

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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ORIGINAL PETITION

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

APPELLANTS' APPENDIX VOLUME IV

DATE	DESCRIPTION	VOLUME	PAGES
01/20/2021	Defendants and Non-Party Jay Bloom's Response to Order to Show Cause	I	AA0209-0214

10/15/2020	Defendants' Limited Opposition to Motion to Confirm Arbitration Award and Countermotion to Modify Award Per NRS 38.242	I	AA0041-0046
01/19/2021	Defendants' Motion to Enforce Settlement Agreement and Vacate Post-Judgment Discovery Proceedings on <i>Ex Parte</i> Order Shortening Time	I	AA0156-0208
11/24/2020	Defendants' Opposition to Motion for Attorneys' Fees and Costs	I	AA0111-0115
01/27/2021	Defendants' Reply in Support of Motion to Enforce Settlement Agreement and Vacate Post-Judgment Discovery Proceedings and Opposition to Countermotion to Strike the Affidavit of Jason Maier and Opposition to Countermotion for Sanctions	II	AA0362-0492
11/17/2020	Motion for Attorneys' Fees and Costs	I	AA0069-0110
10/01/2020	Motion to Confirm Arbitration Award	I	AA0001-0040
04/15/2021	Notice of Appeal	III/IV	AA0943-0986
07/02/2021	Notice of Appeal	IV	AA0995-1001
04/07/2021	Notice of Entry of Findings of Fact, Conclusions of Law & Order Re Evidentiary Hearing	III	AA0903-0942
02/09/2021	Notice of Entry of Order	II	AA0516-0520
06/11/2021	Notice of Entry of Order Awarding Attorneys' Fees and Costs	IV	AA0990-0994
12/21/2020	Notice of Entry of Order Granting Plaintiff's Ex Parte Application for Judgment Debtor Examination of First 100, LLC	I	AA0131-0140
12/21/2020	Notice of Entry of Order Granting Plaintiff's Ex Parte Application for Judgment Debtor Examination of First One Hundred Holdings, LLC AKA 1 st One Hundred Holdings LLC	I	AA0141-0150

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
11/17/2020	Notice of Entry of Order Granting Plaintiff's Motion to Confirm Arbitration Award and Denying Defendants' Countermotion to Modify Award; and Judgment	I	AA0060-0068
02/09/2021	Order	II	AA0513-0515
03/17/2022	Order Affirming in Part and Dismissing in Part	IV	AA1007-1011
03/17/2022	Order Affirming in Part, Reversing in Part and Remanding, and Dismissing in Part	IV	AA1002-1006
06/11/2021	Order Awarding Attorneys' Fees and Costs	IV	AA0987-0989
01/27/2021	Order Granting Plaintiff's Motion for Attorneys' Fees and Costs	II	AA0352-0355
11/17/2020	Order Granting Plaintiff's Motion to Confirm Arbitration Award and Denying Defendants' Countermotion to Modify Award; and Judgment	I	AA0053-0059
12/18/2020	Plaintiff's Ex Parte Application for Order to Show Cause Defendants and Jay Bloom Should Not Be Held in Contempt of Court	I	AA0123-0130
10/26/2020	Plaintiff's Reply to Defendants' Limited Opposition to Motion to Confirm Arbitration Award and Opposition to Defendants' Countermotion to Modify Award Per NRS 38.242	I	AA0047-0052
03/03/2021	Recorder's Transcript of Evidentiary Hearing	II/III	AA0537-0764

03/10/2021	Recorder's Transcript of Evidentiary Hearing	III	AA0765-0902
03/01/2021	Recorder's Transcript of Hearing Re: Motion to Compel and For Sanctions; Application for Ex-Parte Order Shortening Time	II	AA0521-0536
01/21/2021	Recorder's Transcript of Hearing Re: Show Cause Hearing	II	AA0323-0329
12/14/2020	Reply in Support of Motion for Attorneys' Fees and Costs	I	AA0116-0122
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
01/28/2021	Transcript of Proceedings Re: Show Cause Hearing/Defendant's Motion to Enforce Settlement Agreement and Vacate Post-Judgment Discovery Proceedings on Ex-Parte Order Shortening Time	II	AA0493-0512

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:

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/s/ Brandon Lopipero

An Employee of MAIER GUTIERREZ & ASSOCITES

1 The 23.709% Class A Member of 1st 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 1st 100, respectively.¹¹⁷
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.¹¹⁸ 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.¹¹⁹ 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.

