing, right.

6 A Correct.

7 Q And that was not limited to the communications regarding  
8 the unrelated lawsuit involving the speedway, but every communication,  
9 including those involving TGC Farkas, right?

10 A Correct. And I will tell you that my discussion with State Bar  
11 counsel was not limited in any capacity. He said any and all  
12 communications of prior representation, current representation, et  
13 cetera. So -- and so then when I received this letter from Mr. Bloom, I  
14 interpreted this letter from Mr. Bloom to be specific as it relates to this  
15 Farkas matter.

16 Q When you first identified the case number of A-20-822273-C,  
17 our case, on January 4th, 2021, you understood that Jay Bloom was on  
18 the other side of the aisle from TGC Farkas, correct?

19 A What I understood was that there was a dispute between  
20 TGC Farkas and First 100 and that the principals of TGC Farkas, meaning  
21 specifically Mr. Farkas as well as the principal of First 100, Mr. Bloom,  
22 that those two parties came together to resolve a dispute and they were  
23 looking for representation to assist and that Matthew was looking for  
24 representation to assist in moving that settlement forward.

25 Q Jay Bloom communicated that to you?

1           A     Mr. Bloom communicated that to me and --

2           Q     And I'm talking --

3           A     Oh. I'm sorry.

4           Q     -- January 4th -- sorry. January 4th, 2021, in that initial  
5 communication.

6           A     That. I don't want to go into the depths of the discussion  
7 specifically, but that was my understanding as to the purpose of my  
8 involvement.

9           Q     All right. If we can go to RAN006 in the same exhibit, 28. Mr.  
10 Nahabedian, it was three days later, January 7th, 2021, that you received  
11 the signed documents from Matthew Farkas from Jay Bloom, correct?

12          A     I received -- yes. I received documents from Mr. Bloom.  
13 Again, he was providing the -- as a conduit between himself and Mr.  
14 Farkas.

15          Q     All right. And it indicates that attached -- this is -- there's  
16 documents attached, important docs scan and there were four  
17 documents that were attached, correct?

18          A     If that's the documentation, then that -- I don't want to  
19 dispute that, if that's what the record reflects.

20          Q     So you had the legal representation agreement signed by  
21 Matthew Farkas retaining you, right?

22          A     Okay.

23          Q     And you have the settlement agreement signed by Matthew  
24 Farkas and Jay Bloom, right?

25          A     I'm seeing that now. I'm going through that exhibit right



1 now.

2 Q And then the very first document that's attached is a release  
3 hold harmless and indemnification agreement. Do you see that?

4 A I do see that.

5 Q And that was also signed by Matthew Farkas at the same  
6 time and returned at the same time, correct?

7 A That is correct.

8 Q All right. And that release, hold harmless and the  
9 indemnification agreement is dated the same date as the settlement  
10 agreement January 6th, 2021, right?

11 A If that's what the documents reflect, then that -- I mean, do  
12 you want me to verify what the documents show? I don't understand. Is  
13 that what -- I can verify that by looking at the document.

14 Q Sure.

15 A I see a page. It says dated Jan 6th, 2021 and it has Mr.  
16 Farkas' signature. That's on the release document. And then there's a  
17 settlement agreement that's dated Jan 6th, 2021 and that also reflects  
18 Mr. Farkas' signature.

19 Q All right. This release, hold harmless and indemnification  
20 agreement, in the first paragraph of mutual general release provides that  
21 Matthew Farkas on his behalf and on behalf of his affiliated entities  
22 hereby fully, completely, finally and forever releases, waives,  
23 relinquishes and discharges First 100, LLC, First 100 Holdings, LLC and  
24 its managers, officers, directors, owners. Do you see that? That very  
25 first paragraph?

1           A     I see the paragraph. I will tell you and make it very clear for  
2 the record. I have nothing to do and I had nothing to do with this  
3 document, its interpretation, its explanation. It was created unrelated to  
4 me. I have nothing to do with its negotiation, preparation or anything to  
5 that effect. So I can read what the document says, but in terms of its  
6 interpretation and meaning, I was not retained for that purpose  
7 whatsoever.

8           Q     When you say you weren't retained for the purpose, it was  
9 being provided to you in conjunction with your attorney retention  
10 agreement and the settlement agreement and your testimony, to be very  
11 clear, is that you had no involvement in its effect in reviewing its effect or  
12 advising Matthew Farkas or TGC Farkas of its effect. Is that right?

13          A     That is correct.

14          Q     Okay. Now if you can go to RAN22 in the same exhibit, 28.  
15 This was also in the documents provided to you on January 7th, 2021. A  
16 January 6 letter purporting to terminate my office. Do you see that?

17          A     I do.

18          Q     Now, Matthew Farkas testified he did not write this letter.  
19 Jay Bloom indicated he did not write this letter. And the document -- Jay  
20 Bloom said he didn't know if you had written it. Did you write this letter?

21          A     100 percent no. I had nothing to do with the creation of this  
22 letter, the contents of the letter. I was never consulted with the contents  
23 of the letter or anything to that effect. This document was provided to  
24 me and it was my belief that it was provided to me as part of the  
25 transition or transmission from Mr. Farkas to me. And it was understood

1 that this document was from Mr. Farkas and was intended to be  
2 delivered to me. And at no time have I ever been told this letter was  
3 anything other than what I understood to be as a document from Mr.  
4 Farkas, but I had nothing to do with the letter. Zero.

5 Q All right. If we go to Bates Number RAN45, we have January  
6 10th, 2021, an email from you requesting that Matthew bring the  
7 operating agreement of TGC Farkas. Do you see that?

8 A Okay. What's the date? Here --

9 Q January --

10 A -- Jan 10?

11 Q Yes.

12 A I think -- Jan 10?

13 Q Yes.

14 A Yes. Jan 10 was:

15 "Good afternoon. Additionally, Matthew must bring the  
16 operating agreement of the LLC. This is critical to confirm  
17 his authority of termination as authorized manager to fund  
18 the operating agreement and not just a managing member."

19 Q And then it says: GTG may be very difficult in this process,  
20 especially since they are owed fees; do you see that?

21 A I do.

22 Q You and I had never met, or talked, prior to January 10th,  
23 2021, right?

24 A Correct.

25 Q And you had not talked to Matthew Farkas by that date,

1 right?

2 A I don't believe I had talked to Matthew by that date, I don't  
3 believe so, but I may have. But I believe the first communication was  
4 around that time, so it could have been before or after maybe January  
5 10, 11, but I'm not certain, but it's around this -- that timeframe, that I  
6 spoke with Matt, or had a conversation with Mr. Farkas.

7 Q Now Mr. Bloom had told you to prepare a substitution of  
8 counsel to replace Garman Turner Gordon with yourself and effectuate  
9 the dismissal of this action, pursuant to the settlement agreement,  
10 correct?

11 A It was a conveyance of an understanding based upon the --  
12 the settlement that Mr. Bloom and Mr. Farkas had -- had entered into,  
13 and that the purpose of my involvement was to facilitate that for  
14 Mr. Farkas, or GTC Farkas.

15 Q When you mentioned the "termination" you meant the  
16 termination of Garman Turner Gordon, right?

17 A Yes. And that was part of the understanding that was being  
18 conveyed to me, which was subsequently discussed in a telephone  
19 conversation, and I was never disproved of any of the direction that I  
20 would -- I had been informed of, so --

21 Q Okay. Now at the top of this page it says: "From Jay Bloom  
22 to Raffi Nahabedian, with a cc to Jason Maier, and Joseph Gutierrez and  
23 Danielle Barraza." Those are throughout your emails, you're  
24 communicating with Jason Maier, Joseph Gutierrez and Danielle  
25 Barraza, in addition to Jay Bloom; those are attorneys at Maier Gutierrez

1 & Associates, correct?

2 A Those are.

3 Q Now you understood that Mr. Maier, Mr. Gutierrez and  
4 Ms. Barraza at Maier Gutierrez represented First 100, First 100 Holdings,  
5 LLC and Mr. Bloom?

6 A During these exchanges that was my understanding, correct.

7 Q Okay. Now it indicates on January 10th at 12:35 p.m.:

8 "I doubt he has it. We should be fine with his representation  
9 and his having engaged them in the first place, together with  
10 his signing the subscription agreement, and the redemption  
11 agreement on behalf of the entity, as manager. We need to  
12 get this done and filed ASAP."

13 Is your understanding the same as mine, that "ASAP" means  
14 "as soon as possible"?

15 A I understand that ASAP means as soon as possible, but that  
16 didn't affect my determination to make certain of Mr. Farkas' title and  
17 position and authority.

18 Q Why did this need to get done, meaning the substitution and  
19 dismissal, ASAP?

20 A I couldn't tell you why he wanted it done ASAP.

21 Q Well, if we go to ran0049. I have your email January 11th,  
22 2021, at the top of the page in the second paragraph, to the email sent to  
23 Jay Bloom with a cc to Jason Maier, Joe Gutierrez and Danielle Barraza  
24 at Maier Gutierrez & Associates. You indicate: "As substantive LLC  
25 issues are foreseeable, having the operating agreement is an absolute

1 must to prevent claims." Do you see that?

2 A I do.

3 Q All right. And as of this date you had had a conference call  
4 with Matthew Farkas, Jay Bloom and Joe Gutierrez, where Mr. Farkas,  
5 Matthew Farkas, had indicated he had resigned his manager role at TGC  
6 Farkas, correct?

7 A Hundred percent incorrect.

8 MR. GUTIERREZ: Your Honor, objection. It misstates  
9 testimony, lacks foundation.

10 THE WITNESS: That's a hundred percent incorrect.

11 THE COURT: If it misstates the testimony the witness can so  
12 say.

13 BY MS. TURNER:

14 Q Okay.

15 A That's a hundred percent incorrect. At this point I had  
16 nothing other than the understanding that Mr. Farkas was the  
17 administrative member and managing member of the LLC, and it wasn't  
18 until around a week later that that information was disproved, when I  
19 received a document from Mr. Farkas that reflected that he -- that the  
20 structure had changed.

21 So at this point there was never any statement to me  
22 whatsoever, other than him being the administrative member, and  
23 managing member, and authorized to move forward as it was  
24 understood for me to move forward, and as my correspondence with  
25 you reflected, that I would be moving forward as.

1 Trust me, when I discovered -- when I discovered the  
2 information that was later presented to me I was very upset and very  
3 disturbed that my client had not informed me prior thereto; very  
4 disturbed.

5 Q Mr. Nahabedian, isn't it true that on or about January 9th,  
6 2021 there was a telephone conference with you, Joe Gutierrez,  
7 Jay Bloom and Matthew Farkas where the subject matter of Mr. Farkas  
8 resigning his position as manager came up, and he indicated he would  
9 check his emails?

10 A I wasn't on that phone call, and I don't recall ever having a  
11 phone call conversation like that, whatsoever. If I had ever been on a  
12 phone call with Mr. Farkas, wherein Mr. Farkas had indicated he resigned  
13 his position I would never, ever, have moved forward in any capacity,  
14 whatsoever; in any capacity whatsoever.

15 I would never have sent you a letter. I would never have  
16 provided you with the document, the documents that I provided you.  
17 Never, ever was that informed to me, and I've tried to make that as clear  
18 in the record as possible during my deposition and in correspondence.

19 I have made that abundantly clear, my attorney has  
20 conveyed that. I was never informed of such, and as soon as I received  
21 your letter, wherein you stated that there was an amended operating  
22 agreement, everything changed going forward, everything changed.

23 At that point I notified him, orally, that -- and I'm not going to  
24 get into specific details, but I'm going to express this as the  
25 responsibilities I have as an attorney, that at that point I said that there is

1 a problem, and I need to address this problem, and I need to have an  
2 understanding if there was an amendment to the operating agreement  
3 that was different than the operating agreement's terms that I  
4 understood and I was informed of, and have been acting under; and  
5 once Mr. Farkas provided me with that document, that was it.

6 Q All right. That's a lot to unpack. At Exhibit 28 there are no  
7 emails between you and anyone other than the opponent of TGC Farkas  
8 Funding, meaning First 100's lawyers, and Jay Bloom, its manager, until  
9 well after January 14th, 2021 when you sent the substitution of counsel  
10 and notice of your intention to dismiss this lawsuit; isn't that right?

11 A If that's what the documents reflect, that's what the  
12 documents reflect.

13 Q And Mr. Nahabedian, if we go to Exhibit P, P as in party.

14 A I don't have an Exhibit P. I was informed that we were  
15 looking at Exhibits 28, 29 and 30.

16 Q That's all intended to, and this has come up in your  
17 testimony, so I apologize. We have it up on the screen.

18 MS. TURNER: If we can go paragraphs 19, 20 and blow that  
19 up so that Mr. Nahabedian can see it.

20 BY MS. TURNER:

21 Q I'm blind myself, Mr. Nahabedian.

22 All right. At paragraph 19, this is the declaration of Jay  
23 Bloom where he says: "On or about January 9th, 2001, during a  
24 telephone conference with TGC Farkas Funding, counsel Raffi  
25 Nahabedian, Joe Gutierrez, and myself" meaning Jay Bloom, "Mr. Farkas



1 continued to state he has no recollection of resigning his position as  
2 manager, but he would check his emails."

3 Do you see that?

4 A I see the contents of that paragraph, correct.

5 Q And so there was a telephone conference on or about  
6 January 9th, 2021, where Matthew Farkas' authority was being  
7 discussed, and he indicated he would check his emails; is that correct?

