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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: July 25, 2022
Hearing Time: 9:30 a.m.

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 18 **DEBTOR’S OPPOSITION TO LAS VEGAS DEVELOPMENT
 FUND, LLC’S, MOTION TO TERMINATE STAY**

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 20 Front Sight Management LLC, the chapter 11 debtor in possession herein (the “Debtor”),
 21 hereby submits its opposition (“Opposition”) to the *Motion to Terminate Stay* [ECF No. 206]
 22 (“Motion”) filed by Las Vegas Development Fund, LLC (“LVDF”). In support of its Opposition, the
 23 Debtor respectfully represents as follows:

24 **I. INTRODUCTION**

25 By the Motion, LVDF seeks relief from the automatic stay to, among other things, prosecute
 26 its counterclaims and third-party claims with respect to pre-petition litigation between the Debtor
 27 and LVDF that was initially pending in state court, and is now pending before this Court as
 28 adversary case number 22-01116-abl (the “Adversary Case”), notwithstanding the fact that these

1 claims are now property of the estate. By the Motion, LVDF makes “much ado about nothing” and
2 attempts to glorify what can be resolved by an objection to claim into some complex litigation that
3 only the state court can resolve (when in fact it is not complicated). LVDF is an oversecured
4 disputed secured creditor and it is the Debtor’s burden to object to LVDF’s claim. Resolution of the
5 counterclaims and third-party claims does not affect the validity and amount of LVDF’s claim.
6 Resolution of the counterclaims and third-party claims, at best, brings more money into the estate for
7 the benefit of the Debtor’s unsecured creditors and has no effect on LVDF’s secured claim.

8 As set forth more fully in the Debtor’s opposition to LVDF’s motion for remand filed in the
9 Adversary Case, most, if not all, of LVDF’s counterclaims and third-party claims are property of the
10 estate as they either (a) are fraudulent transfer / conversion / waste / conspiracy claims or otherwise
11 allege injury to the Debtor, or (b) implicate alter ego claims. *See, In re O’Reilly*, 2014 WL 460767
12 *6 (N.D. Cal. 2014)(“The Ninth Circuit has recognized that certain causes of action seeking alter ego
13 liability, which allege injury to a debtor corporation, are properly brought by the trustee, such as
14 fraudulent conveyance, conversion and theft”), *citing Ahcom, LTD. v. Smeding* (“*Ahcom*”), 623 F.3d
15 1248, 1252 (9th Cir. 2010)(“ ‘an action by a trustee in bankruptcy to recover assets of the bankrupt
16 by setting aside *fraudulent and preferential transfers*’; ‘an action by creditors and a trustee in
17 bankruptcy for *conversion by a corporate stockholder of assets of the bankrupt corporation*’; ‘an
18 action by the trustee of a bankrupt corporation against the sole shareholders on an alter ego theory
19 upon allegations that ... *defendants deposited corporation funds into their personal bank accounts*
20 *or that corporation funds were received by defendants personally*”) (quoting *Stodd v. Goldberger*
21 (“*Stodd*”), 73 Cal.App.3d 827, 834 (1977)). Therefore, LVDF has no standing to prosecute these
22 counterclaims and third-party claims, and LVDF is not entitled to relief from stay.

23 With respect to the direct claim against the Debtor, judicial foreclosure is moot as the
24 company is in bankruptcy. This Court has already found that LVDF is adequately protected with a
25 sufficient equity cushion (not only based upon the value of the Debtor’s assets but in light of the
26 stalking horse agreement). The only relevant issues relating to LVDF’s disputed claim are (a) what
27 claim, if any, is LVDF entitled to arising out of the construction loan agreement, (b) should LVDF’s
28 claim be subordinated to claims of unsecured creditors based on LVDF’s inequitable conduct, and

1 (c) what amount should be estimated for LVDF’s claim for purposes of plan confirmation. Any
2 litigation relating to LVDF outside of these issues is not necessary, a waste of estate resources, and
3 will only result in additional money coming into the estate (and will not result in an additional claim
4 of LVDF).

5 The Debtor and LVDF’s original construction loan agreement (“CLA”) was for a \$75 million
6 construction loan to enable the Debtor to build a Front Sight Vacation Club & Resort (which would
7 include vacation residences, RV Park, etc.), a retail area adjacent to the vacation club and a pavilion
8 (collectively, the “Project”). Given that the Debtor’s expected revenue from the Project would be a
9 source of repayment of this construction loan, LVDF’s inability and/or refusal to fund the entire loan
10 amount (beyond the less than 10% that was funded under the CLA) meant that the Debtor did not
11 receive the “benefit of its bargain” and rendered the \$6,375,000 that was funded useless.

