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7 Proposed Attorneys for Chapter 11 Debtor  
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8 **UNITED STATES BANKRUPTCY COURT**  
 9 **DISTRICT OF NEVADA**

11  
 12 In re  
 13 Front Sight Management LLC,

Case No. 22-11824-abl  
 Chapter 11

**Hearing Date:** OST REQUESTED  
**Hearing Time:** OST REQUESTED

20  
 21 **DEBTOR’S EMERGENCY MOTION FOR ORDER AUTHORIZING MAINTENANCE**  
 22 **OF CERTAIN PREPETITION BANK ACCOUNTS AND MERCHANT ACCOUNTS**  
 23 **AND CASH MANAGEMENT SYSTEM**

24 Front Sight Management LLC dba Front Sight Firearms Training Institute, the chapter 11  
 25 debtor in possession herein (the “Debtor”), hereby files its emergency motion (“Motion”), pursuant  
 26 to Sections 105(a) and 363, 364(a), 503(b), 1107(a) and 1108 of title 11 of the United States Code  
 27 (the “Bankruptcy Code”), Rules 4001, 6003 and 6004 of the Federal Rules of Bankruptcy Procedure  
 28 (the “Bankruptcy Rules”), for entry of an order authorizing the maintenance of certain of the  
 Debtors’ pre-petition Cash Accounts, CD Account and Merchant Account (as hereinafter defined).

1 It is imperative that the Debtor’s proposed Cash Management System be approved to provide  
2 a smooth transition into chapter 11 without disrupting the Debtor’s ongoing business operations.  
3 Among other things, the Debtor needs to ensure that its employee paychecks can be issued and  
4 cashed, that customers may use credit cards to purchase the Debtor’s goods and services and pay  
5 outstanding invoices, and that business continues as usual. Altering the Debtor’s Cash Management  
6 System at this early stage of the case will devastate the Debtor’s ongoing business operations  
7 because revenues from credit card sales will not find their way into the Debtor’s account quickly  
8 enough to cover employee payroll and other operating expenses, all of which are essential to the  
9 ongoing business operations.

10 This Motion is based on this Motion and attached Memorandum of Points and Authorities,  
11 the concurrently filed *Omnibus Declaration of Ignatius Piazza in Support of First Day Motions* (the  
12 “Piazza Decl.”) and evidence appended thereto, the arguments of counsel and other admissible  
13 evidence properly brought before the Court at or before the hearing on this Motion.

14 **WHEREFORE**, the Debtor respectfully requests that this Court enter an order granting the  
15 Motion in its entirety, in substantially the form attached hereto as **Exhibit 1**, and to grant such other  
16 relief as the Court deems appropriate under the circumstances.

17 DATED: May 24, 2022

BG LAW LLP

19 By: /s/ Susan K. Seflin  
20 Steven T. Gubner  
21 Susan K. Seflin  
22 Jessica Wellington  
23 Proposed Attorneys for Chapter 11 Debtor  
24 and Debtor in Possession  
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26  
27  
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**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. JURISDICTION AND VENUE**

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

2. Pursuant to Rule 9014.2(a) of the Local Rules of Bankruptcy Practice of the United States District Court for the District of Nevada (the “Local Rules”), the Debtor confirms its consent to the entry of a final order by the Bankruptcy Court in connection with this Motion to the extent that it is later determined that the Bankruptcy Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

3. The statutory predicates for the relief requested in this Motion are Sections<sup>1</sup> 105(a), 363, 364(a), 503(b), 1107(a) and 1108 and Bankruptcy Rules 4001, 6003 and 6004.

**II. FACTUAL BACKGROUND**

**A. General Case Background**

4. On May 24, 2022, Front Sight Management LLC dba Front Sight Firearms Training Institute, a Nevada limited liability company, filed a voluntary petition for relief under chapter 11. The Debtor continues to operate its business and manage its affairs as a debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee, examiner, or committee has been appointed in the Debtor’s chapter 11 case.

**B. Description of the Debtor’s Business**

5. The Debtor was founded in 1996 by Ignatius Piazza. Mr. Piazza owns, either directly or indirectly, 100% of the Debtor. The Debtor was originally formed as a California business and operated near Bakersfield, California from its formation in 1996 until 2002. In 1998, the Debtor purchased 550 acres of raw land 45 minutes from Las Vegas, acquired approximately 500 acre feet

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<sup>1</sup> Unless otherwise stated, all references to “Sections” herein shall be to the Bankruptcy Code appearing in Title 11 of the United States Code; and all references to a “Bankruptcy Rule” shall refer to the Federal Rules of Bankruptcy Procedure.

1 of water rights and began building what is now the finest and largest private firearms training facility  
2 in the world (the “Front Sight Property”).

3 6. In 2012, the Debtor became a Nevada limited liability company. The Debtor’s  
4 primary place of business is the Front Sight Property located at 1 Front Sight Road, Pahrump,  
5 Nevada 89061.

6 7. The Front Sight Property is accessed by a four-mile, two lane paved road, and is  
7 currently comprised of 50 outdoor firearms training ranges, live fire tactical training simulators, an  
8 8,000 square foot classroom and pro shop, and assorted accessory buildings, bathrooms, three water  
9 wells and thousands of square yards of completed grading for future development.