8 MR. GUTIERREZ: Objection. This misstates the testimony of  
9 Mr. Bloom, about this issue.

10 THE WITNESS: The contents of the paragraph reads for  
11 itself. That is never -- I was never a part of that discussion, and never  
12 was such an issue brought to my attention at any time, by any source,  
13 during any conversation, prior to your letter. Prior to your letter, there  
14 was, no understanding, other than Mr. Farkas being the administrative  
15 member, and managing member, or manager of TGC Farkas Funding,  
16 LLC.

17 So the contents of this letter is completely inaccurate, or this  
18 paragraph, as it relates to me. Up until my receipt of your letter, nothing  
19 had raised that issue or was brought to my attention at any time.

20 Nothing except your letter, and once I received your letter everything  
21 changed, and that is my testimony, the truth, the whole truth, so help me  
22 God. And as soon as I received your letter everything changed, and  
23 when I received confirmation documentation from Mr. Farkas, that was  
24 it. There was no way I was going to move forward any further.

25 If I had received any information disputing Mr. Farkas'

1 authority and apparent authority, or actual authority, as serving and  
2 being the administrative member and manager, I would never have  
3 moved forward, I would never have sent you that letter, never.

4 BY MS. TURNER:

5 Q On --

6 A So up until I received your letter I had no knowledge of any  
7 of this, none, zero.

8 Q Exhibit 20 -- I mean, Exhibit P, paragraph 20 it says -- this is  
9 Jay Bloom: "It was not" --

10 MR. GUTIERREZ: Your Honor, I don't think this is an  
11 admitted exhibit, so I don't know how counsel is trying to use it. Is she  
12 trying to refresh his recollection? So I just want to make sure what the  
13 purpose is.

14 THE COURT: Counsel?

15 MS. TURNER: Your Honor, I believe -- I thought it was in --

16 THE COURT: This is a Defense proposed exhibit -- I mean, a  
17 Plaintiffs' proposed exhibit, right?

18 MS. TURNER: No, no. This is Defendant's proposed  
19 exhibit --

20 THE COURT: It's Defense proposed exhibit, right? Proposed  
21 Exhibit --

22 MR. GUTIERREZ: All you have got to do is just check his  
23 public declaration.

24 THE COURT: Proposed Exhibit P, declaration of Mr. Bloom,  
25 correct?

1 MS. TURNER: Yes.

2 THE COURT: Uh-huh.

3 MR. GUTIERREZ: And there was an objection to all the  
4 declarations come in.

5 THE COURT: Say that again?

6 MR. GUTIERREZ: I think there was an objection to all the  
7 declarations coming into evidence.

8 THE COURT: Well, there was no stipulation, okay. But now  
9 it's being -- are you offering this, Ms. Turner?

10 MS. TURNER: Your Honor, I am -- I'll offer this exhibit into  
11 evidence, that was proposed by Defendants. I went through it with  
12 Mr. Bloom, in his cross-examination earlier this morning, specifically  
13 paragraph 36, and last week went over these same paragraphs with  
14 Mr. Bloom.

15 THE COURT: If --

16 MR. GUTIERREZ: Your Honor, she can refresh Mr. Bloom's  
17 recollection with his own declaration. If she -- withdraw her objection to  
18 an earlier objection and now stipulate to move it in, it's a different story.

19 THE COURT: All right. It's admitted.

20 [Plaintiffs' Exhibit 20 admitted into evidence]

21 BY MS. TURNER:

22 Q Okay. Mr. Nahabedian --

23 A Yes.

24 Q -- do you see at paragraph 20, it says: "It was not until on or  
25 about January 10th, 2021, that Matthew Farkas, for the first time, said

1 that he found the email where he signed the September 2020  
2 amendment to the TGC Farkas Funding operating agreement; do you see  
3 that?

4 A I have read paragraph 20 in the document that you prepared  
5 -- or presented me. I have no knowledge, whatsoever of the contents of  
6 that -- that paragraph, as I have no knowledge of the contents of  
7 paragraph 19.

8 Q Is it true, Mr. Nahabedian, that as purported counsel for TGC  
9 Farkas Funding, you did not make inquiry into the authority to act on  
10 behalf of and bind TGC Farkas Funding, prior to sending not only your  
11 legal representation agreement, but also the substitution of counsel and  
12 notice that you were intending to dismiss this action pursuant to the  
13 settlement?

14 A That is completely untrue. Up until your letter, what I was  
15 directly informed of, and unambiguously informed of, was that Matthew  
16 was the administrative member, and the manager of the LLC, and at no  
17 point prior to your letter, and have the information contained in your  
18 letter provided to me, did he ever dispute or try to provide me with  
19 information to the contrary.

20 So your question is in the no, and it is inaccurate as it applies  
21 to me, that I did what I needed to do, as reflected in the documents that  
22 you've referred to, that I want to have the operating agreement to verify  
23 his authority. I received a copy of the operating agreement to verify his  
24 authority. He knew that I was operating with the belief and  
25 understanding that he was the administrative member, and the manager,

1 and it wasn't until your letter, when everything came out, that that was in  
2 fact incorrect.

3 And at that point, when I got your letter, I asked for  
4 documents. I'm not going to tell you what he said, but I said, "Why  
5 didn't you ever inform me? Why wasn't this brought to my attention?"  
6 And I'm not going to say anything more, other than the common sense  
7 question would have been, why didn't you say this before I sent  
8 everything? I won't tell you what he said, but I'm going to tell you that  
9 once I got your letter everything changed, and I did what I needed to do  
10 and removed myself from the situation.

11 But prior to that letter there was never any other  
12 understanding, than other than him being the administrative member  
13 and manager of TGC Farkas Funding, LLC.

14 Q So you have not one text message or email between you and  
15 Mr. Farkas, up to the time you sent your January 14th letter notifying for  
16 the very first time of the settlement, there's no record in the call-log, of  
17 any call between you and Mr. Farkas directly? You were getting  
18 information relating to authority of Matthew Farkas from Jay Bloom,  
19 prior to that time, correct?

20 A That's incorrect. Because there was a global telephone  
21 communication that existed with Mr. Farkas, and that's -- those  
22 communications with Mr. Farkas were very clear he had the  
23 documentation, he knew what was going forward, and at no point was I  
24 ever instructed otherwise. And once I received your letter, obviously I  
25 was flabbergasted, completely.

1 I mean, hit me over the head with a 2 by 4, because he had  
2 every opportunity to say, oh, by the way, you're operating under the  
3 assumption, or belief, or with good reason that I'm the administrative  
4 member and manager; by the way, X, that never happened.

5 Q Is it your testimony --

6 A Once I received your letter everything changed, everything  
7 changed. Oral communications never, ever included, going back to  
8 paragraph 19 of the document that's on the screen still; that paragraph  
9 19 never happened with my involvement on that call. Never was I a  
10 communication of the content in that paragraph with me, on that call.

11 Q Mr. Nahabedian, is it your testimony that Matthew Farkas  
12 affirmatively represented to you that he had authority to bind TGC  
13 Farkas, without Adam Flatto's consent?

14 A I'm not going to violate --

15 MR. GUTIERREZ: Your Honor, this calls for --

16 THE WITNESS: -- attorney/client confidences --

17 MR. GUTIERREZ: -- attorney/client privilege --

18 THE WITNESS: -- as to his discussion. Sorry, Joe, go ahead.

19 MR. GUTIERREZ: Your Honor, I just want to be perfectly  
20 clear, that I think counsel is asking for attorney/client privileged  
21 communication with Mr. Farkas. His counsel, Ken Hogan, is not on the  
22 phone and I think -- I don't know that this privilege has been waived.

23 THE WITNESS: It hasn't been waived. I'm sorry, Your  
24 Honor. Go ahead.

25 THE COURT: Ms. Turner your response to the objection?

1 MS. TURNER: TGC Farkas owns the privilege that would  
2 apply, if any, to the representation of Raffi Nahabedian on behalf of TGC  
3 Farkas, and there is no privilege being maintained by TGC Farkas  
4 Funding.

5 THE WITNESS: Your Honor, I'm not going to divulge any  
6 communications, oral, from Mr. Farkas, to me. Given the instruction by  
7 State Bar counsel, I understand that counsel is representing that she is  
8 counsel for TGC Farkas, is asserting there's no privilege, however,  
9 Mr. Farkas is represented by Mr. Hogan. Mr. Hogan received a  
10 correspondence from me, and numerous correspondence from me and  
11 my counsel, requesting authorization or information relating to any  
12 waiver that would be effectuated.

13 I've never received such documentation wherein Mr. Farkas  
14 waived and signed such authorization to waive any privileged  
15 communication. I will speak --

16 BY MS. TURNER:

17 Q Let me help you out, Mr. Nahabedian. In your group  
18 communication that you testified to, the one group communication, prior  
19 to January 14th, 2021, that involved Mr. Gutierrez, Mr. Maier, or Jay  
20 Bloom, so that there are somebody else that is adverse to TGC Farkas on  
21 that call, in any communication involving Matthew Farkas, and  
22 Jay Bloom, and Maier Gutierrez, or a combination of them, did Matthew  
23 Farkas ever represent to you that he had the authority to bind TGC  
24 Farkas Funding, without the consent of Adam Flatto?

25 A Mr. Flatto's name never came up at all, in that -- in any global

1 communication Mr. Flatto's name never came up. And in the global  
2 communication the expressions were very clear for me to proceed, as I  
3 proceeded, and based upon the direction to proceed as I proceeded,  
4 without any opposition to the instruction, and without any statements to  
5 the effect that Mr. Flatto would need to be involved and/or was the  
6 administrative member and manager, that never occurred. And so had it  
7 occurred, then you would never have received my correspondence.

8 Q Did Matthew Farkas affirmatively tell you he had authority to  
9 bind TGC Farkas Funding, in January of 2021?

10 MR. GUTIERREZ: Objection --

11 THE WITNESS: Base on --

12 MR. GUTIERREZ: -- Your Honor.

13 THE WITNESS: -- the communications that I've had, where  
14 other parties were involved, the apparent and actual authority was  
15 demonstrated by the instruction.

16 BY MS. TURNER:

17 Q Sir, my question to you is, whether or not Matthew Farkas  
18 ever affirmatively represented to you that he had the authority to bind  
19 TGC Farkas Funding in January of 2021?

20 THE COURT: Counsel, are you referring to conversations in  
21 which other people were involved?

22 MS. TURNER: Yes, sir.

23 THE COURT: The so called "global communications"?

24 MS. TURNER: Yes. I believe counsel's testimony is that's all  
25 he had with Mr. Farkas, prior to January 14th.



1 THE WITNESS: All right. As it relates to global  
2 communications, you're asking if there was ever a specific, verbatim, I  
3 have this distinct power to do this. I don't know if he ever expressed it  
4 in such terms, but his expression was very clear that as the managing  
5 member, and administrative member, or as the person in charge of the  
6 LLC, moved forward with this -- this strategy.

7 So as it related to global communications I was instructed to  
8 move forward, as I did move forward. And based upon him instructing  
9 me to move forward, as I did move forward, would be clearly indicative  
10 of his expression of authority, because at no point did he express that he  
11 didn't have authority. At no point was it ever expressed in that  
12 conversation, or those conversations, that Mr. Flatto had the authority,  
13 and/or Mr. Flatto needed to be involved, whatsoever.

14 And, again, had he ever expressed it during those  
15 conversations that were global, or included others, this would never  
16 have happened.

17 BY MS. TURNER:

18 Q Mr. Nahabedian, if you go to ran0072 of Exhibit 28; ran0072?

19 A I'm trying to get there right now.

20 Q Okay. So in response to your January 11th, 2021 email to  
21 Jay Bloom, with a cc to Jason Maier, Joe Gutierrez and Danielle Barraza,  
22 that substantive LLC issues are foreseeable. Jason Maier sent you the  
23 engagement letter for the engagement of Garman Turner Gordon on  
24 behalf of TGC Farkas Funding, correct?

25 A That's -- Monday, Jan. 11 at 10:24?

1 Q Yes.

2 A Okay.

3 Q Matthew signed that agreement on behalf of himself, as a  
4 member of TGC Farkas Funding, correct?

5 A I don't have the document in front of me right now, so if I  
6 had --

7 Q If you back up, it's the document preceding this email, and if  
8 you go to ran0061.

9 A I'm going there now.

10 Q You have Gerry's signature, Gerry Gordon's signature, and  
11 then Matthew Farkas', do you see that?

12 A I do.

13 Q And it's "Mr. Farkas, Member?

14 A I see that now --

15 Q [Indiscernible].

16 A Yes.

17 Q Okay. Now go back to ran72 in Exhibit 28, we have an email  
18 at that top of the page from Jason Maier to you, with a cc to Jay Bloom,  
19 Joe Gutierrez and Danielle Barraza; do you see that?

20 A This is Exhibit 78, you're saying?

21 Q 28, Exhibit 28.

22 A Oh, 28.

23 Q And this is Bates Number ran72, it's numbered by your  
24 office.

25 A Wait, you want ran Bates Number 72?

1 Q Yes, 72.

2 A Ran72?

3 Q Yeah. And it should start with an email from Jason Maier,  
4 dated January 11th, 2021?

5 A I see it.

6 Q And it says, "Raffi, here's a draft of a letter." Are we on the  
7 same page?

8 A I see it.

9 Q All right. Jason Maier wrote the letter, he drafted the letter  
10 on behalf of you, as counsel for TGC Farkas, in order to provide notice to  
11 my firm of you coming in, because there had been a settlement; do you  
12 recall that?