24 ¹¹⁶ Exhibit 7, p. 28.

25 ¹¹⁷ Exhibit 8, p. 29.

26 ¹¹⁸ Exhibits 7-8, 26-27.

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

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

CONCLUSIONS OF LAW

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

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

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

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

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

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.¹²⁰ 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.

28 ¹²⁰ 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.¹²¹ 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

27 ¹²¹ 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.¹²² Defendants’ claimed expenses associated with the
15 demand for production was required to be arbitrated,¹²³ 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.¹²⁴ 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.¹²⁵ 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

25 ¹²² Exhibit 4.

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

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

28 ¹²⁵ 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 ("NRCP") 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.*, NRCP 69 (describing procedures for
15 execution on judgment to include obtaining discovery from any person); NRCP 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."); NRCP 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); *1st 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.¹²⁶
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

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

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.¹²⁷

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 Plaintiff¹²⁸ at their expense:¹²⁹

- 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;

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

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

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

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

MARK R. DENTON
DISTRICT JUDGE

DEPARTMENT THIRTEEN
LAS VEGAS, NV 89155

1 **CSERV**

2
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

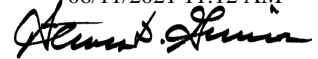
22
23 If indicated below, a copy of the above mentioned filings were also served by mail
24 via United States Postal Service, postage prepaid, to the parties listed below at their last
25 known addresses on 4/8/2021

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Joseph Gutierrez

Maier Gutierrez & Associates
Attn: Joseph A. Gutierrez
8816 Spanish Ridge Avenue
Las Vegas, NV, 89148



CLERK OF THE COURT

ORDR

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Tel: (725) 777-3000
Fax: (725) 777-3112

Attorneys for Plaintiff

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 1st ONE HUNDRED HOLDINGS
LLC, a Nevada Limited Liability Company,

Defendants.

CASE NO. A-20-822273-C
DEPT. 13

**ORDER AWARDING ATTORNEYS'
FEES AND COSTS**

ORDER AWARDING ATTORNEYS' FEES AND COSTS

On April 9, 2021, Plaintiff TGC/FARKAS FUNDING, LLC ("Plaintiff") filed a *Declaration of Erika Pike Turner, Esq. in Support of Award of Fees and Costs* (the "Declaration"). On April 19, 2021, Defendants FIRST 100, LLC and FIRST ONE HUNDRED HOLDINGS, LLC aka 1st ONE HUNDRED HOLDINGS LLC ("Defendants") and non-party JAY BLOOM filed *Defendants' Opposition to Plaintiff's Declaration in Support of Fees and Costs Award* (the "Opposition"). On April 23, 2021, Plaintiff filed its *Reply to Defendants' Opposition to Plaintiff's Declaration in Support of Fees and Costs Award* (the "Reply"). The Court, having considered the Declaration, the Opposition, the Reply, as well as the exhibits thereto, FINDS and CONCLUDES as follows:

The Court has considered each of those factors outlined in *Brunzell v. Golden Gate*

1 *National Bank*, 85 Nev. 345, 455 P.2d 31 (1969) (the skill and experience of Plaintiff's counsel,
2 the nature of the work to be performed, the actual work performed, as well as the result achieved),
3 and thereon concludes that Plaintiff has shown in the civil contempt context adequate factual and
4 legal bases for a remedial award of attorneys' fees in the sum of \$146,719.00 and costs in the sum
5 of \$4,816.81. Plaintiff has shown in the civil contempt context adequate factual and legal bases
6 for a remedial award for the conduct described at length in the *Court's Findings of Fact,*
7 *Conclusions of Law and Decision* entered April 7, 2021.

8 The Court therefore hereby enters a total award of civil contempt sanctions in favor of
9 Plaintiff in the total amount of \$151,535.81, which amount must be paid by Defendants and/or Jay
10 Bloom as a condition of purging the contempt.