10 8. The Debtor provides firearms training courses which promote the defensive use of  
11 various firearms. Courses are offered to the general public, members of law enforcement and  
12 military members.

13 9. The Front Sight Firearms Facility is the most successful of its type in the United  
14 States. The Debtor provides classes and instruction annually to upward of 40,000 gun and weapons  
15 enthusiasts. The Debtor is considered the leader in its field, and provides additional training and  
16 instruction for numerous city and state agencies seeking to improve performance of their respective  
17 law enforcement departments.

18 10. Over the last 25 years, the Debtor has trained a million students and currently has  
19 over 263,000 members, of which approximately 80,000 are active members.

20 11. As of January 19, 2022, the Front Sight Property (including the land, water rights and  
21 improvements but excluding equipment and inventory) was appraised at \$25,260,000 “as is.”

22 12. Historically, the Debtor has operated its business by selling lifetime memberships at  
23 an amount ranging from \$250 to \$50,000, courses and ancillary products. The Debtor’s business  
24 model centered around a major expansion plan that was intended to build the Front Sight Vacation  
25 Club & Resort (vacation residences, a RV park, etc.), a retail area adjacent to the vacation club and a  
26 pavilion. The Debtor’s intent was that the discounted lifetime memberships and other promotional  
27 benefits (like “Front Sight bucks” [money to be used on limited items at Front Sight], certificates [to  
28 be used for 2 day or 4 day training courses], etc.) would lead to a “captive” customer base that would

1 be more likely to take advantage of the Vacation Club & Resort which would then bring increased  
2 revenue to the Debtor.

3 **C. Disputed Lending Transaction & the Reasons Behind the Debtor's Bankruptcy**  
4 **Filing.**

5 13. With that goal in mind, the Debtor began researching its financing options. Financing  
6 from traditional banks was largely unavailable to the Debtor due to its business centering around the  
7 use of firearms. In 2012, the Debtor was approached by Robert W. Dziubla ("Dziubla") John  
8 Fleming ("Fleming"), doing business as Las Vegas Development Fund LLC ("LVDF"), who  
9 represented themselves as like-minded, pro-gun patriots who told the Debtor that they would be able  
10 to obtain a financing package for the Debtor to raise up to \$150 million (at a low interest rate) to  
11 build and bring to market, among other things, the Vacation Club & Resort. Dziubla, Fleming and  
12 LVDF stated that all they needed from the Debtor was \$300,000 in fees needed to secure approval  
13 from the United States Customs and Immigration Service ("USCIS") and \$100,000 in marketing  
14 costs to solicit foreign investors to participate in an EB-5<sup>2</sup> immigration investment plan.

15 14. The Debtor initially declined the Dziubla, Fleming and LVDF offer twice. Dziubla  
16 and Fleming persisted and promised the Debtor that due to their vast experience raising foreign  
17 investments, their personal connections in China, and their desire to help the Debtor complete its  
18 development, that they could raise the necessary funds within a year.

19 15. After months of solicitation and misrepresentations, Front Sight unwittingly accepted  
20 Dziubla's and Fleming's proposal. Front Sight paid the requested \$300,000 in fees to secure  
21 approval from the USCIS to market the EB-5 investment project. Instead of taking a year as  
22 promised to secure the USCIS approval, it took over two years. Front Sight paid the aforementioned  
23 \$100,000 in marketing fees, as well as another \$120,000 in marketing fees, but the promised funding  
24 never materialized.

25 16. Four years later, in 2016, Dziubla and Fleming continued their misrepresentations by  
26 stating they had secured the first \$2.5 million in investor funding, and had hundreds of investors in a  
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28 <sup>2</sup> An "EB-5" investment allows qualified foreign investors who meet specific capital investments  
and job creation requirements to potentially obtain permanent residency.

1 pipeline to invest in the construction project, but needed to execute a construction loan document to  
2 start the flow of investment money. In October of 2016, after three months of negotiating a  
3 construction loan agreement, the Debtor was induced into signing the agreement with the  
4 expectation that full funding would follow shortly thereafter. Dziubla and Fleming produced only  
5 \$6.3 million dollars in funding over the next two years, all of which was used by Front Sight under  
6 the parameters of the construction loan agreement. During this time period, the Debtor paid the  
7 interest payments on the money every month on time and in full. By 2018, the Debtor became  
8 suspicious that the funds advanced to Dziubla and Fleming (the \$300,000 in fees and \$220,000 for  
9 marketing) had not actually been used to secure USCIS approval and for marketing the project to  
10 foreign investors, and requested that Dziubla and Fleming produce such evidence.

11 17. Dziubla and Fleming refused to show proof of where the funds the Debtor paid had  
12 been spent and apparently in retaliation for its demands, Dziubla and Fleming fraudulently claimed  
13 that the Debtor was in default on a number of terms of the construction loan agreement (which the  
14 Debtor was not in default).