13 A What I recall is, I had injured my back, severely injured my  
14 back, and that I was out of commission, and was not going to be able to  
15 work, whatsoever, and so there was going to be a delay in anything I  
16 was going to be doing for Mr. Farkas, and that they drafted a draft of a  
17 letter which was sent to me, which I reviewed, and then I edited the letter  
18 that was eventually presented to you.

19 Q And the letter is attached, the draft that came from Jason  
20 Maier, at ran0077, onto the next page. That's what Jason Maier wrote;  
21 correct, that draft?

22 A I believe so.

23 Q And in response to Jason Maier's draft letter, Jay Bloom  
24 approved it, right?

25 A I -- I guess. If there if -- is there a confirmation email, I don't

1 know.

2 Q Ran79.

3 A Okay.

4 Q Let's see if that refreshes your recollection?

5 A I see it there.

6 Q And there's a cc to Joe Gutierrez and Jason Maier and  
7 Danielle Barraza?

8 A I see that.

9 Q And there is no cc to Matthew Farkas, correct?

10 A I see that, correct. That's the way the document reads.

11 Q And, again, there is nothing leading up to this letter going  
12 out to Garman Turner Gordon, indicating you emailing Mr. Farkas to  
13 approve that letter?

14 A At this point -- I don't think there was at this point, but it was  
15 part of the discussion we had, or telephonic communications that took  
16 place.

17 Q And if we go to ran116, just to put a date stamp on it, that's  
18 when you sent the letter, January 14th, 2001 -- or 2021, to me, with the  
19 cc to Joe Gutierrez, Jason Maier, right?

20 A Let me pull up that. Hang on one second. Ran116, you said?

21 Q Yes.

22 A Yeah. That's my email to you, correct?

23 Q And if we go to ran118, second to the last paragraph, it  
24 indicates "Mr. Farkas has resolved the TGC Farkas v. First 100 matter. On  
25 behalf of TGC Farkas and a courtesy copy of the fully executed

1 settlement agreement is also enclosed herein." That settlement  
2 agreement was not enclosed, right?

3 Q Yeah. That -- that is correct. For whatever reason I did not  
4 include -- include it, and I think I testified at my deposition that I did not  
5 believe at the time that I had the settlement agreement. I think that was  
6 my testimony during my deposition. I have since learned, when I was  
7 producing these documents, that it was part of documents that were  
8 provided, and so the documents I provided shows that I did have the  
9 settlement and the release agreement prior to this.

10 I didn't include it, because at the time I sent this letter -- I  
11 don't know why I didn't include it, since I had it, and I apologize for that,  
12 but once we prepared these documents that's when I saw that I did have  
13 it. And why I didn't include it, I'm uncertain as to why I didn't include it.  
14 My apologies for not including it.

15 But then I think at the time where there were  
16 communications between yourself and myself, or your firm and myself, I  
17 believe at some time during those communications Mr. Maier -- Mr.  
18 Maier produced the document, and at that point I -- I figured it was a  
19 moot issue, since it was produced by Mr. Maier.

20 A It was produced by Mr. Maier.

21 Q Mr. Maier didn't produce it until he attached it to a motion to  
22 enforce settlement, correct?

23 A I don't know what it was, or how he produced it. I just  
24 remember that the document became part of an email, that I think we  
25 were all included on.

1 Q If we go to ran123. At the top of the page you have Jason  
2 Maier sending you and Jay Bloom an FYI with a cc to Joe Gutierrez, and  
3 that was forwarding the email from my office, indicating at the last line,  
4 "Mr. Nahabedian claims that your office and he negotiated a settlement.  
5 Please provide that immediately."

6 MS. TURNER: Can you put that --

7 BY MS. TURNER:

8 Q Do you see that?

9 A I do see that. I didn't -- and I've never made such a claim,  
10 whatsoever, that we negotiated anything; that is patently false. I never  
11 claimed that I was involved, that -- or negotiated a settlement,  
12 preparation of documents, nothing, nothing of the sort. And I was -- it  
13 had nothing to do with me, and so I don't know why that sentence reads  
14 that way.

15 Q Do you see why there is a request for the production of the  
16 settlement?

17 A Yeah. I see that there is a request in that letter, correct.

18 Q All right. And then the next page, ran126, that is the  
19 communication from my office to you, in response, your letter notifying  
20 of the settlement and providing the amendment to the operating  
21 agreement, correct?

22 A The -- 126 is an email from Mr. Irwin --

23 Q From my office, and if you look at the --

24 A -- or it could be a Miss. It's --

25 Q -- attachment --

1           A     It's a person by the name, of last name "Irwin." It could be a  
2 male or female, sorry about that. Then I have your letter, the  
3 attachment is the January 15 correspondence from you, correct.

4           Q     And that's where the amended operating agreement that  
5 removes Matthew Farkas, and is provided to your attention, correct?

6           A     That's -- that this letter is the letter I've been referring to  
7 throughout this testimony, where I said that you communicated with me,  
8 and that communication was the absolute first time, without any doubt,  
9 the first time I was ever made aware that Mr. Farkas did not have  
10 authority to act on behalf TGC Farkas Funding, LLC.

11                     And prior to this it was never expressed, otherwise, that he  
12 was the person, as the administrative member, and manager, and that  
13 when you provided this correspondence that's when things changed.

14           Q     And if we go to ran133, January 15th, 2021 email, from  
15 Dylan Ciciliano of my office; this is ran133.

16           A     Okay.

17           Q     All right. At the top of the page, January 15th, the same date  
18 that you received the letter from me, and you have an email to Jason  
19 Maier, you and a cc --

20           A     Yeah, yeah.

21           Q     -- to Danielle Barraza and Joseph Gutierrez, saying: "For the  
22 avoidance of doubt, there has been no substitution of counsel and there  
23 has been no settlement." Do you see that, that repudiation?

24           A     So hang on. What -- which page are you looking, 133?

25           Q     Yes, 133.

1           A     Okay. So there's -- this is from Dylan's -- this is from --

2           Q     Yes. .

3           A     -- Mr. Ciciliano, "for the avoidance of doubt, that's what their  
4 email reads, correct.

5           Q     Okay. And as of the date of that repudiation had you  
6 received any tender of a million dollars, or any portion of a million  
7 dollars to be paid by the settlement agreement?

8           A     Paid what?

9           Q     Did you receive any money from First 100, in performance of  
10 the settlement agreement, on behalf of TGC Farkas Funding?

11          A     I received no such matter, whatsoever, and no involvement; I  
12 -- I have no idea what you're talking about.

13          Q     You never received any proof of funds of -- that were to be  
14 paid under the settlement agreement?

15          A     I have not.

16          Q     Or any sale agreement showing that there was a sale of the  
17 judgment, that is the subject of the settlement agreement?

18          A     I have not. And at this point -- at this point here, and I will  
19 tell you that my representation and my subsequent communications  
20 were -- I -- I'm not -- no longer counsel, once I found out that the contents  
21 of your communication were accurate.

22          Q     All right. If we go to ran 0147. As I tell my husband, I'm  
23 always right.

24          A     All right. I'll just -- you can have that dinner with my wife.

25          Q     Ran147. That same date, January 15th, I email you. At the



1 top of the page it says: "Mr. Nahabedian, you said you had an executed  
2 settlement agreement in your possession, that needs to be provided  
3 ASAP, along with an explanation of how and when it came into your  
4 possession."

5           You never provided me a settlement agreement, or an  
6 explanation of how it came into your possession, did you?

7           A     I don't believe so. But if -- if I did it would be reflected in an  
8 email, and if I didn't, I did not, it would be contained in -- in the email  
9 exchange with you, that would have been provided by me.

10          Q     Right. If we go to ran18 --

11          A     I think at this point, I know that there's other  
12 communications, but at this point I think everything, again, called into  
13 question my ability to even act on behalf of the company, but I don't  
14 know why I didn't provide it to you, to be honest with you.

15          Q     All right. If we go to ran185. Ran185. All right. Here we  
16 have my office, Dylan from my office, on January 19th, four days later,  
17 saying: "Mr. Nahabedian, I wanted to follow-up on our demand for  
18 documents, please provide them immediately." And if you scroll up to  
19 ran184, we have your response of January 19th, 2021. And you say: "In  
20 terms of the settlement agreement that you requested it appears that  
21 Mr. Maier provided it to the Court, in his filing, that we all received this  
22 afternoon via email." And you explain that -- you were apologizing for it  
23 being left out of your January 14th letter; do you see that?

24          A     Right. I do.

25          Q     And you have no information to indicate that TGC Farkas

1 Funding had a copy of the settlement agreement prior to January 19th,  
2 2021, when it was attached to the motion to enforce settlement  
3 agreement?

4 A Oh, that's not my testimony, whatsoever. My -- I never said  
5 that -- so, are you -- that -- that was the first time I understood that you  
6 were receiving it, Ms. Turner or your office was receiving it. But that's --  
7 that's all I could attest to, is that that would have been the first time that  
8 you, Ms. Turner, or Mr. Ciciliano, or Max Irwin would have been  
9 receiving the settlement agreement.

10 Q You did not provide the settlement agreement to Matthew  
11 Farkas, correct?

12 A As I understood, that Mr. Farkas provided it to me, and I -- I  
13 was in possession of it through his direction.

14 Q When you say you received it from Mr. Farkas, you received  
15 the settlement agreement from Jay Bloom, correct?

16 A Correct. It was through, Mr. Bloom, and we went through  
17 that email earlier, there was an email that I received that contained  
18 Mr. Farkas' documents and that settlement agreement. And then  
19 thereafter, again, there was a global communication that included all the  
20 parties relating to the direction I was to pursue, given the fact that  
21 Mr. Bloom and Mr. Farkas had negotiated and entered into the  
22 settlement.

23 And at no time during that communication or conversation  
24 was there ever an expression, during the global calls, that Mr. Farkas  
25 was not in possession of it. To the contrary, that we were to move

1 forward, or I was to move forward, myself, on behalf of Mr. Farkas -- or  
2 TGC Farkas Funding, LLC, was to move forward with sending you the  
3 letter, such that a settlement with the Court could be provided. So --

4 Q It's your --

5 A What?

6 Q Let me unpack that. You did not provide the settlement  
7 agreement to Matthew Farkas, correct?

8 A No. As I understood, Mr. Farkas was providing it to me,  
9 along with his other documents that he signed.

10 Q And when you say that, to be clear, that was the email from  
11 Jay Bloom, to you?

12 A Yeah. Mr. Bloom and Mr. Farkas are -- are brother-in-laws,  
13 and the chain of communication was going that direction early on, and  
14 then -- then it went from the -- that type of intermediary to a global  
15 interaction that included multiple parties, including Mr. Bloom and his  
16 counsel. And then it went to communications solely and exclusively  
17 between myself and Mr. Farkas, wherein Mr. Farkas was continuing to  
18 act as the administrative member and manager of TGS Farkas Funding,  
19 LLC.

20 Q Did Jay Bloom disclose to you that Adam Flatto was required  
21 to consent to any action on behalf TGC Farkas Funding, according to the  
22 arbitrator's award?

23 A No one ever expressed that Mr. Flatto was to -- needed in  
24 any capacity, neither Mr. Bloom, nor Mr. Farkas. That was -- that  
25 communication never occurred.

1 MS. TURNER: All right. I'm going to pass the witness.

2 THE COURT: All right. Counsel, proceed.

3 MR. GUTIERREZ : Briefly, Your Honor. Just a few questions.

4 CROSS-EXAMINATION

5 BY MR. GUTIERREZ :

6 Q Mr. Nahabedian, can you hear me?

7 A Yes, I can.

8 Q Would you have agreed represent TGC Farkas Funding, if  
9 you knew that Matthew Farkas resigned as the administrative manager  
10 of the company, in September of 2020?

11 A I would never have represented Mr. Farkas as the  
12 administrative member and manager of TGC Farkas Funding, LLC. I  
13 would never have moved forward, whatsoever, had that information  
14 been disclosed to me; I would never have done this.

15 Q And, Mr. Nahabedian, when you settle a litigation do you  
16 routinely work with opposing counsel to prepare and finalize settlement  
17 documents, to dismiss the case?

18 A That is typical.

19 MR. GUTIERREZ : Okay. Thank you, Your Honor. I don't  
20 have any other questions.

21 Thank you, Mr. Nahabedian for you time.

22 THE COURT: Anything else, Ms. Turner?

23 MS. TURNER: No, Your Honor.

24 THE COURT: All right. The witness may stand down, so-to-  
25 speak.

1 THE WITNESS: Thank you so much, Your Honor. Thank you  
2 so much. So I can log off and be done with this, correct, or am I to  
3 standby?

4 THE COURT: That's --

5 MS. TURNER: You can log off.

6 THE WITNESS: Okay. I'm logging off. Thank you so much.

7 THE COURT: Very well. Thank you.

8 All right. Next?

9 MS. TURNER: Next is rebuttal testimony from Matthew  
10 Farkas. I just sent his counsel an email saying "ready." So we should  
11 see them getting on. Should we take a two-minute break, to give them  
12 an opportunity to hop on?

13 THE COURT: Well, let's discuss proceedings today. It's  
14 almost a quarter to 12:00. How much longer do you think this is going to  
15 take today?

16 MS. TURNER: I won't have more than 15 minutes, and that's  
17 stretching it, with Mr. Farkas.

18 THE COURT: Mr. Gutierrez?

19 MS. TURNER: A very brief rebuttal.

20 THE COURT: How about you, Mr. Gutierrez?

21 MR. GUTIERREZ : I may have a few questions for Mr. Farkas.  
22 I don't have any other witnesses. So I think we'd be ready for closing  
23 arguments.