11
12 ~~IT IS SO ORDERED this _____ day of _____, 2021.~~

13 **Dated this 11th day of June, 2021**

14
15 

16 DISTRICT COURT JUDGE

17 **FD8 409 3937 0C15**

18 **Mark R. Denton**

19 **District Court Judge**

20 Respectfully submitted:

21 GARMAN TURNER GORDON LLP

22 /s/ Erika Pike Turner

23 Erika Pike Turner, Esq., Bar No. 6454
24 Dylan T. Ciciliano, Esq., Bar. No. 12348
25 7251 Amigo Street, Suite 210
26 Las Vegas, Nevada 89119
27 *Attorneys for Plaintiff*

Reviewed and disapproved:

MAIER GUTIERREZ & ASSOCIATES

DISAPPROVED

Joseph A. Gutierrez, Esq., Bar No. 9046
Danielle J. Barraza, Esq., Bar No. 13822
8816 Spanish Ridge Avenue
Las Vegas, Nevada 89148
*Attorneys for Defendants First 100, LLC
and 1st One Hundred Holdings, LLC and non-
party Jay Bloom*

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 TGC/Farkas Funding, LLC,
Plaintiff(s)

CASE NO: A-20-822273-C

7 vs.

DEPT. NO. Department 13

8
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 Order was served via the court's electronic eFile system to all
recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 6/11/2021

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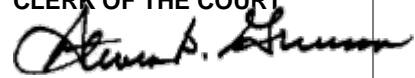
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Las Vegas, Nevada 89119
Tel: (725) 777-3000
Fax: (725) 777-3112
Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

TGC/FARKAS FUNDING, LLC,
Plaintiff,

CASE NO. A-20-822273-C
DEPT. 13

vs.

**NOTICE OF ENTRY OF ORDER
AWARDING ATTORNEYS' FEES AND
COSTS**

FIRST 100, LLC, a Nevada Limited Liability
Company; FIRST ONE HUNDRED
HOLDINGS, LLC, a Nevada limited liability
company aka 1st ONE HUNDRED HOLDINGS
LLC, a Nevada Limited Liability Company,
Defendants.

NOTICE OF ENTRY OF ORDER AWARDING ATTORNEYS' FEES AND COSTS

PLEASE TAKE NOTICE that an *Order Awarding Attorneys' Fees and Costs*, a copy of
which is attached hereto, was entered in the above-captioned case on the 11th day of June, 2021.

DATED this 11th 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
7251 Amigo Street, Suite 210
Tel: (725) 777-3000
Fax: (725) 777-3112
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

The undersigned, hereby certifies that on the 11th day of April, 2021, he served a copy of the **NOTICE OF ENTRY OF ORDER AWARDING ATTORNEYS' FEES AND COSTS**, 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
Email: jag@mgalaw.com
djb@mgalaw.com
Attorneys for Defendants

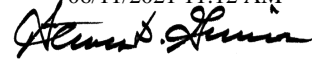
Bart K. Larsen, Esq.
SHEA LARSEN
1731 Village Center Circle, Suite 150
Las Vegas, NV 89134
Email: blarsen@shea.law
Attorneys for Raffi Nahabedian

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.
HOGAN HULET PLLC
1140 N. Town Center Dr., Suite 300
Las Vegas, NV 89144
Email: ken@h2legal.com
Attorneys for Matthew Farkas

/s/ Max Erwin

An Employee of
GARMAN TURNER GORDON LLP



CLERK OF THE COURT

ORDR

GARMAN TURNER GORDON LLP
ERIKA PIKE TURNER
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Las Vegas, Nevada 89119
Tel: (725) 777-3000
Fax: (725) 777-3112

Attorneys for Plaintiff

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 1st ONE HUNDRED HOLDINGS
LLC, a Nevada Limited Liability Company,

Defendants.

CASE NO. A-20-822273-C
DEPT. 13

**ORDER AWARDING ATTORNEYS'
FEES AND COSTS**

ORDER AWARDING ATTORNEYS' FEES AND COSTS

On April 9, 2021, Plaintiff TGC/FARKAS FUNDING, LLC ("Plaintiff") filed a *Declaration of Erika Pike Turner, Esq. in Support of Award of Fees and Costs* (the "Declaration"). On April 19, 2021, Defendants FIRST 100, LLC and FIRST ONE HUNDRED HOLDINGS, LLC aka 1st ONE HUNDRED HOLDINGS LLC ("Defendants") and non-party JAY BLOOM filed *Defendants' Opposition to Plaintiff's Declaration in Support of Fees and Costs Award* (the "Opposition"). On April 23, 2021, Plaintiff filed its *Reply to Defendants' Opposition to Plaintiff's Declaration in Support of Fees and Costs Award* (the "Reply"). The Court, having considered the Declaration, the Opposition, the Reply, as well as the exhibits thereto, FINDS and CONCLUDES as follows:

The Court has considered each of those factors outlined in *Brunzell v. Golden Gate*

1 *National Bank*, 85 Nev. 345, 455 P.2d 31 (1969) (the skill and experience of Plaintiff's counsel,
2 the nature of the work to be performed, the actual work performed, as well as the result achieved),
3 and thereon concludes that Plaintiff has shown in the civil contempt context adequate factual and
4 legal bases for a remedial award of attorneys' fees in the sum of \$146,719.00 and costs in the sum
5 of \$4,816.81. Plaintiff has shown in the civil contempt context adequate factual and legal bases
6 for a remedial award for the conduct described at length in the *Court's Findings of Fact,*
7 *Conclusions of Law and Decision* entered April 7, 2021.

8 The Court therefore hereby enters a total award of civil contempt sanctions in favor of
9 Plaintiff in the total amount of \$151,535.81, which amount must be paid by Defendants and/or Jay
10 Bloom as a condition of purging the contempt.

11
12 ~~IT IS SO ORDERED this _____ day of _____, 2021.~~

13 **Dated this 11th day of June, 2021**

14
15 

16 DISTRICT COURT JUDGE

17 **FD8 409 3937 0C15**

18 **Mark R. Denton**

19 **District Court Judge**

20 Respectfully submitted:

21 GARMAN TURNER GORDON LLP

22 /s/ Erika Pike Turner

23 Erika Pike Turner, Esq., Bar No. 6454
24 Dylan T. Ciciliano, Esq., Bar. No. 12348
25 7251 Amigo Street, Suite 210
26 Las Vegas, Nevada 89119
27 *Attorneys for Plaintiff*

Reviewed and disapproved:

MAIER GUTIERREZ & ASSOCIATES

DISAPPROVED

Joseph A. Gutierrez, Esq., Bar No. 9046
Danielle J. Barraza, Esq., Bar No. 13822
8816 Spanish Ridge Avenue
Las Vegas, Nevada 89148
*Attorneys for Defendants First 100, LLC
and 1st One Hundred Holdings, LLC and non-
party Jay Bloom*

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 TGC/Farkas Funding, LLC,
Plaintiff(s)

CASE NO: A-20-822273-C

7 vs.

DEPT. NO. Department 13

8
9 First 100, LLC, Defendant(s)

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12 This automated certificate of service was generated by the Eighth Judicial District
13 Court. The foregoing Order was served via the court's electronic eFile system to all
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14 Service Date: 6/11/2021

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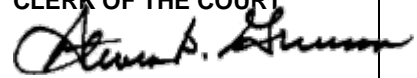
19 Bart Larsen

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AA0994



NOAS

JASON R. MAIER, ESQ.

Nevada Bar No. 8557

JOSEPH A. GUTIERREZ, ESQ.

Nevada Bar No. 9046

DANIELLE J. BARRAZA, ESQ.

Nevada Bar No. 13822

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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 1st One Hundred Holdings,
LLC and non-party Jay Bloom by and through their attorneys of record, the law firm MAIER

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1 GUTIERREZ & ASSOCIATES, appeal to the Supreme Court of Nevada from the Order Awarding
2 Attorneys' Fees and Costs on June 11, 2021, a copy of which is attached hereto as **Exhibit 1**.

3 DATED this 2nd day of July, 2021.

4 Respectfully submitted,

5 **MAIER GUTIERREZ & ASSOCIATES**

6 /s/ Danielle J. Barraza

7 JASON R. MAIER, ESQ.

8 Nevada Bar No. 8557

9 JOSEPH A. GUTIERREZ, ESQ.

10 Nevada Bar No. 9046

11 DANIELLE J. BARRAZA, ESQ.

12 Nevada Bar No. 13822

13 8816 Spanish Ridge Avenue

14 Las Vegas, Nevada 89148

15 *Attorneys for First 100, LLC, 1st 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 2nd day of July, 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.
GARMAN TURNER GORDON, LLP
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Attorneys for TGC Farkas Funding LLC

/s/ Natalie Vazquez
An Employee of MAIER GUTIERREZ & ASSOCIATES

EXHIBIT 1

EXHIBIT 1

ORDR

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Attorneys for Plaintiff

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 1st ONE HUNDRED HOLDINGS
LLC, a Nevada Limited Liability Company,

Defendants.