15 18. To sum up a very complex history, Dziubla, Fleming and LVDF defaulted on their  
16 obligations, failed to raise the funds necessary to complete the Vacation Club & Resort, and  
17 litigation was commenced by the Debtor against Dziubla, Fleming, LVDF and related affiliates  
18 (collectively, the “LVDF Parties”) in August of 2018, styled *Front Sight Management, LLC v. Las*  
19 *Vegas Development Fund LLC et al.*, Case No. A-18-781084-B, which is pending before the Eighth  
20 Judicial District Court in Clark County, Nevada (the “LVDF Litigation”). In the LVDF Litigation,  
21 the Debtor asserts claims for, among other things, fraud in the inducement, intentional  
22 misrepresentation, breach of fiduciary duty and conversion against the LVDF Parties. Dziubla,  
23 Fleming, and LVDF then filed a fraudulent foreclosure action against the Debtor. The judge in the  
24 civil action placed a temporary restraining order on the foreclosure action. The civil action has been  
25 pending for nearly four years.

26 19. While the Debtor believes it will ultimately prevail in the litigation, the Debtor’s legal  
27 fees related to the LVDF Litigation and foreclosure action have exceeded one million dollars to date.  
28 Furthermore, the most damaging consequences arising out of the LVDF Parties malfeasance are (a)

1 the loss of momentum the Debtor has suffered in completing the development of its project, (b) the  
2 loss of member confidence the Debtor has suffered due to all the delays in the project, (c) the  
3 resulting reduction in membership sales, and (d) the increased difficulty for the Debtor to obtain  
4 additional financing to complete the project.

5 20. As 2021 came to an end, the Debtor solicited its members to participate in a number  
6 of marketing offers in an attempt to raise sufficient funds to complete the aforementioned litigation.  
7 Unfortunately, the Debtor was not able to raise sufficient funds.

8 21. Because the Vacation Club & Resort and related projects have not yet materialized  
9 and the Debtor's ability to obtain traditional financing to complete the construction is impossible  
10 while the LVDF Litigation is pending, the Debtor has determined that it must reorganize its business  
11 to generate sufficient cash flow on an ongoing basis to support itself. While the Debtor has not yet  
12 finalized all the details of its plan of reorganization, the Debtor intends on implementing certain  
13 annual fees and other costs while giving members and creditors direct ownership interest in the  
14 reorganized Debtor.

15 22. The Debtor hopes that the ability to participate in profits post-bankruptcy will  
16 incentivize its current members to continue their membership with the Debtor.

17 23. While the Debtor is working diligently to improve its cash flow, an injunction that  
18 was in place in LVDF Litigation which stayed the foreclosure of the Front Sight Property was  
19 recently lifted. Without the filing of this bankruptcy, the Front Sight Property would be foreclosed  
20 upon and the Debtor would have no choice but to immediately fire all of its employees and close its  
21 business.

22 **III. RELIEF REQUESTED**

23 24. By this Motion, the Debtor seeks authorization to maintain its existing Cash  
24 Accounts, CD Account and Merchant Account (defined below) for all purposes in this case to avoid  
25 immediate and irreparable harm and to continue to collect incoming payments to avoid disruption in  
26 the Debtor's collections during the chapter 11 case.

1           25.       Specifically, to manage its businesses efficiently and seamlessly, Debtor utilizes  
2 certain accounts to collect and transfer funds generated by its operations and disburse those funds to  
3 satisfy the obligations required to operate its business.

4           26.       As part of the Cash Management System, the Debtor proposes to maintain the  
5 following existing bank accounts, which are accounts utilized for Debtor's deposits and  
6 disbursements: Bank of America: Acct No. XXXXXX8176; Wells Fargo: Acct No. XXXXX7051,  
7 which account secures a \$100,000 line of credit; and accounts held at American First National Bank:  
8 Acct No. XXXXX0322 and Acct No. XXXXX0187 (collectively, the "Cash Accounts"). The Cash  
9 Accounts are essential for the Debtor's continued operations.

10          27.       To obviate the disruption that might otherwise occur in the collection process, it is in  
11 the best interest of the estate that the Debtor be authorized to continue its ordinary course use of the  
12 Cash Accounts, rather than to close these accounts and then open a new accounts.

13          28.       The Debtor also maintains a Certificate of Deposit account at City National Bank,  
14 which has a balance of \$100,000 and secures the Debtor's credit card (the "CD Account").

15          29.       Furthermore, the Debtor utilizes credit card processors, which collect funds and  
16 distribute them directly to the Cash Accounts. The Debtor's Merchant Account is at Bank of Texas:  
17 Acct No. XXXXXX6255 (the "Merchant Account"). In the ordinary course of its business, the  
18 Debtor authorizes the operators of the Merchant Account to collect funds and process returns. The  
19 Debtor seeks authorization, in its sole discretion, to permit the Merchant Account to continue to  
20 process such transactions in the ordinary course of business. Pre-petition, the Debtor also used this  
21 Merchant Account as an operating account and payroll is currently drawn from this account by ADP,  
22 the company that the Debtor uses to process payroll. Post-Petition, the Debtor will use the Merchant  
23 Account solely as a Merchant Account. However, in this interim time period before the Debtor  
24 opens a general debtor in possession operating account at Bank of Texas, the Debtor requests  
25 authority to continue to use the Merchant Account as it did pre-petition to ensure that (a) payroll can  
26 timely be funded, and (b) to ensure a smooth transition to the extent that this account is currently set  
27 up for automatic payments, etc.