24 THE COURT: Okay. What we'll do then, is we'll go ahead  
25 with Mr. Farkas, and then we'll recess for lunch. Okay?

1 MS. TURNER: Okay.

2 THE COURT: And we'll reconvene -- we'll designate the time  
3 for reconvening, after Mr. Farkas' testimony. Okay?

4 MS. TURNER: Good morning, Mr. Hogan, is Matthew Farkas  
5 joining us?

6 MR. HOGAN: I just let him know, he should be logging in  
7 here any moment. I'll give him a call just to follow-up.

8 MS. TURNER: He's on. We can't hear you, Mr. Farkas.

9 THE COURT: Hold on just a second. Will counsel accept an  
10 admonishment to the witness, or should he be re-sworn? Is there a  
11 stipulation that I could admonish him?

12 MS. TURNER: I stipulate.

13 MR. GUTIERREZ : I stipulate, Your Honor.

14 THE COURT: Okay. Mr. Farkas, you realize that you're still  
15 under oath?

16 MR. FARKAS: Yes, sir. I do.

17 MATTHEW FARKAS, PLAINTIFF'S WITNESS, PREVIOUSLY SWORN

18 THE COURT: Okay. Very well, you may proceed, Ms. Turner.

19 DIRECT EXAMINATION

20 BY MS. TURNER:

21 Q Mr. Farkas --

22 A Can everyone hear me?

23 Q Yes.

24 A Okay.

25 Q Mr. Farkas, Mr. Nahabedian just finished testifying that as a

1 result of his communications with you, in conjunction with others, Jay  
2 Bloom, or Maier Gutierrez, he understood that you had authority to bind  
3 TGC Farkas Funding; is that accurate?

4 A He didn't get that information from me; so the answer is, no.

5 Q Did you ever represent, directly or indirectly, that you had  
6 authority to bind TGC Farkas Funding, in your communication that  
7 involved Raffi Nahabedian, Jay Bloom and/or the attorneys for Maier  
8 Gutierrez?

9 A No.

10 Q Mr. Farkas, did you have the settlement agreement that had  
11 been executed by you, prior to it being provided by my office?

12 A I -- I don't think I understand the question. I'm sorry.

13 Q The first time that you received the settlement agreement,  
14 understanding you had executed it before, but that you understood it  
15 was a settlement agreement, was that after my office provided it to you?

16 A I -- I don't remember your office providing me anything. I --  
17 the only settlement agreement I got was through the -- that day at the  
18 UPS Store with Mr. Bloom.

19 Q You understood that you were signing a settlement  
20 agreement, at that time?

21 A No, I did not. Again, when I -- when I -- and I've testified to  
22 this before. I signed a whole bunch of documents at the UPS Store that  
23 day, and all of them I signed under the assumption that I was retaining  
24 Mr. Nahabedian to be my personal attorney. That was the only reason I  
25 was there, and that was the -- those were the only papers that I thought I

1 was signing, but, again -- them first, that that is what -- that was my  
2 understanding, and that's what Mr. Bloom had told me.

3 Q The first time that you understood that you signed a  
4 settlement agreement that was being asserted against TGC Farkas  
5 Funding, that was after the motion to enforce settlement agreement,  
6 correct? Is that a, yes?

7 A Sorry. I'm sorry, I'm trying to speak as loud as I can.

8 Q It just goes out. Can you repeat the answer?

9 A The answer is, yes.

10 Q Okay. Now, Mr. Farkas, Jay Bloom testified that, and I want  
11 to make sure I get his testimony correct: "Matthew Farkas should  
12 provide records to Matthew Farkas, because you have possession of  
13 documents, the books and records of the First 100 entities, and should  
14 provide those to TGC Farkas Funding"?

15 A That's -- complete lie. It is such a lie that it is offensive to me.  
16 I never had access to those books and records. I do not have them in  
17 my home, nor have I ever, and that is such an offensive lie, I don't know  
18 what to say. And by the way, if that were really the case, this action  
19 started four years ago, it is now just coming up, that I have the books  
20 and records; I find that very, very strange.

21 And if I had records, why didn't Mr. Bloom, or anyone else  
22 from First 100, for that matter, send me an email asking for those books  
23 and records? I -- I have never had them, and I am offended by what -- by  
24 that -- by that statement.

25 Q Mr. Farkas, Mr. Bloom also testified that you provided a false



1 declaration to the arbitrators, in August of 2020, and if we go to Exhibit F,  
2 Exhibit F. I'll have my paralegal put it up on the screen, for your ease.

3 A Thank you.

4 Q Can you --

5 A Yes. I've -- document before.

6 Q Is there anything in that declaration that is untrue?

7 A No.

8 Q Did you voluntarily sign the declaration after reviewing it and  
9 confirming for yourself that the allegations are true?

10 A Yes.

11 Q And if we go to FF, FF, which is the declaration of Matthew  
12 Farkas, provided in January of 2021. Just to be very clear you reviewed  
13 every single sentence of this declaration, before signing it, correct?

14 A Yes, I did.

15 Q And when you went through and reviewed the sentences, or  
16 the allegations, they were all true and correct?

17 A Yes.

18 Q And when Dylan Ciciliano, of my office, went to your house  
19 on a weekend, to receive your signature, was there anything about that,  
20 that made you uncomfortable, or made you feel like you were under  
21 duress?

22 A No. In fact, I would argue that a good part of having  
23 Mr. Ciciliano standing there, was that if I had any questions he was there  
24 to explain them to me. Not to guide me, not to, you know, tell me that I  
25 should answer one way or the other, or even sign this, it was simply he

1 was there. If I had a question I could answer, but I was not under any --  
2 nobody forced me to do anything.

3 Q And finally, Mr. Farkas --

4 A That was within the presence of my wife.

5 Q Mr. Farkas, with respect to Raffi Nahabedian, did you  
6 authorize Jay Bloom to be your conduit, and communicate on your  
7 behalf, with Mr. Nahabedian, as counsel for TGC Farkas Funding, LLC?

8 A No. The only -- the only conversation -- in fact -- in fact,  
9 Mr. Bloom didn't even tell me he was going to go to Raffi, he just --  
10 Raffi's name came up. He said -- and again, this is when I went to the  
11 UPS Store, he said, "Matthew, I found you a lawyer." I didn't ask him to  
12 find me a lawyer at that point. He said, "I know you" -- he said -- he said,  
13 "I have found a lawyer to represent you," Matthew Farkas, as an  
14 individual in this proceeding, not as the new -- for TGC Farkas.

15 Q If we go to Exhibit 14, a release hold harmless and  
16 indemnification agreement?

17 A Uh-huh.

18 Q Did Jay Bloom explain to you, before you executed this  
19 release, hold harmless and indemnification agreement, that they include  
20 your release on behalf of you and any affiliated entity releasing First 100,  
21 First 100 Holdings, and any of its officers, directors or managers?

22 A Mr. Bloom explained nothing.

23 Q And --

24 A -- sent me documents. Again, he sent me documents that I  
25 signed, that I did not read first. I trusted him as my brother-in-law,

1 anything I thought I was signing that day. And I take -- I told -- I said this  
2 in my last deposition, I take responsibility for that, but I was absolutely  
3 misled, as well.

4 Q If we go to Plaintiff 115 of the same Exhibit 14, there's no  
5 signature on behalf of Jay Bloom on this release. There's no signature  
6 on behalf of First 100 Holdings, or First 100, only your signature. Since  
7 you testimony last week, have you received additional threats against  
8 you, on behalf of First 100 Holdings and First 100?

9 A Additional? No, nothing new. I -- I've made it clear that --  
10 that the threats that I have been getting from Mr. Bloom over the last  
11 couple of months have been, as I mentioned last week, that he was  
12 going to have, you know, all the shareholders of First 100 sue me for --  
13 the responsibility, which I did not have.

14 Q Did your parents contact you since last week, to indicate that  
15 Mr. Bloom is preparing a lawsuit?

16 A Last --

17 MR. GUTIERREZ : Objection. Your Honor, that's hearsay.

18 THE COURT: If the question is whether they contacted him,  
19 I'll allow that; that's a yes, or no?

20 THE WITNESS: Yes. It would be not this week, but last  
21 week.

22 BY MS. TURNER:

23 Q After you testified and it was said that you were going to  
24 come back and rebut, or provide rebuttal testimony?

25 A Yes.

1 Q Sir?

2 A Yes. Yes. Now --

3 Q All right.

4 MS. TURNER: I'll pass the --

5 THE WITNESS: -- my parents, that is not coming directly  
6 from Mr. Bloom.

7 MR. GUTIERREZ : Just briefly, Your Honor. I've got a few  
8 questions.

9 CROSS-EXAMINATION

10 BY MR. GUTIERREZ :

11 Q Mr. Farkas, can you hear me?

12 A I can.

13 Q You just testified that Mr. Bloom explained nothing to you,  
14 when you were signing the settlement agreement; is that what you said?

15 A Mr. Bloom and I did not discuss a settlement agreement. We  
16 did not discuss it, and as I said last week, both parties were represented  
17 by counsel, and if First 100 wanted to execute a settlement agreement  
18 with TGC Farkas, that would have been up to you and Ms. Turner, not  
19 Jay and I. I didn't have the ability to negotiate a settlement agreement.

20 Q But you never told that to Mr. Bloom, correct?

21 A I never -- I did not tell Mr. Bloom that I could do anything on  
22 behalf of TGC Farkas.

23 Q Did you ever tell anyone that you were forced to sign the  
24 declaration in Exhibit F, or you would be sued by Adam Flatto?

25 A Again, what happened was, last August, Mr. Bloom asked me

1 to send him a document, which I should not have sent him, okay. And  
2 he gave it to the arbitrator, which he did not tell me that he was going to  
3 do. I thought it was just under, let me take a look at it, to make sure you  
4 don't make a mistake, but instead he sent it to the arbitrator without  
5 telling me.

6 Then Ms. Turner and her firm amended what I signed, so that  
7 I wouldn't be making a mistake, and Mr. Busch, who is the in-house  
8 attorney for the Georgetown company, which is Adam's company, said,  
9 because I had sent a privileged document they could sue me, but  
10 because I don't have anything they're not going to sue me, and they  
11 never brought it up again.

12 But they did say, that because of what I did, and I shouldn't  
13 have sent that document, but again I trusted Jay, that they could have  
14 sued me for that, but they were not going to.

15 Q I understand. But did you ever tell anyone that you were  
16 forced to sign the declaration in Exhibit F, or you would be sued by  
17 Adam; that's a yes or no question?

18 A No. I wasn't forced to -- to do it.

19 Q Okay.

20 A Anything --

21 Q You're telling me --

22 A Anything I've done, Mr. Gutierrez, in reference to this action,  
23 was to help my partner.

24 Q I understand that. But did you ever tell anyone that you were  
25 -- you had to sign the declaration, or you would be sued by Adam

1 Flatto --

2 A What -- what happened was, again, Mr. Busch told me that  
3 because I had sent that document to Jay, which I shouldn't have sent to  
4 him, that they could have sued me, that they could have sued me, but  
5 they weren't going to, because they knew it didn't make any sense to sue  
6 me. But they could have, because I shouldn't have sent that document  
7 to Jay. It was a privileged document, and I thought I was sending it to  
8 him, for him -- you know, he said, "Let me just take a look at it," and then  
9 he gave it to the arbitrator.

10 Q Mr. Farkas, did you ever tell anyone that you signed a  
11 declaration in January of '21, which is Exhibit Double F, or you would be  
12 sued by Adam Flatto?

13 A I don't remember saying that to anybody, no.

14 Q Okay. Now when you signed the declaration, Exhibit Double  
15 F, that was only a few days after the recorded phone call between you  
16 and Dylan Ciciliano, at Garman Turner Gordon; isn't that true?

17 A Yes. It was around that time. That's right, yes.

18 Q And during the phone call, we've gone through -- already  
19 through that during your prior examination, you were told by  
20 Mr. Ciciliano that if you signed -- by signing that settlement agreement  
21 you were going to extinguish Adam Flatto's million dollar investment;  
22 isn't that true?

23 A That's what I was told, yes.

24 Q You later found out that was a lie, correct?

25 MS. TURNER: Objection. Misstates prior testimony,

1 argumentative.

2 THE COURT: Overruled.

3 THE WITNESS: I'm sorry, Mr. Gutierrez, could you please  
4 repeat that? I apologize.

5 BY MR. GUTIERREZ :

6 Q Sir, you later found out that statement of Mr. Ciciliano about  
7 extinguishing Adam Flatto's million dollar investment was not true,  
8 correct?

9 A Right, yes.

10 Q And you also testified that that false statement by Garman  
11 Turner Gordon made you angry at Jay Bloom; isn't that true?

12 A Yes.

13 Q And that false statement was never corrected before you  
14 signed a January 23rd, 2021 declaration; isn't that true?

15 MS. TURNER: Objection. The document doesn't contain  
16 that; it misstates the document.

17 THE COURT: Overruled.

18 THE WITNESS: Okay. Joe, could you -- I'm sorry,  
19 Mr. Gutierrez, could you just ask me that again, please? I apologize.

20 BY MR. GUTIERREZ :

21 Q Sure, yeah. You signed the declaration on January 23rd,  
22 2021, when Mr. Ciciliano came to your house; isn't that true --

23 A That's true.

24 Q Okay. And prior to you signing that declaration Mr. Ciciliano,  
25 or nobody at Garman Turner Gordon ever corrected the misstatement

1 about you extinguishing Mr. Flatto's million dollar investment; isn't that  
2 true?