CASE NO. A-20-822273-C
DEPT. 13

**ORDER AWARDING ATTORNEYS'
FEES AND COSTS**

ORDER AWARDING ATTORNEYS' FEES AND COSTS

On April 9, 2021, Plaintiff TGC/FARKAS FUNDING, LLC ("Plaintiff") filed a *Declaration of Erika Pike Turner, Esq. in Support of Award of Fees and Costs* (the "Declaration"). On April 19, 2021, Defendants FIRST 100, LLC and FIRST ONE HUNDRED HOLDINGS, LLC aka 1st ONE HUNDRED HOLDINGS LLC ("Defendants") and non-party JAY BLOOM filed *Defendants' Opposition to Plaintiff's Declaration in Support of Fees and Costs Award* (the "Opposition"). On April 23, 2021, Plaintiff filed its *Reply to Defendants' Opposition to Plaintiff's Declaration in Support of Fees and Costs Award* (the "Reply"). The Court, having considered the Declaration, the Opposition, the Reply, as well as the exhibits thereto, FINDS and CONCLUDES as follows:

The Court has considered each of those factors outlined in *Brunzell v. Golden Gate*

1 *National Bank*, 85 Nev. 345, 455 P.2d 31 (1969) (the skill and experience of Plaintiff's counsel,
2 the nature of the work to be performed, the actual work performed, as well as the result achieved),
3 and thereon concludes that Plaintiff has shown in the civil contempt context adequate factual and
4 legal bases for a remedial award of attorneys' fees in the sum of \$146,719.00 and costs in the sum
5 of \$4,816.81. Plaintiff has shown in the civil contempt context adequate factual and legal bases
6 for a remedial award for the conduct described at length in the *Court's Findings of Fact,*
7 *Conclusions of Law and Decision* entered April 7, 2021.

8 The Court therefore hereby enters a total award of civil contempt sanctions in favor of
9 Plaintiff in the total amount of \$151,535.81, which amount must be paid by Defendants and/or Jay
10 Bloom as a condition of purging the contempt.

11
12 ~~IT IS SO ORDERED this _____ day of _____, 2021.~~

13 **Dated this 11th day of June, 2021**

14
15 

16 DISTRICT COURT JUDGE

17 **FD8 409 3937 0C15**

18 **Mark R. Denton**

19 **District Court Judge**

20 Respectfully submitted:

21 GARMAN TURNER GORDON LLP

22 /s/ Erika Pike Turner

23 Erika Pike Turner, Esq., Bar No. 6454
24 Dylan T. Ciciliano, Esq., Bar. No. 12348
25 7251 Amigo Street, Suite 210
26 Las Vegas, Nevada 89119
27 *Attorneys for Plaintiff*

Reviewed and disapproved:

MAIER GUTIERREZ & ASSOCIATES

DISAPPROVED

Joseph A. Gutierrez, Esq., Bar No. 9046
Danielle J. Barraza, Esq., Bar No. 13822
8816 Spanish Ridge Avenue
Las Vegas, Nevada 89148
*Attorneys for Defendants First 100, LLC and non-
party Jay Bloom*

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 TGC/Farkas Funding, LLC,
Plaintiff(s)

CASE NO: A-20-822273-C

7 vs.

DEPT. NO. Department 13

8
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 Order was served via the court's electronic eFile system to all
recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 6/11/2021

15 Dylan Ciciliano dciciliano@gtg.legal

16 Erika Turner eturner@gtg.legal

17 MGA Docketing docket@mgalaw.com

18 Tonya Binns tbinns@gtg.legal

19 Bart Larsen blarsen@shea.law

20 Max Erwin merwin@gtg.legal

IN THE SUPREME COURT OF THE STATE OF NEVADA

FIRST 100, LLC, A NEVADA LIMITED
LIABILITY COMPANY; AND 1ST ONE
HUNDRED HOLDINGS, LLC, A
NEVADA LIMITED LIABILITY
COMPANY,
Appellants,
vs.
TGC/FARKAS FUNDING, LLC,
Respondent.