28

1           30.     As noted above, it is imperative that the Debtor's Cash Management System be  
2 approved to provide a smooth transition into Chapter 11 without disrupting the Debtor's ongoing  
3 business operations. During this transition period, the Debtor needs to ensure that its employee  
4 paychecks can be issued and cashed in a timely manner, that customers may use credit cards to  
5 purchase the Debtor's goods and services and pay outstanding invoices, and that business continues  
6 as usual.

7           31.     Any changes to the Cash Accounts, CD Account and/or Merchant Account would  
8 result in significant disruption in the collection and distribution of these funds.

9           32.     Closing the Cash Accounts, CD Account and Merchant Account would require that  
10 these automatic payments be reestablished and would result in significant delay in the delivery of  
11 necessary post-petition goods.

12           33.     The Debtor's use of the Cash Accounts, CD Account and Merchant Account is an  
13 ordinary, usual, and important business practice. The continued use of the Cash Accounts, CD  
14 Account and Merchant Account enables the Debtor to maintain control over the receipt of cash, and  
15 to generate timely and accurate financial information critical to operations during the pendency of  
16 the chapter 11 case. If these practices and procedures are disrupted, the Debtor's efforts to  
17 reorganize may be jeopardized.

18           34.     The Debtor's use of the Cash Accounts, CD Account and Merchant Account, is  
19 similar to those commonly employed by corporate enterprises of comparable size and complexity.  
20 Establishing new Cash Accounts and Merchant Account would entail significant delay and cost. At  
21 a minimum, substantial disruptions to the Debtor's business would occur by, among other things,  
22 delaying the receipt of incoming payments and funding payroll. This would in turn harm creditors,  
23 employees and consumer confidence, and would hinder Debtor's chance to complete a successful  
24 reorganization.

25           35.     Further, maintaining the existing Cash Accounts, CD Account and Merchant Account  
26 would not prejudice any party. The Debtor will maintain strict records with respect to all transfers of  
27 cash so that it is able to readily account for all transactions. The Debtor's maintenance of its existing  
28

1 Cash Accounts, CD Account and Merchant Account is not only of critical importance to the  
2 Debtor's business operations, but is also in the best interest of the Debtor, its estate, and creditors.

3 36. If the Cash Accounts, CD Account and Merchant Account are disrupted, the Debtor  
4 will experience immediate and irreparable harm.

5 37. As a result, the Debtor requests this Court authorize procedures as follows:

- 6 a. That the Debtor is authorized and empowered to: 1) maintain its Cash Accounts, CD  
7 Account and Merchant Account and continue to use its Cash Accounts, CD Account  
8 and Merchant Account in existence as of the Petition Date and as listed and  
9 described; 2) treat the Cash Accounts, CD Account and Merchant Account for all  
10 purposes as debtor-in-possession accounts (and the Debtor will request the respective  
11 banks convert these accounts into debtor-in-possession accounts with the increased  
12 collateralization); 3) use, in their present form, existing checks and other documents  
13 related to the Cash Accounts and Merchant Account; 4) pay post-petition ordinary  
14 course bank fees in connection with the Cash Accounts, CD Account and Merchant  
15 Account; 5) perform its obligations under the documents and agreements governing  
16 the Cash Accounts, CD Account and Merchant Account;
- 17 b. That the Debtor maintains records of all transfers and transactions within the Cash  
18 Accounts, CD Account and Merchant Account so that all transfers and transactions  
19 are adequately and promptly documented in, and ascertainable and traceable from, the  
20 Debtor's books and records;
- 21 c. That the Banks are authorized and directed to: 1) continue to administer, service, and  
22 maintain the Cash Accounts, CD Account and Merchant Account as such Accounts  
23 are administered, serviced, and maintained prior to the Petition Date, without  
24 interruption and in the usual and ordinary course; and 2) to pay any and all checks,  
25 drafts, wires, automated clearinghouse transfers, electronic fund transfers, or other  
26 items presented, issued, or drawn on the Cash Accounts, CD Account and Merchant  
27 Account (collectively, the "Debits") on account of a claim arising on or after the  
28 Petition Date so long as there are sufficient collected funds in the relevant Cash

1 Accounts, CD Account and Merchant Account and in accordance with the agreements  
2 governing said Cash Accounts, CD Account and Merchant Account, including,  
3 without limitation, any prepetition cash management agreements, merchant service  
4 agreements, or treasury services agreements;