3 A I believe that's true, yes.

4 Q Thank you, Mr. Farkas, for your time.

5 THE COURT: Redirect?

6 MR. GUTIERREZ : No further questions.

7 REDIRECT EXAMINATION

8 BY MS. TURNER:

9 Q Mr. Farkas, because I know that we had previously gone  
10 through this, but I feel like I have to address it again, because of the  
11 testimony you just provided. Whether or not the million dollar  
12 investment that was exchanged for a membership interest, that gave a  
13 right to books and records, there's no question the right to books and  
14 records is extinguished by the -- by the settlement agreement, correct?

15 A I believe so.

16 Q And do you recall in the arbitration that First 100 and First  
17 100 Holdings was actually disputing that TGC Farkas still even had a  
18 membership interest, because you executed a redemption agreement?

19 A Right. That was from 2017.

20 Q And that the arbitrators addressed that argument, and said  
21 that TGC Farkas Holding in fact had a membership interest; do you recall  
22 that?

23 A I believe so, yes.

24 Q And the settlement agreement would wipe out the judgment  
25 and the underlying arbitration award; you understand that, right?



1           A     I don't understand that. No, I'm sorry.

2           Q     Okay.

3           MS. TURNER: I'll pass the witness, Your Honor.

4           THE COURT: Recross?

5           MR. GUTIERREZ : No further questions, Your Honor.

6           THE COURT: Okay.

7           THE WITNESS: What blew me -- may I say one thing? I --  
8 when I --

9           THE COURT: Counsel? Hold on just a second. Counsel, is  
10 he -- can he say one thing?

11          MS. TURNER: Please say one thing, Your Honor.

12          THE WITNESS: -- what happened after that phone call, the  
13 declaration I made, that I signed with Mr. Ciciliano, was 100 percent  
14 accurate. It was 100 percent accurate, and it had nothing to do with that  
15 phone call with Mr. Ciciliano.

16               Now I believe that Mr. Flatto is entitled to see these  
17 documents. This has been going on for four years. I understand that  
18 there were documents that I should not have signed, that I signed by  
19 mistake, but that I absolutely was misled. And I want to make it clear  
20 that -- that regardless of what Mr. Gutierrez just asked me, I knew exactly  
21 what I was signing when Dylan was here, and I believe that I did and said  
22 what was accurate.

23               And that's all I have to say.

24          THE COURT: Any follow-up questions based on what was  
25 just stated?

1 MS. TURNER: No, Your Honor.  
2 MR. GUTIERREZ : No, Your Honor.  
3 THE COURT: All right. Thank you. The witness will stand  
4 down.  
5 THE WITNESS: Can I hang up?  
6 MS. TURNER: Yes.  
7 THE COURT: Yes, okay.  
8 My understanding, from what's been stated earlier, is that  
9 that concludes the testimony, correct?  
10 MS. TURNER: Yes, Your Honor, from the Plaintiffs'  
11 standpoint.  
12 THE COURT: Mr. Gutierrez, is that the case with you, as  
13 well?  
14 MR. GUTIERREZ : Yes, Your Honor. We don't have any  
15 further witnesses --  
16 THE COURT: Okay.  
17 MR. GUTIERREZ : -- and I think all the --  
18 THE COURT: Okay. So what we'll do is, go into argument,  
19 but I think we should go ahead and recess for lunch, give counsel an  
20 opportunity to prepare for argument. Do you want to reconvene at 1:30,  
21 or at 1:15, or --  
22 MS. TURNER: At your pleasure, Your Honor.  
23 MR. GUTIERREZ : One o'clock will be fine.  
24 THE COURT: I beg your pardon.  
25 MR. GUTIERREZ : Whatever works for the Court.

1 MS. TURNER: Yeah.

2 THE COURT: Okay. Let's reconvene at 1:30, okay? And offer  
3 argument, and proceed accordingly, okay.

4 MS. TURNER: Thank you, Your Honor.

5 MR. GUTIERREZ : Thank you.

6 THE COURT: See you at 1:30. Thank you.

7 [Recess at 12:03 p.m., recommencing at 1:30 p.m.]

8 THE COURT: Good afternoon. This is the time for  
9 resumption of evidentiary hearing in TGC/Farkas Funding, LLC v. First  
10 100, LLC, et al.

11 I believe I see counsel are present. Are we waiting for  
12 anybody else before we proceed?

13 MS. TURNER: Your Honor --

14 MR. GUTIERREZ: I don't --

15 MS. TURNER: -- not from my end.

16 MR. GUTIERREZ: Not from my end either, Judge.

17 THE COURT: All right. Very well. We'll proceed with  
18 closing.

19 MR. GUTIERREZ: Thank you, Your Honor.

20 Joseph Gutierrez on behalf of First 100, LLC and First 100  
21 Holdings, LLC.

22 Your Honor, I said in the opening that Plaintiff's opposition to  
23 Defendant's motion to enforce the settlement agreement was really a  
24 dispute between the members of TGC/Farkas, and that's exactly what the  
25 evidence revealed in this hearing. You know, the first question that

1 came to mind was how could First 100 be expected to know who was in  
2 charge of TGC/Farkas if the TGC/Farkas members cannot agree on it.  
3 You know, why would First 100 be expected to know Adam Flatto  
4 needed approval over a provision when you have two key documents.  
5 You have one Adam Flatto's August 13th, 2020 declaration, Exhibit E,  
6 submitted in arbitration. It clearly states Matthew Farkas is the  
7 administrative manager at TGC/Farkas. And if you go to the operating  
8 agreement, the administrative manager is defined and says they have  
9 the ability to bind the company. Section 4.4 of that TCG operating  
10 agreement states that third-parties can rely conclusively upon the power  
11 and authority of the administrative manager for decision. As of August  
12 of 2020, Your Honor, it's undisputed that was Matthew Farkas.

13           It's all undisputed from this hearing, Your Honor, that by  
14 September 17th of 2020 when Matthew Farkas was removed as the  
15 administrative manager of TGC/Farkas, that nobody informed First 100. I  
16 think the evidence of that is abundantly clear. Mr. Flatto, Mr. Farkas, Mr.  
17 Bloom all testified that First 100 was not made aware of that change.  
18 There was an amendment sign that First 100 was never given prior to the  
19 settlement agreement in January being signed, and in fact, Mr. Farkas  
20 was not even aware he signed that amendment.

21           So at the time of the settlement agreement, First 100 was  
22 entitled to rely on the representation from TGC/Farkas that were made in  
23 the arbitration about Mr. Farkas having the authority to bind TGC/Farkas.  
24 First 100 certainly is not, for Matthew Farkas, failing to read a two-page  
25 settlement agreement before signing it, and we'll get into that a little bit,

1 Your Honor, but Matthew Farkas was sent four documents that were no  
2 more than a total of six pages. The settlement agreement in this, Your  
3 Honor, is a two-page document. The third page is a signature line. And  
4 there's no reason for Mr. Farkas to be excused for allegedly not reading  
5 a settlement document. The case law, Your Honor, on parole evidence is  
6 clear. The parole evidence precludes Mr. Farkas or TGC/Farkas from  
7 claiming that he was not signing on behalf of TGC/Farkas, because all  
8 prior negotiations merged with the contract. Parole evidence was not  
9 admissible to vary the terms.

10 The *Tallman* [phonetic] case, which is 66 Nev 248, when a  
11 plaintiff pleads that a relief does not express the intentions of a party, he  
12 would have to plead something which the law would not permit him to  
13 approve. And that's what we have here. We have material terms and  
14 settlement agreement. There's no claim of fraud. There's no claim that  
15 Matthew Farkas didn't sign it. That's abundantly clear. There's no claim  
16 that he was just given a signature page.

17 He was given all the documents, and he was standing in the  
18 UPS store with ample time to go through each one of them. He even  
19 testified that it was his fault. He could've called Adam Flatto when he  
20 was standing at that UPS store and talked to them about it. He should've  
21 read the documents. We didn't say he couldn't make edits to the  
22 documents. Nobody was sitting there holding a gun to his head, and he  
23 signed the documents and returned them.

24 With respect to Mr. Farkas blaming Mr. Bloom for Mr. Farkas  
25 not reading the settlement agreement, Nevada Law clear list issue that --

1 and that's part of his duty to read the settlement agreement before  
2 signing it. There's the *Yee v. White* [phonetic] case, which is cite 110  
3 Nev 657. In that case, it involves a commercial lease. The Nevada  
4 Supreme Court cited to the restatement of contract and held that if the  
5 recipient shall discover the falsity by making a cursory examination, his  
6 reliance is clearly not justified and he is not entitled to believe. He is  
7 expected to use his senses and not rely blindly on the maker's  
8 assertion.

9           And Your Honor, here we have a two-page settlement  
10 agreement clear on its face. Signature line that clearly states Matthew  
11 Farks as signed on behalf of TGC/Farkas. Any cursory examination  
12 would be enough to know what was being signed. And Mr. Farkas had  
13 an absolute duty to read and understand the terms of that settlement  
14 agreement in which failure to do so does not diminish the force of that  
15 agreement, Your Honor. Your Honor, it's not the Court's role to protect  
16 parties from their own agreements.

17           Mr. Farkas -- there's no issue about his capacity. He's  
18 competent. He testified he has an MBA from NYU from over 30 years  
19 ago. He has over 30 years of business experience, including running a  
20 hedge fund in New York. He was the vice president of finance for First  
21 100. He's no stranger to documents. This is not a complicated  
22 document. And it is not an excuse if they didn't read it, simply to avoid  
23 any consequences from him signing that.

24           This next claim, Your Honor, was about duress, but the  
25 evidence, Your Honor, has shown that there was no duress to Mr. Farkas

1 for signing this agreement. There was no threat of violence by Jay  
2 Bloom, there was no misrepresentation of fraud. I think Mr. Farkas is  
3 going to testify today that Mr. Bloom explained nothing about the  
4 agreement. If he didn't explain anything, how could there be any fraud?  
5 How could there be any duress? So if there was any duress, Your Honor,  
6 I think the evidence showed that it came from Mr. Flatto, through his  
7 attorney, Michael Busch, who did threaten claims against Mr. Farkas  
8 prior to him signing certain documents, but there certainly was no  
9 duress involved. It was Mr. Farkas signing the settlement agreement at  
10 issue.

11           Again, Mr. Farkas' claim of not reading the contract is not  
12 done by any court, Your Honor. California law holds very similar to  
13 Nevada, I think. When a party to an agreement deal at arm's length does  
14 it is not reasonable fail to read a contract before signing it. That's exactly  
15 what we've dealt with here, Your Honor, with this hearing.

16           So Your Honor, we're requesting that the motions for  
17 settlement agreement be granted. The issue really has been coming  
18 down to authority, apparent authority. The two step test Your Honor, is  
19 whether First 100 subjectively believed that the agent -- in this case, Mr.  
20 Farkas -- had the authority to act for the company, and whether that  
21 belief was objectively reasonable.

22           Your Honor, you hear from Mr. Bloom directly and Mr.  
23 Farkas. Mr. Farkas and Mr. Bloom are brother-in-law's. They speak  
24 regularly. Mr. Farkas was the VP of finance at First 100. The testimony  
25 has come out that Mr. Farkas would clearly -- talk to Mr. Bloom about

1 issues regarding TGC/Farkas.

2           The TGC/Farkas operating agreement, hear talks about  
3 reliance of that third-party. Mr. Farkas signed almost every single  
4 document on behalf of TGC/Farkas, including the First 100 operating  
5 agreement, the subscription agreement, and he had regular  
6 communications through email, Your Honor, with Mr. Flatto where he  
7 would send First 100 documents to Mr. Flatto directly, and those were in  
8 Exhibit Y and Z.

9           The other issue is when you look at that First 100  
10 subscription agreement, which is Exhibit A, page 0015. It requires that  
11 notices of changes on member status remain in writing, sent via certified  
12 mail to First 100. The Defendant stated that was not done. If anything,  
13 they should've sent the amendment to the first one -- to the TGC/Farkas  
14 operating agreement after it was signed in September of 2020 to First  
15 100. We wouldn't be here. That was never done. Undisputed. That was  
16 never done.

17           When we have -- when we're talking about First 100's  
18 reliance on the terms and whether it was objectively reasonable in the  
19 settlement, and the settlement really accomplished one thing. It ended  
20 litigation, number one; and two, it ensured Mr. Flatto got his investment  
21 back. What First 100 knows is Mr. Flatto got an email, Your Honor, that's  
22 dated January 23rd, 2017 -- it's Exhibit C -- at First 0018, where Mr. Flatto  
23 is emailing Mr. Farkas -- not Jay Bloom, but Mr. Farkas -- saying he  
24 wants his million dollar investment back and wants no part of the  
25 collection efforts against Raymond Ngan. He said, "We simply want our



1 investment returned. Discuss with Jay how you will return our  
2 investment and take us out of this. The time has come to an end."  
3 Matthew forwards that email to Jay Bloom and says, enclosed is the  
4 email where Adam is willing to [indiscernible].

5           And it's interesting. Mr. Flatto says in that email, I want you  
6 to discuss with Jay Bloom how that's going to be -- how my investments  
7 got returned. Not him. He wants Mr. Farkas to discuss with Jay, his  
8 brother-in-law, how his investment is going to be returned, and we  
9 talked about Mr. Flatto and asked him, were there any other  
10 communications between you and Mr. Farkas and Mr. Bloom where you  
11 recanted that? He said no, there wasn't.