No. 83177

FILED

MAR 17 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

*ORDER AFFIRMING IN PART, REVERSING IN PART AND
REMANDING, AND DISMISSING IN PART*

This is an appeal from a post-judgment award of attorney fees and costs as a civil contempt sanction. Eighth Judicial District Court, Clark County; Mark R. Denton, Judge.¹

On April 7, 2021, the district court held appellants and nonparty Jay Bloom in civil contempt.² The order indicated that, as a sanction, the court would award respondent the attorney fees and costs that respondent incurred in litigating various matters (hereafter “the relevant matters”). Thereafter, respondent requested roughly \$157,000 in fees and roughly \$5,000 in costs. Over appellants’ opposition, the district court entered an order reflecting that it had considered the *Brunzell* factors³ and

¹Pursuant to NRAP 34(f)(1), we have determined that oral argument is not warranted in this appeal.

²Contemporaneous with the disposition of this appeal, we have affirmed the district court’s April 7, 2021, order in a related appeal (Docket No. 82794).

³*Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969).

awarded respondent roughly \$147,000 in fees and the full amount of requested costs.⁴ As part of the contempt sanction, the district court also held Bloom personally liable for the award.

On appeal, appellants contend (1) the amount of fees awarded was unreasonably high, and (2) the district court erred in holding nonparty Bloom personally liable for the award.

With respect to appellants' first argument, they generally contend that the district court abused its discretion by awarding an unreasonably high amount of fees without adequately articulating its *Brunzell*-factor analysis. *Cf. Logan v. Abe*, 131 Nev. 260, 266, 350 P.3d 1139, 1143 (2015) (recognizing that this court reviews an attorney fee award for an abuse of discretion and that, while it is preferable for a district court to provide an express analysis of the *Brunzell* factors, such findings are not necessary if it is evident that the district court considered those factors). More particularly, appellants contend that the fee award was unreasonably high because (1) respondent's counsels' billing rates for the applicable year (2021) were inexplicably higher than their rates for the previous year (2020); (2) the billing rate for counsels' paralegal was too high; (3) counsel double-billed for some of the work performed by virtue of having two attorneys attend depositions; (4) counsel billed for a paralegal to attend an evidentiary hearing; (5) counsel billed too many hours for drafting the district court's April 7, 2021, order; (6) counsel billed \$3,825.50 for drafting documents that were unrelated to the relevant matters; (7) counsel billed \$1,193 for time spent inquiring about NRCP violations, none of which were

⁴As reflected in the minutes, the district court's roughly \$10,000 reduction in the fee award reflected fees that respondent's counsel inadvertently billed for an unrelated matter.

found by the district court; and (8) counsel billed \$1,232 for preparing another motion that was unrelated to the relevant matters.⁵

We conclude that the district court was within its discretion in awarding the amounts contested in arguments 1 through 5. With respect to arguments 1 and 2, respondent submitted a declaration indicating that counsels' billing rates and the paralegal's billing rate were commensurate with rates for those with similar experience. With respect to arguments 3 through 5, we are unable to conclude that the district court abused its discretion in finding that counsels' decisions were reasonable in terms of the time and resources they chose to devote to the relevant matters. *Cf. Brunzell*, 85 Nev. at 349, 455 P.2d at 33 (listing the "difficulty" of the work performed, the "importance, time and skill required" of the work performed, and "the skill, time and attention given to the work" as relevant factors to consider). With respect to arguments 6 through 8, however, we agree with appellants that the district court improperly awarded fees for those amounts. In particular, appellants' contention that those amounts have no relation to the relevant matters appears accurate and is not contested by respondent on appeal. *See Ozawa v. Vision Airlines, Inc.*, 125 Nev. 556, 563, 216 P.3d 788, 793 (2009) (recognizing that failure to respond to an argument can be treated as a confession of error).

Accordingly, and only insofar as the district court awarded fees relating to arguments 6 through 8, we reverse the award of fees in that

⁵To the extent that appellants raise additional arguments, we are not persuaded that those arguments warrant specific discussion.

respect.⁶ We affirm the remaining portion of the district court's fee award and the entirety of its cost award.