- 5 d. That no Debits issued on the Cash Accounts or Merchant Account prior to, but  
6 presented after, the commencement of the Debtor's chapter 11 case are honored or  
7 paid except as otherwise permitted by an order of the Court (and the Debtor is  
8 seeking such relief in its first day wage motion and first day critical vendor motion);
- 9 e. The Banks are authorized and directed to rely on the representations of the Debtor as  
10 to which Debits are authorized to be honored and dishonored, whether or not such  
11 Debits are dated prior to, on, or subsequent to the Petition Date, and whether or not  
12 the Banks believe the payment is authorized by an order of the Court. To the extent  
13 that the Debtor directs that any Debit be dishonored, the Debtor may issue  
14 replacement Debits consistent with the orders of this Court;
- 15 f. That the Banks are authorized to debit the Debtor's Cash Accounts and Merchant  
16 Account in the ordinary course of business for all Debits presented for payment or  
17 exchanged for cashier's checks prior to the commencement of the Debtor's chapter 11  
18 case;
- 19 g. That nothing contained in this Motion or its subsequent order may prevent the Debtor  
20 from closing the Cash Accounts, CD Account and Merchant Account as it deems  
21 necessary and appropriate;
- 22 h. That the Debtor reimburse the Banks for any claim arising prior to or after the  
23 Petition Date in connection with Debits deposited with the Banks which have been  
24 dishonored or returned for insufficient funds in the applicable accounts;
- 25 i. That the Banks implement reasonable handling procedures to effectuate the terms  
26 requested in this Motion. The Debtor requests that if the Banks do not implement  
27 such handling procedures, that they be liable to the Debtor or its estate, or otherwise  
28 held in violation of this Motion or its subsequent order, for honoring a prepetition

1 Debit or other Debit: 1) at the direction of the Debtor that such prepetition Debit or  
2 other Debit be honored; 2) in the good faith belief that the Court has authorized that  
3 such prepetition Debit or other Debit be honored; or 3) as a result of an innocent  
4 mistake made despite implementation of such handling procedures;

- 5 j. That the relief, rights, and responsibilities requested herein are deemed to apply to  
6 any and all Cash Accounts, CD Account and Merchant Account maintained in  
7 Debtor's name;
- 8 k. That to the extent any other order is entered directing the Banks to honor Debits  
9 made, drawn, or issued in payment of prepetition claims, the obligation to honor such  
10 items are subject to the order authorizing this Motion;
- 11 l. That the Debtor and the Banks are authorized and directed to continue to perform  
12 pursuant to the terms of any prepetition documents and agreements governing the  
13 Cash Accounts, CD Account and Merchant Account, except and to the extent  
14 otherwise directed by the terms of this order. The Debtor requests that the Banks are  
15 authorized to continue offsetting any funds deposited in the Cash Accounts, CD  
16 Account and Merchant Account by Debtor to the extent necessary to cover any fees,  
17 charges, and assessments, including attorneys' fees, set forth or provided for in the  
18 agreements governing the Cash Accounts, CD Account and Merchant Account, or as  
19 otherwise permitted in the ordinary course of business pursuant to the agreements  
20 governing the Cash Accounts, CD Account and Merchant Account. The parties to  
21 such agreements seek to continue to enjoy the rights and remedies afforded them  
22 under such agreements, except to the extent modified by the Court or by operation of  
23 the Bankruptcy Code.

#### 24 **IV. BASIS FOR RELIEF REQUESTED**

25 The OUST has established certain operating guidelines for debtors in possession to supervise  
26 the administration of Chapter 11 cases. These guidelines require Chapter 11 debtors to, among other  
27 things: (a) close all existing bank accounts; (b) open a minimum of three (3) new debtor in  
28 possession accounts under the debtor name as a debtor in possession (general, payroll and tax) at an

1 approved depository, with all disbursements made out of one of the debtor in possession accounts;  
2 and (c) obtain checks from each debtor in possession account that bear the designation “Debtor in  
3 Possession” and the bankruptcy case number. However, Section 105(a) of the Bankruptcy Code  
4 allows the Court to “issue any order, process or judgment that is necessary or appropriate to carry  
5 out the provisions of this title.” 11 U.S.C. § 105(a).

6 The OUST Guidelines for bank accounts are intended to ensure a clear separation between  
7 prepetition and postpetition payments, and track tax and payroll obligations. The Debtor’s Cash  
8 Management System, however, allows Debtor to identify and account for transfers of funds, track  
9 and keep separate prepetition and postpetition payments, and track tax and payroll obligations.

10 Requiring the Debtor to open new Cash Accounts, CD Account and Merchant Account  
11 would complicate the Debtor’s collection of cash, needlessly increasing operating costs, and could  
12 otherwise jeopardize the Debtor’s operations entirely.

13 Courts have acknowledged that a bankruptcy court has the discretionary authority to allow  
14 the continued use of existing, prepetition bank accounts. 11 U.S.C. § 105(a); *In re Pathmark Stores*  
15 *Inc. et al.*, Case No. 00-02963(JJF) (D. Del. July 13, 2000); *In re Safety-Kleen Corp.*, Case No. 00-  
16 02303(PJW) (Bankr. D. Del. June 13, 2000); *In re Eagle Food Centers, Inc.*, Case No. 00-01311  
17 (RRN) (D. Del. March 2, 2000); *In re Philip Services (Delaware), Inc.*, Case No. 99-02385(MEW)  
18 (Bankr. D. Del. June 30, 1999); *see also, In re New York City Shoes, Inc.*, 78 B.R. 426, 427 (Bankr.  
19 E.D. Pa. 1987) (debtor depositing postpetition funds into prepetition bank accounts); *In re Grant*  
20 *Broadcasting of Philadelphia, Inc.*, 75 B.R. 819 (E.D. Penn. 1987); *In re Charter Company, et al.*,  
21 778 F.2d 617 (11th Cir. 1985).