12           So First 100's belief going into this settlement agreement  
13 was very simple. You want a litigation, and that's what Mr. Farkas  
14 wanted, as well. And we also want to ensure Mr. Flatto gets his money  
15 back, plus six percent interest, which Jay Bloom said was based on  
16 communication he had. And the settlement accomplished that, Your  
17 Honor.

18           Mr. Flatto and Mr. Farkas are both educated and experienced  
19 businessmen, Your Honor. There's no excuse for any person that's  
20 claiming they didn't read a document or it was too complicated. It's just  
21 really an internal dispute between TGC/Farkas. First 100 has close to 50  
22 members. They couldn't be expected to make sure and double check  
23 every time a member made a representation on behalf of a company  
24 that all of the other members were in agreement. It's not practical.  
25 That's why First 100 in the subscription agreement said, if you have a

1 change, notify us in writing. Never done.

2           So Your Honor, the order to show cause is moot if the  
3 settlement agreement is enforced. I think if we get to the second issue,  
4 which is the order to show cause, if this motion to enforce the settlement  
5 agreement is denied, the Court has to look at whether First 100 and Jay  
6 Bloom should be held in contempt for not producing the First 100  
7 company documents for TGC/Farkas.

8           Your Honor, with Mr. Bloom, in his personal capacity, he was  
9 never a party to any order in the case to produce the documents.  
10 There's no alter ego claim. There's no fact even alleged. SJC Venture is  
11 the manager of First 100. They weren't even part of the arbitration order.  
12 Any contempt or any order regarding Jay Bloom in his individual  
13 capacity should be dismissed.

14           With First 100, Your Honor, the testimony has been pretty  
15 clear that First 100 -- and it's been consistent. First 100 didn't have the  
16 money to gather records. They hadn't been operational in over four  
17 years. There's no willful non-compliance of the court order. The minute  
18 Mr. Bloom -- when the arbitration order was entered, although he  
19 disagreed with it, he submitted a declaration October 15th, 2020, which  
20 is Exhibit G, as in George, that First 100 didn't have the money to pay for  
21 it. There's no employees.

22           The records would need to be recreated, and the cost  
23 associated with the production would have to be paid. The First 100  
24 operating agreement provides that members, if they request it, need to  
25 be the ones fronting that cost, and First 100 has been consistent that if

1 TGC/Farkas is going to pay for the costs associated with the collection  
2 and organizing of these documents, that they can have these documents.  
3 Exhibit V as in Victor is a letter from my firm to Ms. Turner that states  
4 clearly that encloses Mr. Michael Hendrickson's estimate and what it  
5 would cost to gather the documents, which is a few thousands dollars  
6 for documents that the documents prior to 2015. It also states that if you  
7 want us to recreate documents after 2016, here's what it's going to cost  
8 because we're actually recreating documents and that costs money, and  
9 that was First 100's position. And it was clear that the Plaintiff didn't  
10 want to accept that request.

11 Your Honor, you also heard today -- I guess you're hearing  
12 from Mr. Farkas, Mr. Flatto, and Mr. Bloom -- from Mr. Raffi Nahabedian,  
13 who was clear in his role as the attorney for TGC/Farkas. It's very  
14 limited. It was expressly to dismiss the case. He said he routinely works  
15 with other attorneys to dismiss cases when it comes to finalizing  
16 settlement documents, and his words were, I was upset and disturbed  
17 the minute he found out there was this amendment to the operating  
18 agreement that Mr. Farkas may have not had the authority that was  
19 represented. And Mr. Nahabedian withdrew his counsel immediately.

20 He contacted State Bar to get advice on the scope of  
21 attorney/client privilege, and he's protected that privilege from here on  
22 out. He said he would've never accepted the representation of  
23 TGC/Farkas if he knew that Mr. Farkas had signed an amendment in the  
24 TGC operating agreement that removed him as the administrative  
25 manager of the company. So his testimony actually was very helpful to

1 show that there was no evidence whatsoever that Mr. Farkas had signed  
2 this amendment to the TGC/Farkas operating agreement.

3 Your Honor, this is a case, Your Honor, you're dealing with  
4 family members. You're dealing with Mr. Bloom and Mr. Farkas who  
5 have worked together at First 100 for over seven years. They're very --  
6 their ability to settle this case without lawyers -- that's exactly what  
7 should happen in cases like this. Mr. Bloom talked about his experience  
8 in resolving defense litigation, which is handling the person on the other  
9 side. Sometimes it's the fastest and most efficient way to get these  
10 cases resolved.

11 Since 2013, Farkas was the point of contact between the  
12 company and First 100. He was also the VP of finance, and Your Honor,  
13 there's nothing in the settlement agreement that is unclear. The terms  
14 are valid, binding, and Mr. Farkas clearly signed on behalf of the  
15 company.

16 Your Honor, with this subjective belief, we've gone through  
17 this as length. First 100 has had this subjective belief that Matthew  
18 Farkas had the ability to bind the company and he did so.

19 So Your Honor, the relief that we're requesting today is that  
20 you grant the Defendant's motion to enforce the settlement agreement.  
21 This would render the order to show cause is moot and the case would  
22 be dismissed. That you deny all of Plaintiff's requests for sanctions, that  
23 you grant First 100's reasonable attorney's fees and costs associated  
24 with having to defend this action. There was really no reason this action  
25 should have been brought and continued the way it was.

1                   And Your Honor, if the Court will deny a motion for a  
2 settlement, we ask that you deny the order to show cause, that we  
3 believe Mr. Bloom does not have any standing to be in the case on  
4 ownership cause, and that First 100 has shown cause why it does not  
5 have the ability to produce the documents that have been requested.

6                   And Your Honor, if you have any questions, I would be more  
7 than happy to answer any, but thank you for your time and  
8 accommodating us for this year.

9                   THE COURT: All right. Thank you.

10                  Ms. Turner?

11                  MS. TURNER: Yes.

12                  So let's start with the order to show cause. It was entered  
13 December 18th, 2020, on the issue of whether Defendants and Jay  
14 Bloom are in contempt of court. And the facts outlined in that order to  
15 show cause application have not changed. They're immutable. There  
16 was a failure to comply with the Court's order, confirming the arbitration  
17 award, denying the counter-motion to modify and judgment, entered  
18 November 17th, 2020.

19                  It's been almost five months and, you know, generally, the  
20 scope of a contempt hearing is whether or not there have been  
21 reasonable steps taken, whether or not there has been substantial  
22 compliance, and here, we don't have those questions. There's been  
23 nothing. Not one piece of paper, not one record has been produced.  
24 There has been an absolute stonewall.

25                  Now, NRS 22.0103 defines contempt relevant here as

1 disobedience or resistance of a court order, rule, or process issued by  
2 the Court. That's what we have here. That's what we had in December  
3 2020 and that's what we have now.

4 Now, in response to the order to show cause, there is a  
5 settlement agreement and a motion to enforce settlement agreement,  
6 and the timing is conspicuous indeed. This was not a settlement  
7 agreement that was negotiated over time. It was executed while there  
8 were pending contempt proceedings and executed without any back and  
9 forth redlines, without any back and forth drafts. These were executed --  
10 or this settlement agreement was executed January 7th, 2021 at a UPS  
11 store following Jay Bloom sending the document and it being  
12 accompanied by a form of release, and attorney/client retention  
13 agreement for Raffi Nahabedian, and a letter purportedly terminating my  
14 firm, Garman Turner Gordon, so that Mr. Nahabedian could dismiss this  
15 lawsuit and dismiss the contempt proceedings before the consequences  
16 of the contempt could ever come to bear.

17 We saw the email communication from Jay Bloom to Raffi  
18 Nahabedian, as well as Joseph Gutierrez, opposing counsel, and the  
19 opposing party's principal, telling counsel, Raffi Nahabedian, purportedly  
20 acting on behalf of TGC/Farkas, purportedly acting in its best interest and  
21 saying, we need to have this dismissal ASAP, we need this finalized  
22 ASAP. What is the rush? Mr. Nahabedian didn't ask. He didn't care. He  
23 was coming in just to dismiss the case. There is no impedance for  
24 getting this dismissed other than to avoid the consequences of the  
25 contempt.

1                   Now, the primary argument for avoiding the contempt  
2 consequences is that the settlement agreement rendered the contempt  
3 move. The settlement agreement, if enforced, will result in dismissal of  
4 the case with prejudice, with prejudice. That includes the judgment, the  
5 underlying arbitration award, and any and all relating motions and  
6 actions pending in the district court.

7                   Now, there are not less than 10 reasons why the settlement  
8 agreement cannot and should not be enforced. We have Exhibits 28  
9 through 30 that were unknown to the Court and unknown to TGC/Farkas  
10 until the motion to compel was granted. And the motion to compel --  
11 thank goodness that we were able to get a hearing prior to these  
12 proceedings, because without that evidence that was being produced, it  
13 was being withheld and it was produced last Tuesday, the day before the  
14 evidentiary hearing, corroborates Mr. Farkas and his explanation of the  
15 events that transpired.

16                  Number 1, Mr. Farkas did not have actual authority to enter  
17 into the settlement agreement with Defendants on January 7th, 2021.  
18 This is a point that's really undisputed. Exhibit 23 has the amendment to  
19 the TGC/Farkas, LLC operating agreement, executed by Mr. Farkas on  
20 September 17th, 2021, and it unambiguously provides for the removal of  
21 Matthew Farkas from any management role and TGC 100 Investor, LLC,  
22 managed by Adam Flatto, has the sole managerial control over  
23 TGC/Farkas Funding. It's undisputed that that amendment was executed  
24 in September of 2020. Sorry -- I think I said 2021, but it's 2020. And that  
25 Matthew Farkas voluntarily agreed to give up his management.

1                   So the question then turns to what the other side is arguing,  
2 whether or not Mr. Farkas had apparent authority to enter into the  
3 settlement agreement, and that is point number 2. Mr. Farkas did not  
4 have apparent authority when we look at applicable Nevada law.

5                   In Simmons Self Storage v. Rib Roof [phonetic], 130 Nev 540,  
6 there must be evidence of the principles, knowledge, and acquiescence  
7 to the agent holding himself out as having authority to bind the principle.  
8 And we do not have that here. We have Exhibit E, which is Adam  
9 Flatto's declaration submitted in the arbitration in August 2020, and in  
10 that declaration at paragraph five, Mr. Flatto says that Matthew Farkas  
11 does not have the authority to bind TGC/Farkas without the consent of  
12 the other members.

13                  Prior to that, we have Exhibit 22, an April 2017 email attached  
14 to a July 2017 letter to Maier Gutierrez, an associate's counsel at the time  
15 that the correspondence was sent, and we actually showed the secretary  
16 of state records indicating that Maier Gutierrez was the registered agent  
17 for much of the relevant time period.

18                  In the email, there's no question that First 100 receives notice  
19 that Adam Flatto is requiring to approve any action taken. Now, the  
20 email refers to the redemption agreement, but if you look, it says it's  
21 invalid and shall not be binding on TGC/Farkas Funding, LLC unless and  
22 until approved by Adam Flatto.

23                  If you go to the letter sent in July of 2017 to counsel that  
24 attached this email, we go much broader. Mr. Flatto and TGC/Farkas tell  
25 Joe Gutierrez of Maier Gutierrez that Matthew Farkas is not the manager



1 and counsel has previously sent correspondence explaining that  
2 Matthew Farkas does not have the authority to bind TGC/Farkas Funding.

3 We have then the arbitration award that's entered in  
4 September of 2020 that addresses authority to bind TGC/Farkas. That  
5 was something that was arbitrated. And in that arbitration award, you  
6 have an unequivocal determination that Adam Flatto has to consent to  
7 actions taken on behalf of TGC/Farkas Funding. It is not enough for  
8 Matthew Farkas to execute a document.

9 Now, the notices to Maier Gutierrez, the declaration, the  
10 point number five of Adam Flatto and the arbitration award have not  
11 been discussed. They've been ignored by the other side. You can't  
12 ignore opposing inferences of authority. In Ellis v. Nelson, the Nevada  
13 Supreme Court explains there is no apparent authority simply because  
14 the party claiming so has acted upon its conclusions. There can only be  
15 apparent authority where a person acts in good faith and gives heed to  
16 opposing inferences. If there are opposing inferences of authority, a  
17 party may not ignore them. A party may not ignore them.

18 The Great American Insurance case that was cited to by Mr.  
19 Gutierrez in his argument discusses the subjective belief on Jay Bloom,  
20 how to be objectively reasonable. In light of the arbitration award, it is  
21 not objectively reasonable for Mr. Bloom to believe that Matthew Farkas  
22 could alone receive the settlement agreement and execute it and return  
23 it within 35 minutes and bind TGC/Farkas. That is not objectively  
24 reasonable.