With respect to appellants' second argument, respondent contends that this court lacks jurisdiction because Bloom, who is the only person aggrieved by the district court holding him personally liable, was not a party to the underlying proceedings and did not file a writ petition challenging the district court's order. *Cf. Mona v. Eighth Judicial Dist. Court*, 132 Nev. 719, 724-25, 380 P.3d 836, 840 (2016) ("[W]here the sanctioned party was not a party to the litigation below, he or she has no standing to appeal."); *Detwiler v. Eighth Judicial Dist. Court*, 137 Nev., Adv. Op. 18, 486 P.3d 710, 715 (2021) ("Where no rule or statute provides for an appeal of a contempt order, the order may properly be reviewed by writ petition."). Appellants do not meaningfully refute respondent's contention but instead argue that they are challenging the district court's order insofar as it held *them* liable for the award. We decline to consider this argument because appellants' opening brief did not allude to any such argument. *See Francis v. Wynn Las Vegas, LLC*, 127 Nev. 657, 671 n.7, 262 P.3d 705, 715 n.7 (2011) (observing that this court generally declines to consider arguments raised for the first time in a reply brief). Accordingly, we agree with respondent that we lack jurisdiction in the context of this appeal to consider whether the district court appropriately held nonparty Bloom personally liable for the fee and cost award.

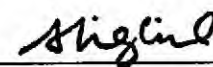
Consistent with the foregoing, we affirm in part and reverse in part the district court's award of fees and costs, and we remand this matter

⁶Our calculation reflects this to be a total of \$6,250.50. To the extent the parties disagree with this figure, they may present any such disagreement to the district court on remand.

for proceedings consistent with this order. We also dismiss this appeal insofar as it challenges the district court's decision to hold Bloom personally liable for the fee and cost award.

It is so ORDERED.⁷


Parraguirre, C.J.


Stiglich, J.


Gibbons, Sr.J.

cc: Hon. Mark R. Denton, District Judge
Persi J. Mishel, Settlement Judge
Maier Gutierrez & Associates
Garman Turner Gordon
Eighth District Court Clerk

⁷The Honorable Mark Gibbons, Senior Justice, participated in the decision of this matter under a general order of assignment.


IN THE SUPREME COURT OF THE STATE OF NEVADA

FIRST 100, LLC, A NEVADA LIMITED
LIABILITY COMPANY; AND FIRST 100
HOLDINGS, LLC, A NEVADA LIMITED
LIABILITY COMPANY, A/K/A 1ST ONE
HUNDRED HOLDINGS, LLC, A NEVADA
LIMITED LIABILITY COMPANY,
Appellants,
vs.
TGC/FARKAS FUNDING, LLC,
Respondent.

No. 82794

FILED

MAR 17 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER AFFIRMING IN PART AND DISMISSING IN PART

This is an appeal from a post-judgment order denying a motion to enforce a settlement agreement and holding appellants and a nonparty in civil contempt. Eighth Judicial District Court, Clark County; Mark R. Denton, Judge.¹

On January 7, 2021, Matthew Farkas executed a Settlement Agreement on behalf of respondent wherein respondent agreed to dismiss the underlying litigation against appellants. Following an evidentiary hearing, the district court entered an order finding that the Settlement Agreement was not a valid contract because Farkas lacked actual or

¹Pursuant to NRAP 34(f)(1), we have determined that oral argument is not warranted in this appeal.

apparent authority to bind respondent.² The district court's order also held appellants and nonparty Jay Bloom in civil contempt for their failure to comply with a previous order requiring them to produce appellants' books and records. As a sanction for the contempt, the district court indicated that it would award respondent a to-be-determined amount of attorney fees and costs.

On appeal, appellants contend (1) the district court erred in finding that Farkas lacked apparent authority to bind respondent to the Settlement Agreement, and (2) the district court erred in holding nonparty Bloom personally liable for the fees and costs.