22 Indeed, Bankruptcy court approval of an existing cash management system (including bank  
23 accounts) and related procedures and transactions used in the ordinary course of business is  
24 common. *See In re Interco, Inc.*, 130 B.R. 301 (Bankr. E.D. Mo. 1991); *see also In re The Charter*  
25 *Co.*, 778 F.2d 617, 621 (11th Cir. 1985) (holding that it was “entirely consistent” with the provisions  
26 of the Bankruptcy Code for the bankruptcy court to authorize debtors to use their pre-petition  
27 “routine cash management system”). Moreover, allowing a debtor to continue its present cash  
28

1 management system should be approved by the Court as a continuation of Debtor's operations in its  
2 ordinary course of business. *See In re Amdura Corp.*, 75 F.3d 1447 (10th Cir. 1996).

3 The authorization which Debtor seeks is in the best interest of Debtor's estate and is  
4 supported by applicable law. *See, e.g., In re Federated Dep't Stores, Inc.*, 1990 Bankr. LEXIS 72  
5 (Bankr. S.D. Ohio Jan. 15, 1990); *In re Grant Broadcasting of Philadelphia, Inc.*, 75 Bankr. 819,  
6 820 (E.D. Pa. 1987) (decision referred to order authorizing use of cash collateral and prepetition  
7 bank accounts).

8 The continuation of the Cash Accounts and Merchant Account is also permitted pursuant to  
9 Section 3663(c)(1) of the Bankruptcy Code, which authorizes the debtor-in-possession to "use  
10 property of the estate in the ordinary course of business without notice or a hearing." Included within  
11 the scope of Section 363(c)(1) is the ability to continue "routine transactions" required under the  
12 cash management system. *See Amdura Corp.*, 75 F.3d at 1453. Bankruptcy courts have routinely  
13 granted Chapter 11 debtors authority to continue utilizing existing cash management systems and  
14 treat request for such authority as a relatively "simple matter." *See In re Baldwin-United Corp.*, 79  
15 B.R. 321, 327 (Bankr. S.D. Ohio 1987). Further, the Court has authority to grant the relief requested  
16 under Section 105(a).

17 While courts generally enter orders approving the continuation of a debtor's cash  
18 management system when requested, *see, e.g., In re Lehman Brothers Holdings, Inc.*, 2008 WL  
19 4902202, at \*2 (Bankr. S.D.N.Y. 2008), courts addressing contested cash management requests  
20 frequently tailor the cash management order to the facts of case rather than fully deny the request.  
21 *See, e.g., In re the Colad Group, Inc.*, 324 B.R. 208, 216-217 (Bankr. W.D. N.Y. 2005); *In re Enron*  
22 *Corp.*, 279 B.R. 671, 692 (Bankr. S.D.N.Y. 2002).

23 As such, sufficient factual and legal basis therefore exists for this Court to approve this  
24 Motion and allow the Debtor to maintain the Cash Accounts, CD Account and Merchant Account as  
25 detailed above in order to ensure revenues from credit card companies are received as soon as  
26 possible, to avoid delays in payments to administrative creditors, including employees and trade  
27 creditors, to ensure as smooth a transition into Chapter 11 as possible with minimal disruption, and  
28 to aid in the Debtor's efforts to successfully and rapidly complete this case.

1 If the Cash Accounts, CD Account or Merchant Account are disrupted, the Debtor will  
2 unlikely be able to escape the immediate and irreparable harm that will follow.

3 **V. NOTICE AND REQUEST FOR WAIVER OF THE STAY**

4 Bankruptcy Rule 6004(h) provides that an “order authorizing the use, sale, or lease of  
5 property . . . is stayed until the expiration of 14 days after entry of the order, unless the court orders  
6 otherwise.” In view of the urgency of the relief requested herein and the risk to the Debtor’s  
7 operations if the Cash Accounts, CD Account and Merchant Account are interrupted, a fourteen-day  
8 stay of the relief sought herein is impractical. To be sure, absent an order approving the continued  
9 use of the Cash Accounts, CD Account and Merchant Account, the Debtor may be faced with a  
10 delay in receipt in payments. Accordingly, the Debtors requests that this Court waive the stay under  
11 Bankruptcy Rule 6004(h) and provide in the order granting the relief sought herein that such order  
12 shall be effective immediately.

13 Bankruptcy Rule 6003(b) provides “except to the extent that relief is necessary to avoid  
14 immediate and irreparable harm, the court shall not, within 21 days after the filing of the petition,  
15 grant relief regarding . . . a motion to use, lease or otherwise incur an obligation regarding property  
16 of the estate, including a motion to pay all or part of a claim that arose before filing of the petition. . .  
17 .” As described herein, if the Cash Accounts, CD Account and Merchant Account are not  
18 maintained, the Debtor will experience immediate and irreparable harm. To ensure the Debtor’s  
19 chances of successfully reorganizing and maximizing value for the Debtor’s creditors, this Court  
20 should find that the exception set forth in Bankruptcy Rule 6003 applies here.<sup>3</sup>

21 The Debtor shall serve notice of this Motion on the following: (i) the Office of the United  
22 States Trustee for the District of Nevada; (ii) all secured creditors; (iii) the holders of the twenty (20)  
23 largest unsecured claims against the Debtor, or any official committee of unsecured creditors, if one  
24 is appointed pursuant to Section 1102; and (iv) other interested parties as listed on the service list.