25 The settlement agreement was not emailed to Mr. Farkas so

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

1 demanded expenses.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

7 THE COURT: No, thank you.

8 Mr. Gutierrez, last word?

9 MR. GUTIERREZ: Thank you, Your Honor.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 THE COURT: Family members.

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

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

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

20 MS. TURNER: Okay.

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

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

25 MS. TURNER: I would say by Friday.

1 THE COURT: Friday? The day after tomorrow?

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

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

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

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

10 MS. TURNER: Right.

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

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

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

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

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

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

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



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

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

7 MS. TURNER: Okay.

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

10 MS. TURNER: Thank you.

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

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

14 MS. TURNER: It --

15 THE COURT: Yes.

16 MS. TURNER: Okay.

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

18 MS. TURNER: All right.

19 THE COURT: Okay.

20 MS. TURNER: Thank you.

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

24 MS. TURNER: Okay, thank you.

25 MR. GUTIERREZ: Thank you, Your Honor.

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

3 MS. TURNER: Thank you.

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

6 THE COURT: Okay, thank you. Yeah.

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

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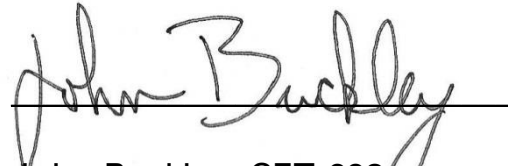
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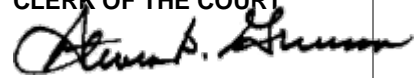
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25

1                   ATTEST: I do hereby certify that I have truly and correctly  
2 transcribed the audio/video proceedings in the above-entitled case to the  
3 best of my ability.  
4

5                     
6                   John Buckley, CET-623  
7                   Court Reporter/Transcriber  
8  
9

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11                   Date: March 16, 2021  
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**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

TGC/FARKAS FUNDING, LLC,  
Plaintiff,

vs.

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

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

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

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

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

DATED this 7<sup>th</sup> day of April, 2021.

GARMAN TURNER GORDON LLP

/s/ Erika Pike Turner  
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Nevada Bar No. 6454  
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**CERTIFICATE OF SERVICE**

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

Joseph A. Gutierrez, Esq.  
Danielle J. Barraza, Esq.  
MAIER GUTIERREZ & ASSOCIATES  
8816 Spanish Ridge Avenue  
Las Vegas, Nevada 89148  
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*Attorneys for Raffi Nahabedian*

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

Kenneth E. Hogan, Esq.  
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*Attorneys for Matthew Farkas*

/s/ Max Erwin

An Employee of  
GARMAN TURNER GORDON LLP

*Heather S. Smith*  
CLERK OF THE COURT

FFCL

DISTRICT COURT

CLARK COUNTY, NEVADA

TGC/FARKAS FUNDING, LLC,

Plaintiff/Judgment Creditor,

vs.

FIRST 100, LLC, a Nevada Limited Liability  
Company; FIRST ONE HUNDRED  
HOLDINGS, LLC, a Nevada limited liability  
company aka 1<sup>st</sup> 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 (“1<sup>st</sup> 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

AA0905

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

### 6 FINDINGS OF FACT

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

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

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

22 <sup>1</sup> Exhibit 20, PLTF\_154, 170.

23 <sup>2</sup> Exhibit 2, PLTF\_006.

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

25 <sup>4</sup> 3/3 Trans., 160:3-7.

26 <sup>5</sup> Exhibits 25-26.

27 <sup>6</sup> Exhibit 7, §§ 1.19 (designating SJV as Manager); 6.1 (Management by Manager) and PTF\_055; Exhibit 8, §§ 1.19  
(designating SJV as Manager); 6.1 (Management by Manager) and PTF\_082; see also 3/3 Trans., 221:18-23.

28 <sup>7</sup> 3/3 Trans., 159:23-160:2.

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

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

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

22 <sup>8</sup> Exhibit 1.

23 <sup>9</sup> Exhibit 2, PLTG\_006; Exhibits 7 and 8, § 13.9 (any dispute arising out of or relating to the Operating Agreements  
24 “shall solely be settled by arbitration”).

25 <sup>10</sup> Exhibits 2 and II.

26 <sup>11</sup> Exhibit 2, PLTF\_006.

27 <sup>12</sup> 3/3 Trans., 123:2-13.

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

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



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

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

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

22  
23 <sup>15</sup> Exhibit 26, PLTF\_218, and Exhibit 27, PLTF\_235.

24 <sup>16</sup> Exhibit 22.

25 <sup>17</sup> Exhibit 2, PLTF\_007.

26 <sup>18</sup> *Id.*

27 <sup>19</sup> *See* Exhibit 1, PLTF\_002.

28 <sup>20</sup> Exhibit 2, PLTF\_009.

<sup>21</sup> *Id.*

1 denied.”<sup>22</sup>

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

14 9. The Order was entered November 17, 2020, constituting a final, appealable  
15 judgment. No appeal was filed by Defendants. On December 18, 2020, the OSC was filed upon  
16 Plaintiff’s application citing no compliance or communicated intention to comply with the Order.  
17 The OSC scheduled a hearing for January 21, 2021.<sup>26</sup> The OSC was served on MGA on  
18 December 18, 2020; in addition, Bloom was personally served with the OSC on December 22,  
19 2020.<sup>27</sup> On December 21, 2020, notices of judgment debtor examinations for each of  
20 Defendants and post-judgment discovery were served on MGA.<sup>28</sup> Bloom was also personally

---

22 <sup>22</sup> *Id.*

23 <sup>23</sup> Exhibit 3.

24 <sup>24</sup> Exhibits 7 and 8, § 13.9.

25 <sup>25</sup> Exhibit 4, PLTF\_019, ll. 15-27.

26 <sup>26</sup> Exhibit 5.

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

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

1 served with post-judgment discovery under NRCP 69(2) on December 29, 2020.<sup>29</sup>

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

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

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

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

27 <sup>30</sup> Exhibit 13, PLTF\_106.

28 <sup>31</sup> *Id.*

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

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

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

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

22 <sup>32</sup> Exhibit 11, PLTF\_097.

23 <sup>33</sup> Exhibit 25.

24 <sup>34</sup> See Exhibit 38, PLTF\_405 (Nahabedian’s email).

25 <sup>35</sup> Exhibits FF and J.

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

27 <sup>37</sup> See, e.g., Exhibit 28.

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

<sup>39</sup> Exhibit 20, §§ 3.4(a), 4.1(c).

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

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

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

21  
22 <sup>40</sup> 3/3 Trans., 108:5-17.

23 <sup>41</sup> Exhibit 21.

24 <sup>42</sup> Exhibit 22, PLTF\_, 179, 190.

25 <sup>43</sup> Exhibit 2, PLTF\_007

26 <sup>44</sup> Exhibit 23.

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

28 <sup>46</sup> Id., 193:25-194:2.

<sup>47</sup> Exhibit 13, PLTF\_108.

1 store for Farkas' signing and return.<sup>48</sup> Farkas did not know he was signing a Settlement  
2 Agreement when he signed it,<sup>49</sup> and there is no evidence he intended to bind Plaintiff to anything  
3 when he executed the documents. Notwithstanding the express terms of the Settlement  
4 Agreement providing that the signatories were duly authorized,<sup>50</sup> Farkas did not read that  
5 provision (or any provision)<sup>51</sup> and testified he never otherwise represented to Bloom or anyone  
6 else that he had authority to enter into the Settlement Agreement on behalf of Plaintiff.<sup>52</sup> Farkas  
7 testified he did not negotiate the terms of the Settlement Agreement with Bloom, which is  
8 corroborated by the lack of evidence of any back and forth on terms prior to the agreement being  
9 finalized by Bloom.<sup>53</sup> There is no evidence Bloom provided Farkas a copy of the Settlement  
10 Agreement for Farkas, Flatto or counsel's review prior to sending it to the UPS store with other  
11 documents to be signed.<sup>54</sup> Farkas testified he believed that the documents he signed at the UPS  
12 store related to resolution of a threatened claim against him by Defendants in connection with his  
13 prior employment and included the retention of personal counsel for him.<sup>55</sup> This testimony was  
14 corroborated by Nahabedian's January 14, 2021 correspondence referencing a threat of adverse  
15 action against Farkas from Defendants<sup>56</sup> and the fact that a form of Release between Farkas and  
16 Defendants was executed at the same time as the Settlement Agreement.<sup>57</sup>

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

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

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

22 <sup>50</sup> Exhibit 13, PLTF\_107, § 14.

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

24 <sup>52</sup> *Id.*, 136:16-19.

25 <sup>53</sup> 3/3 Trans., 137:1-8, 13-15.

26 <sup>54</sup> *Id.*, 211:17-25; 213:15-23.

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

28 <sup>56</sup> Exhibit 11, PLTF\_097.

<sup>57</sup> Exhibit 28, PLTF\_247-253; *see also* Exhibit 16 (text from Bloom threatening adverse action).

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

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

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

14 It was revealed from Nahabedian's records:

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

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

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

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

27 <sup>62</sup> Exhibit 28, PLTF\_240-244.

28 <sup>63</sup> 3/3 Trans., 149:25-150:7.

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

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

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

24 <sup>65</sup> 3/10 Trans., 35:5-16

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

26 <sup>67</sup> Exhibit 28, PLTF\_245.

27 <sup>68</sup> See Exhibit 17, PLTF\_123.

28 <sup>69</sup> Exhibit 28, PLTF\_245-261.



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

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

22 <sup>70</sup> *Id.* at PLTF\_245 (emphasis added).

23 <sup>71</sup> *Id.* at PLTF\_266.

24 <sup>72</sup> *Id.* at PLTF\_278.

25 <sup>73</sup> *Id.* at PLTF\_281, 284, 288.

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

27 <sup>75</sup> Exhibit 11.

28 <sup>76</sup> *Id.* at PLTF-097.

<sup>77</sup> 3/3 Trans., 144:22-148:24.

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

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

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

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

22 <sup>78</sup> PLTF\_311, 316-317, 318, 323, 328-332.

23 <sup>79</sup> 3/10 Trans., 51:17-20.

24 <sup>80</sup> Exhibit FF, ¶¶ 8, 17, 3/3 Trans., 136:12-21, 198:2-21, 212:21-22; Exhibit 15, ¶¶ 19-21. At the Hearing, Bloom  
25 testified that the January 9-11 time subject of his sworn declaration submitted to the Court in support of the Reply in  
26 support of the Motion to Enforce was qualified by "on or about" because the dates were not certain; however, the  
27 timing of January 9-11 are actually consistent with the timing that Nahabedian started inquiring about Farkas'  
28 authority. Exhibit 28, PLTF\_281.

<sup>81</sup> Exhibit 15, ¶¶ 19-21; Exhibit 28, PLTF\_366.

<sup>82</sup> Maier is the only declarant in the Motion to Enforce.

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

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

17 25. In the Motion to Enforce, Maier testified<sup>89</sup> that Farkas had authority based on  
18 Plaintiff's engagement letter with GTG, which Farkas executed as a member of Plaintiff "and  
19

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

21 <sup>84</sup> 3/10 Trans., 87:25-88:14.

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

23 <sup>86</sup> Exhibit 2, PLTF\_007.

24 <sup>87</sup> At the Hearing, Defendants argued that no notice was effective without being sent certified mail pursuant to the  
Subscription Agreement. However, MGA has been counsel for Defendants even since before the subject disputes  
25 arose in May 2017, and MGA was the registered agent for Defendants in July 2017 when the letter was sent.  
Exhibit 26, PLTF\_218.; Exhibit 27, PLTF\_235.

26 <sup>88</sup> Exhibit 22.

27 <sup>89</sup> Motion to Enforce, 3:1-6.

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

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

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

23 <sup>90</sup> Exhibit 28, PLTF\_299-300.

24 <sup>91</sup> 3/3 Trans., 33:1-19; Exhibit 28, PLTF\_298.

25 <sup>92</sup> Motion to Enforce, 3:6-11.

26 <sup>93</sup> Exhibit 20, PLTF\_159.

27 <sup>94</sup> *Id.* at Exhibit 20, PLTF\_162.

28 <sup>95</sup> *See* fn. 81 above.

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

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

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

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

24 <sup>96</sup> Exhibit 13, PLTF\_106.

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

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

28 <sup>99</sup> Exhibits 7 and 8, Article V.

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

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

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

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

26           <sup>100</sup> 3/3 Trans., 72:15- 73:5.

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

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

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

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

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

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

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

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

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

25 <sup>103</sup> *Id.*, 154:16-155:23, 156:13-18.

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

27 <sup>105</sup> *Id.* at 102:17-20.

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



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

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

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

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

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.<sup>110</sup> Bloom denied having any documents, and

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<sup>107</sup> Exhibit 4, p. 3.

<sup>108</sup> Exhibit 6.

<sup>109</sup> 3/3 Trans., 219:4-9.

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

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

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

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

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

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

25 <sup>111</sup> 3/10 Trans., 14:9-18.

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

27 <sup>113</sup> Exhibits 26 and 27.

28 <sup>114</sup> Exhibits 7 and Exhibit 8, p. 8.

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

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

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

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

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

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24 <sup>116</sup> Exhibit 7, p. 28.

25 <sup>117</sup> Exhibit 8, p. 29.

26 <sup>118</sup> Exhibits 7-8, 26-27.

27 <sup>119</sup> Exhibits 7 and 8, Sects. 3.17, 6.1(A).

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

### **CONCLUSIONS OF LAW**

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

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

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

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

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

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

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

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

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

28 <sup>120</sup> 3/3 Trans., 72:19-23.

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

27 <sup>121</sup> Exhibit V.  
28

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

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

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

25 <sup>122</sup> Exhibit 4.

26 <sup>123</sup> Exhibits 7 and 8, Sect. 13.9 (Dispute Resolution provision).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### 6 ORDER

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

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

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

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

<sup>127</sup> Exhibit 28, PLTF\_480, and the Motion to Compel.

<sup>128</sup> 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.