With respect to appellants' first argument, appellants contend that the district court overlooked an August 2020 declaration from respondent's manager, Adam Flatto, wherein he stated that Farkas was and continued to be respondent's "Administrative Member." However, Flatto's declaration also stated that "[u]nder Section 3.4 of [respondent's] Operating Agreement, the Administrative Member can only take action to bind [respondent] after consultation with, and consent of, all [respondent's] members," i.e., Flatto. Thus, Flatto's declaration is consistent with the district court's finding that Farkas lacked authority to bind respondent without Flatto's consent and provides no support for appellants' argument. To the extent that appellants argue that they (via Bloom) thought Farkas

²The district court also appears to have found that the Settlement Agreement was invalid due to a lack of consideration or, alternatively, because it was not negotiated in good faith. In light of our resolution of this appeal, we need not address the parties' arguments regarding these findings.

had obtained Flatto's consent to execute the Settlement Agreement despite that consent having not been communicated to them, substantial evidence supports the district court's finding that such a belief would have been objectively unreasonable. *See Mack v. Estate of Mack*, 125 Nev. 80, 95, 206 P.3d 98, 108 (2009) ("[T]he question of whether a contract exists is one of fact, requiring this court to defer to the district court's findings unless they are clearly erroneous or not based on substantial evidence." (internal quotation marks omitted)); *Great Am. Ins. Co. v. Gen. Builders, Inc.*, 113 Nev. 346, 352, 934 P.2d 257, 261 (1997) ("A party claiming apparent authority of an agent as a basis for contract formation must prove (1) that he subjectively believed that the agent had authority to act for the principal and (2) that his subjective belief in the agent's authority was objectively reasonable."). In particular, the district court's order identified multiple previous instances wherein Flatto had communicated to Bloom that Farkas could not bind respondent without Flatto's consent, with the most notable instance being a 2020 arbitration award wherein the panel invalidated a different agreement between respondent and appellant that Farkas had purported to execute on behalf of respondent.³ Accordingly, we conclude

³In this respect, the only evidence appellants identify to support their position that Farkas represented to Bloom that he *had* obtained Flatto's consent to execute the Settlement Agreement is a fleeting comment made by Bloom at the evidentiary hearing. However, Farkas testified at the evidentiary hearing that he *did not* make any such representations to Bloom and that he had "made it clear to [Bloom] over the years that he needs to speak to [Flatto] and the lawyers" because Farkas "was not in a position to make any decisions on behalf of [respondent]." To the extent that the district court's findings weighed the credibility of this competing testimony, we decline to reweigh those findings. *Ellis v. Carucci*, 123 Nev.

that substantial evidence supports the district court's finding that Farkas lacked apparent authority and, consequently, that the Settlement Agreement was invalid and unenforceable.

With respect to appellants' second argument, respondent contends that this court lacks jurisdiction because Bloom, who is the only person aggrieved by the district court holding him personally liable, was not a party to the underlying proceedings and did not file a writ petition challenging the district court's order. *Cf. Mona v. Eighth Judicial Dist. Court*, 132 Nev. 719, 724-25, 380 P.3d 836, 840 (2016) ("[W]here the sanctioned party was not a party to the litigation below, he or she has no standing to appeal."); *Detwiler v. Eighth Judicial Dist. Court*, 137 Nev., Adv. Op. 18, 486 P.3d 710, 715 (2021) ("Where no rule or statute provides for an appeal of a contempt order, the order may properly be reviewed by writ petition."). Appellants do not meaningfully refute respondent's contention but instead argue that they are challenging the district court's order insofar as it held *them* liable for the fees and costs. We decline to consider this argument because appellants' opening brief did not allude to any such argument. *See Francis v. Wynn Las Vegas, LLC*, 127 Nev. 657, 671 n.7, 262 P.3d 705, 715 n.7 (2011) (observing that this court generally declines to consider arguments raised for the first time in a reply brief). Accordingly, we agree with respondent that we lack jurisdiction in the context of this

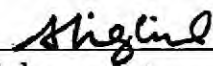
145, 152, 161 P.3d 239, 244 (2007) ("[W]e leave witness credibility determinations to the district court and will not reweigh credibility on appeal.").

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

In light of the foregoing, we affirm the district court's challenged order insofar as it found the January 7, 2021, Settlement Agreement to be unenforceable. We also dismiss this appeal insofar as it challenges the district court's decision to hold nonparty Bloom personally liable for fees and costs as a civil contempt sanction.

It is so ORDERED.⁴


Parraguirre, C.J.


Stiglich, J.


Gibbons, Sr. J.

cc: Hon. Mark R. Denton, District Judge
Persi J. Mishel, Settlement Judge
Maier Gutierrez & Associates
Garman Turner Gordon
Eighth District Court Clerk

⁴The Honorable Mark Gibbons, Senior Justice, participated in the decision of this matter under a general order of assignment.