25 Given the emergency nature of the relief requested herein, and the potential disruption to the  
26

27 <sup>3</sup> To the extent any of the relief requested herein is not granted on the Petition Date, in the  
28 alternative, and out of an abundance of caution, the Debtor requests that the Court set a final hearing  
Date pursuant to Bankruptcy Rule 6003.

1 Debtor's business that will ensue if such relief requested is not granted, Debtor submits that no  
2 further notice need be given prior to granting the relief sought herein.

3 **VI. CONCLUSION**

4 Based on the foregoing, Debtor respectfully requests that the Bankruptcy Court enter an  
5 order granting the relief requested herein, in substantially the form attached hereto as **Exhibit 1**, and:

- 6 1. Authorizing the maintenance of the Debtor's prepetition Cash Accounts, CD  
7 Account and Merchant Account;
- 8 2. Waiving the fourteen-day stay applicable to any order approving the use of estate  
9 property imposed by Bankruptcy Rule 6004(h);
- 10 3. Waiving the 21-day time period imposed by Bankruptcy Rule 6003 to avoid  
11 immediate and irreparable harm; and
- 12 4. Granting such other relief as the Bankruptcy Court deems appropriate under the  
13 circumstances.

14 DATED: May 24, 2022

BG LAW LLP

15  
16  
17 By: /s/ Susan K. Seflin  
18 Steven T. Gubner  
19 Susan K. Seflin  
20 Jessica Wellington  
21 Proposed Attorneys for Chapter 11  
22 Debtor and Debtor in Possession  
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EXHIBIT “1”

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STEVEN T. GUBNER – NV Bar No. 4624  
SUSAN K. SEFLIN – CA Bar No. 213865 – Pro Hac Vice to Be Filed  
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Proposed Attorneys for Chapter 11 Debtor  
and Debtor in Possession

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA**

In re  
Front Sight Management LLC,

Case No. 22-11824-abl

Chapter 11

**Date:** OST REQUESTED  
**Time:** OST REQUESTED

**ORDER GRANTING DEBTOR’S EMERGENCY MOTION FOR ORDER  
AUTHORIZING MAINTENANCE OF CERTAIN PREPETITION BANK ACCOUNTS AND  
MERCHANT ACCOUNTS AND CASH MANAGEMENT SYSTEM**

1 The Court, having reviewed and considered the Debtor's motion (the "Motion")<sup>1</sup> for an  
2 order, pursuant to Sections 105(a) and 363, 364(a), 503(b), 1107(a) and 1108 of title 11 of the  
3 United States Code (the "Bankruptcy Code"), Rules 4001, 6003 and 6004 of the Federal Rules of  
4 Bankruptcy Procedure (the "Bankruptcy Rules"), for entry of an order authorizing the maintenance  
5 of certain of the Debtors' pre-petition Cash Accounts, CD Account and Merchant Account (as  
6 defined in the Motion); and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§  
7 157 and 1334; and this Court having found that venue of this proceeding and the Motion in this  
8 district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that this is a  
9 core proceeding pursuant to 28 U.S.C. § 157(b); and this Court having found that the Debtor's notice  
10 of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances  
11 and no other notice need be provided; and this Court having reviewed the Motion and having heard  
12 the statements in support of the relief requested therein at a hearing, if any, before this Court (the  
13 "Hearing"); appearances having been noted on the record at the Hearing; the Court having stated its  
14 findings of fact and conclusions of law on the record at the Hearing on the Motion, which findings of  
15 fact and conclusions of law are incorporated herein by this reference in accordance with Fed. R. Civ.  
16 P. 52, as made applicable by Bankruptcy Rule 9014; and it appearing that the relief requested is  
17 necessary to preserve the Debtor's ongoing operations and necessary to avoid immediate and  
18 irreparable harm, and is in the best interests of the Debtor, its estates, and its creditors; and in the  
19 light of the circumstances and the emergency nature of the relief requested; and after due  
20 deliberation and sufficient cause appearing therefor,

21 **IT IS HEREBY ORDERED** that the Motion is GRANTED; and

22 **IT IS FURTHER ORDERED THAT:**

- 23 a. That the Debtor is authorized and empowered to: 1) maintain its Cash Accounts, CD  
24 Account and Merchant Account and continue to use its Cash Accounts, CD Account  
25 and Merchant Account in existence as of the Petition Date and as listed and  
26 described; 2) treat the Cash Accounts, CD Account and Merchant Account for all  
27

28 <sup>1</sup> All capitalized, undefined terms shall have the meaning ascribed to them in the Motion.