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

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

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

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

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

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

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



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

Dated this 7th day of April, 2021

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Mark R. Denton  
District Court Judge

1 **CSERV**

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3 **DISTRICT COURT**  
4 **CLARK COUNTY, NEVADA**

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

CASE NO: A-20-822273-C

8 vs.

DEPT. NO. Department 13

9 First 100, LLC, Defendant(s)

10  
11 **AUTOMATED CERTIFICATE OF SERVICE**

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

Service Date: 4/7/2021

16 Dylan Ciciliano dciciliano@gtg.legal

17 Erika Turner eturner@gtg.legal

18 MGA Docketing docket@mgalaw.com

19 Tonya Binns tbinns@gtg.legal

20 Bart Larsen blarsen@shea.law

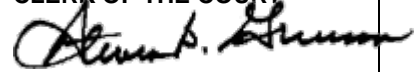
21 Max Erwin merwin@gtg.legal

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

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Joseph Gutierrez

Maier Gutierrez & Associates  
Attn: Joseph A. Gutierrez  
8816 Spanish Ridge Avenue  
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**NOAS**

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

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

TGC/FARKAS FUNDING, LLC,

Plaintiff,

vs.

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

Defendants.

Case No: A-20-822273-C

Dept. No.: XIII

**NOTICE OF APPEAL**

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

///

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///

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

3 DATED this 15th day of April, 2021.

4 Respectfully submitted,

5 **MAIER GUTIERREZ & ASSOCIATES**

6 /s/ Joseph A. Gutierrez

7 JASON R. MAIER, ESQ.

8 Nevada Bar No. 8557

9 JOSEPH A. GUTIERREZ, ESQ.

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14 Las Vegas, Nevada 89148

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

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**CERTIFICATE OF SERVICE**

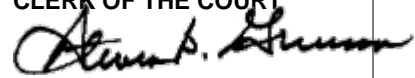
Pursuant to Administrative Order 14-2, a copy of the **NOTICE OF APPEAL** was electronically filed on the 15<sup>th</sup> day of April, 2021, and served through the Notice of Electronic Filing automatically generated by the Court's facilities to those parties listed on the Court's Master Service List,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

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

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

# **EXHIBIT 1**

# **EXHIBIT 1**



**NEFF**  
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**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

TGC/FARKAS FUNDING, LLC,  
Plaintiff,

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

vs.

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

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

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

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

DATED this 7<sup>th</sup> day of April, 2021.

GARMAN TURNER GORDON LLP

/s/ Erika Pike Turner  
ERIKA PIKE TURNER  
Nevada Bar No. 6454  
DYLAN T. CICILIANO  
Nevada Bar. No. 12348  
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*Attorneys for Plaintiff*



**CERTIFICATE OF SERVICE**

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

Joseph A. Gutierrez, Esq.  
Danielle J. Barraza, Esq.  
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*Attorneys for Raffi Nahabedian*

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

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*Attorneys for Matthew Farkas*

/s/ Max Erwin

An Employee of  
GARMAN TURNER GORDON LLP

*Heather S. Smith*  
CLERK OF THE COURT

FFCL

DISTRICT COURT

CLARK COUNTY, NEVADA

TGC/FARKAS FUNDING, LLC,

Plaintiff/Judgment Creditor,

vs.

FIRST 100, LLC, a Nevada Limited Liability  
Company; FIRST ONE HUNDRED  
HOLDINGS, LLC, a Nevada limited liability  
company aka 1<sup>st</sup> 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 (“1<sup>st</sup> 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

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

### 6 FINDINGS OF FACT

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

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

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

22 <sup>1</sup> Exhibit 20, PLTF\_154, 170.

23 <sup>2</sup> Exhibit 2, PLTF\_006.

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

25 <sup>4</sup> 3/3 Trans., 160:3-7.

26 <sup>5</sup> Exhibits 25-26.

27 <sup>6</sup> Exhibit 7, §§ 1.19 (designating SJV as Manager); 6.1 (Management by Manager) and PTF\_055; Exhibit 8, §§ 1.19  
(designating SJV as Manager); 6.1 (Management by Manager) and PTF\_082; see also 3/3 Trans., 221:18-23.

28 <sup>7</sup> 3/3 Trans., 159:23-160:2.

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

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

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

22 <sup>8</sup> Exhibit 1.

23 <sup>9</sup> Exhibit 2, PLTG\_006; Exhibits 7 and 8, § 13.9 (any dispute arising out of or relating to the Operating Agreements  
24 “shall solely be settled by arbitration”).

25 <sup>10</sup> Exhibits 2 and II.

26 <sup>11</sup> Exhibit 2, PLTF\_006.

27 <sup>12</sup> 3/3 Trans., 123:2-13.

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

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

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

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

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

22  
23 <sup>15</sup> Exhibit 26, PLTF\_218, and Exhibit 27, PLTF\_235.

24 <sup>16</sup> Exhibit 22.

25 <sup>17</sup> Exhibit 2, PLTF\_007.

26 <sup>18</sup> *Id.*

27 <sup>19</sup> *See* Exhibit 1, PLTF\_002.

28 <sup>20</sup> Exhibit 2, PLTF\_009.

<sup>21</sup> *Id.*

1 denied.”<sup>22</sup>

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

14 9. The Order was entered November 17, 2020, constituting a final, appealable  
15 judgment. No appeal was filed by Defendants. On December 18, 2020, the OSC was filed upon  
16 Plaintiff’s application citing no compliance or communicated intention to comply with the Order.  
17 The OSC scheduled a hearing for January 21, 2021.<sup>26</sup> The OSC was served on MGA on  
18 December 18, 2020; in addition, Bloom was personally served with the OSC on December 22,  
19 2020.<sup>27</sup> On December 21, 2020, notices of judgment debtor examinations for each of  
20 Defendants and post-judgment discovery were served on MGA.<sup>28</sup> Bloom was also personally

21  
22 <sup>22</sup> *Id.*

23 <sup>23</sup> Exhibit 3.

24 <sup>24</sup> Exhibits 7 and 8, § 13.9.

25 <sup>25</sup> Exhibit 4, PLTF\_019, ll. 15-27.

26 <sup>26</sup> Exhibit 5.

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

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

1 served with post-judgment discovery under NRCP 69(2) on December 29, 2020.<sup>29</sup>

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

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

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

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

27 <sup>30</sup> Exhibit 13, PLTF\_106.

28 <sup>31</sup> *Id.*

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

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

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

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

22 <sup>32</sup> Exhibit 11, PLTF\_097.

23 <sup>33</sup> Exhibit 25.

24 <sup>34</sup> See Exhibit 38, PLTF\_405 (Nahabedian’s email).

25 <sup>35</sup> Exhibits FF and J.

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

27 <sup>37</sup> See, e.g., Exhibit 28.

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

<sup>39</sup> Exhibit 20, §§ 3.4(a), 4.1(c).



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

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

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

21  
22 <sup>40</sup> 3/3 Trans., 108:5-17.

23 <sup>41</sup> Exhibit 21.

24 <sup>42</sup> Exhibit 22, PLTF\_, 179, 190.

25 <sup>43</sup> Exhibit 2, PLTF\_007

26 <sup>44</sup> Exhibit 23.

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

28 <sup>46</sup> Id., 193:25-194:2.

<sup>47</sup> Exhibit 13, PLTF\_108.

1 store for Farkas' signing and return.<sup>48</sup> Farkas did not know he was signing a Settlement  
2 Agreement when he signed it,<sup>49</sup> and there is no evidence he intended to bind Plaintiff to anything  
3 when he executed the documents. Notwithstanding the express terms of the Settlement  
4 Agreement providing that the signatories were duly authorized,<sup>50</sup> Farkas did not read that  
5 provision (or any provision)<sup>51</sup> and testified he never otherwise represented to Bloom or anyone  
6 else that he had authority to enter into the Settlement Agreement on behalf of Plaintiff.<sup>52</sup> Farkas  
7 testified he did not negotiate the terms of the Settlement Agreement with Bloom, which is  
8 corroborated by the lack of evidence of any back and forth on terms prior to the agreement being  
9 finalized by Bloom.<sup>53</sup> There is no evidence Bloom provided Farkas a copy of the Settlement  
10 Agreement for Farkas, Flatto or counsel's review prior to sending it to the UPS store with other  
11 documents to be signed.<sup>54</sup> Farkas testified he believed that the documents he signed at the UPS  
12 store related to resolution of a threatened claim against him by Defendants in connection with his  
13 prior employment and included the retention of personal counsel for him.<sup>55</sup> This testimony was  
14 corroborated by Nahabedian's January 14, 2021 correspondence referencing a threat of adverse  
15 action against Farkas from Defendants<sup>56</sup> and the fact that a form of Release between Farkas and  
16 Defendants was executed at the same time as the Settlement Agreement.<sup>57</sup>

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

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

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

22 <sup>50</sup> Exhibit 13, PLTF\_107, § 14.

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

24 <sup>52</sup> *Id.*, 136:16-19.

25 <sup>53</sup> 3/3 Trans., 137:1-8, 13-15.

26 <sup>54</sup> *Id.*, 211:17-25; 213:15-23.

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

28 <sup>56</sup> Exhibit 11, PLTF\_097.

<sup>57</sup> Exhibit 28, PLTF\_247-253; *see also* Exhibit 16 (text from Bloom threatening adverse action).

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

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

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

14 It was revealed from Nahabedian's records:

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

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

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

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

27 <sup>62</sup> Exhibit 28, PLTF\_240-244.

28 <sup>63</sup> 3/3 Trans., 149:25-150:7.

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

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

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

24 <sup>65</sup> 3/10 Trans., 35:5-16

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

26 <sup>67</sup> Exhibit 28, PLTF\_245.

27 <sup>68</sup> See Exhibit 17, PLTF\_123.

28 <sup>69</sup> Exhibit 28, PLTF\_245-261.

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

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

22 <sup>70</sup> *Id.* at PLTF\_245 (emphasis added).

23 <sup>71</sup> *Id.* at PLTF\_266.

24 <sup>72</sup> *Id.* at PLTF\_278.

25 <sup>73</sup> *Id.* at PLTF\_281, 284, 288.

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

27 <sup>75</sup> Exhibit 11.

28 <sup>76</sup> *Id.* at PLTF-097.

<sup>77</sup> 3/3 Trans., 144:22-148:24.

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

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

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

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

22 <sup>78</sup> PLTF\_311, 316-317, 318, 323, 328-332.

23 <sup>79</sup> 3/10 Trans., 51:17-20.

24 <sup>80</sup> Exhibit FF, ¶¶ 8, 17, 3/3 Trans., 136:12-21, 198:2-21, 212:21-22; Exhibit 15, ¶¶ 19-21. At the Hearing, Bloom  
25 testified that the January 9-11 time subject of his sworn declaration submitted to the Court in support of the Reply in  
26 support of the Motion to Enforce was qualified by "on or about" because the dates were not certain; however, the  
27 timing of January 9-11 are actually consistent with the timing that Nahabedian started inquiring about Farkas'  
28 authority. Exhibit 28, PLTF\_281.

<sup>81</sup> Exhibit 15, ¶¶ 19-21; Exhibit 28, PLTF\_366.

<sup>82</sup> Maier is the only declarant in the Motion to Enforce.

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

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

17 25. In the Motion to Enforce, Maier testified<sup>89</sup> that Farkas had authority based on  
18 Plaintiff's engagement letter with GTG, which Farkas executed as a member of Plaintiff "and  
19

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

21 <sup>84</sup> 3/10 Trans., 87:25-88:14.

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

23 <sup>86</sup> Exhibit 2, PLTF\_007.

24 <sup>87</sup> At the Hearing, Defendants argued that no notice was effective without being sent certified mail pursuant to the  
Subscription Agreement. However, MGA has been counsel for Defendants even since before the subject disputes  
25 arose in May 2017, and MGA was the registered agent for Defendants in July 2017 when the letter was sent.  
Exhibit 26, PLTF\_218.; Exhibit 27, PLTF\_235.

26 <sup>88</sup> Exhibit 22.

27 <sup>89</sup> Motion to Enforce, 3:1-6.

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

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

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

23 <sup>90</sup> Exhibit 28, PLTF\_299-300.

24 <sup>91</sup> 3/3 Trans., 33:1-19; Exhibit 28, PLTF\_298.

25 <sup>92</sup> Motion to Enforce, 3:6-11.

26 <sup>93</sup> Exhibit 20, PLTF\_159.

27 <sup>94</sup> *Id.* at Exhibit 20, PLTF\_162.

28 <sup>95</sup> *See* fn. 81 above.



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

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

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

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

24 <sup>96</sup> Exhibit 13, PLTF\_106.

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

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

28 <sup>99</sup> Exhibits 7 and 8, Article V.

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

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

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

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

26           <sup>100</sup> 3/3 Trans., 72:15- 73:5.

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

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

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

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

27 <sup>102</sup> 3/3 Trans., 116:1-21, 119:9-16.

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

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

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

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

25 <sup>103</sup> *Id.*, 154:16-155:23, 156:13-18.

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

27 <sup>105</sup> *Id.* at 102:17-20.

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

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

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

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

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

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.<sup>110</sup> Bloom denied having any documents, and

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<sup>107</sup> Exhibit 4, p. 3.

<sup>108</sup> Exhibit 6.

<sup>109</sup> 3/3 Trans., 219:4-9.

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

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

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

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

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

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

25 <sup>111</sup> 3/10 Trans., 14:9-18.

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

27 <sup>113</sup> Exhibits 26 and 27.

28 <sup>114</sup> Exhibits 7 and Exhibit 8, p. 8.

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