1 purposes as debtor-in-possession accounts; 3) use, in their present form, existing  
2 checks and other documents related to the Cash Accounts; 4) pay post-petition  
3 ordinary course bank fees in connection with the Cash Accounts, CD Account and  
4 Merchant Account; 5) perform its obligations under the documents and agreements  
5 governing the Cash Accounts, CD Account and Merchant Account;

6 b. That the Debtor maintains records of all transfers and transactions within the Cash  
7 Accounts, CD Account and Merchant Account so that all transfers and transactions  
8 are adequately and promptly documented in, and ascertainable and traceable from, the  
9 Debtor's books and records;

10 c. That the Banks are authorized and directed to: 1) continue to administer, service, and  
11 maintain the Cash Accounts, CD Account and Merchant Account as such Accounts  
12 are administered, serviced, and maintained prior to the Petition Date, without  
13 interruption and in the usual and ordinary course; and 2) to pay any and all checks,  
14 drafts, wires, automated clearinghouse transfers, electronic fund transfers, or other  
15 items presented, issued, or drawn on the Cash Accounts, CD Account and Merchant  
16 Account (collectively, the "Debits") on account of a claim arising on or after the  
17 Petition Date so long as there are sufficient collected funds in the relevant Cash  
18 Accounts, CD Account and Merchant Account and in accordance with the agreements  
19 governing said Cash Accounts, CD Account and Merchant Account, including,  
20 without limitation, any prepetition cash management agreements, merchant service  
21 agreements, or treasury services agreements;

22 d. That no Debits issued on the Cash Accounts prior to, but presented after, the  
23 commencement of the Debtor's chapter 11 case are honored or paid, provided that  
24 Debtor issues a stop payment order in accordance with the terms of the documents  
25 and agreements governing such Account, except as otherwise permitted by an order  
26 of the Court;

27 e. That the Debtor promptly furnish to the Banks a list of those Debits drawn or issued  
28 in payment of prepetition claims, the payment of which has been authorized by any

1 order of the Court, and that the Debtor issues stop payment orders for any prepetition  
2 Debits which they desire to be dishonored. The Banks are authorized and directed to  
3 rely on the representations of the Debtor as to which Debits are authorized to be  
4 honored and dishonored, whether or not such Debits are dated prior to, on, or  
5 subsequent to the Petition Date, and whether or not the Banks believe the payment is  
6 authorized by an order of the Court. To the extent that the Debtor directs that any  
7 Debit be dishonored, the Debtor may issue replacement Debits consistent with the  
8 orders of this Court;

- 9 f. That the Banks are authorized to debit the Debtor's Cash Accounts and Merchant  
10 Account in the ordinary course of business for all Debits presented for payment or  
11 exchanged for cashier's checks prior to the commencement of the Debtor's chapter 11  
12 case;
- 13 g. That nothing contained in this Motion or its subsequent order may prevent the Debtor  
14 from closing the Cash Accounts, CD Account and Merchant Account as it deems  
15 necessary and appropriate;
- 16 h. That the Debtor reimburse the Banks for any claim arising prior to or after the  
17 Petition Date in connection with Debits deposited with the Banks which have been  
18 dishonored or returned for insufficient funds in the applicable accounts;
- 19 i. That the Banks implement reasonable handling procedures to effectuate the terms  
20 requested in this Motion. The Debtor requests that if the Banks do not implement  
21 such handling procedures, that they be liable to the Debtor or its estate, or otherwise  
22 held in violation of this Motion or its subsequent order, for honoring a prepetition  
23 Debit or other Debit: 1) at the direction of the Debtor that such prepetition Debit or  
24 other Debit be honored; 2) in the good faith belief that the Court has authorized that  
25 such prepetition Debit or other Debit be honored; or 3) as a result of an innocent  
26 mistake made despite implementation of such handling procedures;
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- j. That the relief, rights, and responsibilities requested herein are deemed to apply to any and all Cash Accounts, CD Account and Merchant Account maintained in Debtor’s name;
- k. That to the extent any other order is entered directing the Banks to honor Debits made, drawn, or issued in payment of prepetition claims, the obligation to honor such items are subject to the order authorizing this Motion;
- l. That the Debtor and the Banks are authorized and directed to continue to perform pursuant to the terms of any prepetition documents and agreements governing the Cash Accounts, CD Account and Merchant Account, except and to the extent otherwise directed by the terms of this order. The Debtor requests that the Banks are authorized to continue offsetting any funds deposited in the Cash Accounts, CD Account and Merchant Account by Debtor to the extent necessary to cover any fees, charges, and assessments, including attorneys’ fees, set forth or provided for in the agreements governing the Cash Accounts, CD Account and Merchant Account, or as otherwise permitted in the ordinary course of business pursuant to the agreements governing the Cash Accounts, CD Account and Merchant Account. The parties to such agreements seek to continue to enjoy the rights and remedies afforded them under such agreements, except to the extent modified by the Court or by operation of the Bankruptcy Code.

**IT IS FURTHER ORDERED THAT** the fourteen-day stay applicable to any order approving the use of estate property imposed by Bankruptcy Rules 6004(h) is waived; and

**IT IS FURTHER ORDERED THAT** the 21-day time period imposed by Bankruptcy Rule 6003 to avoid immediate and irreparable harm is waived.

**IT IS SO ORDERED.**

*[The Remainder of this Page Left Intentionally Blank]*

1 Submitted by:  
2 BG LAW LLP

3 By: \_\_\_\_\_  
4 Steven T. Gubner  
5 Susan K. Seflin  
6 Jessica Wellington

7 Proposed Attorneys for Chapter 11  
8 Debtor and Debtor in Possession  
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**LR 9021 CERTIFICATION**

In accordance with LR 9021, an attorney submitting this document certifies as follows

(check one):

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

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

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

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

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