12 As early as January 2020, the state court made significant findings that (a) all of the LVDF
13 loan proceeds were used by the Debtor in accordance with the terms required by the LVDF loan for
14 construction purposes, and (b) LVDF failed to establish that the Debtor was in breach of the CLA as
15 of January 2020. *See*, ¶¶ 1, 2 and 4 of the *Findings of Fact, Conclusions of Law, and Order Denying*
16 *Defendant Las Vegas Development Fund LLC’s Motion to Dissolve Temporary Restraining Order*
17 *and to Appoint a Receiver* entered on January 23, 2020 in the state court LVDF litigation. I.e., when
18 LVDF filed its counterclaims against the Debtor (including the cause of action for “Judicial
19 Foreclosure Against Front Sight”), the Debtor was not in breach of the CLA and by filing a wrongful
20 foreclosure action, LVDF made it almost impossible for the Debtor to obtain replacement financing.

21 LDVF’s wrongful prepetition actions were a precipitating factor to the Debtor’s bankruptcy
22 filing and it is clear that LVDF is continuing its scorched-earth litigation tactics post-petition (which
23 tactics cost the estate on a dollar-for-dollar basis as LVDF continues to add all of its attorneys’ fees
24 to its outstanding principal balance). Litigating what is essentially a claim objection when all of
25 LVDF’s claims against the Debtor do not increase or alter LVDF’s claim does not benefit any parties
26 other than LVDF and its affiliates.

1 **II. LVDF’s MOTION IS MOOT AS TO LVDF AS LVDF DOES NOT HAVE STANDING**
 2 **TO PURSUE ITS COUNTERCLAIMS AND THIRD-PARTY CLAIMS**

3 As explained in the Debtor’s opposition to LVDF’s remand motion [Adv. ECF No. 57]
 4 (which is incorporated as if fully set forth herein), remand is inappropriate for the simple fact that
 5 LVDF lacks standing to prosecute its counterclaims and third-party claims as they are estate claims.
 6 See Opposition to Motion to Remand filed in the Adversary Proceeding; see also *In re Pacific Gas*
 7 & *Elec. Co.*, 281 B.R. 1 (Bankr. N.D. Cal. 2002) (J. Montali) (remand of estate claims inappropriate
 8 given third party’s lack of standing to prosecute said claims). As the *Pacific Gas* court explained:

9 Because (as discussed below) Behr lacks standing to assert her
 10 Fraudulent Transfer Claim. . . , those particular claims should not be
 11 remanded. Such claims belong to the estate of Debtor and fall within
 12 this court’s core jurisdiction.).

13 281 B.R., at 13; see also *Ahcom, supra*, 623 F.3d at 1250 (“When the trustee [or debtor-in-
 14 possession] does have standing to assert a debtor’s claim, that standing is exclusive and divests all
 15 creditors of the power to bring the claim.”)

16 The Debtor questions whether LVDF has standing to seek relief from stay given that the
 17 claims it seeks to prosecute belong to the estate and, thus, it is questionable whether LVDF’s
 18 “interests would be harmed by the continuance of the stay.” See *In re B&I Realty Co.*, 158 B.R. 220,
 19 222-23 (Bankr. W.D. Wash. 1993); *Veal v. Amer. Home Mortg. Servicing, Inc. (In re Veal)*, 450
 20 B.R. 897, 913-914 (B.A.P. 9th Cir. 2011) (“[c]reditors may obtain relief from the stay if their
 21 interests would be harmed by continuance of the stay.”) citing *In re Kronemyer*, 405 B.R. 915, 913-
 22 914 (B.A.P. 9th Cir. 2009).

23 Because the litigation should remain in this Court, and more importantly because LVDF has
 24 no standing to prosecute its counterclaims and third-party claims, LVDF’s request to lift the stay is
 25 mooted by the fact that not only is remand unwarranted but since the right to litigate these claims
 26 now vests in the estate lifting of the stay would not serve to vest in LVDF the right to prosecute the
 27 action—be it before this Court or in the state court.

28 LVDF implicitly recognizes the flaw in its machinations to seek remand and a lifting of the
 stay by acknowledging that it is possible that this Court may “determine[s] that any of the claims are
 property of the bankruptcy estate and should not be prosecuted by LVDF.” Motion, at 2:8-9.

1 Inexplicably, and notwithstanding LVDF’s lack of standing it nevertheless asks this Court to lift the
2 stay “as to those claims for the limited purpose of the State Court hearing and entering an order on
3 the motion for terminating sanctions. . .”. *Id.*, at 10-12. Thus, on the one hand, LVDF
4 acknowledges that it may not have standing to prosecute its counterclaims and then, on the other
5 hand, asks for a lifting of the stay so that it can obtain orders on claims for which it has no standing
6 to prosecute (and which affect property of the estate).

7 In other words, LVDF admits the futility and mootness of its request to the extent this Court
8 agrees with the Debtor that the claims at issue are property of the estate. If so, then lifting of the stay
9 serves no purpose because with or without a stay LVDF would have no right to prosecute these
10 claims in any jurisdiction.

11 Rather, and as set forth in the opposition to LVDF’s motion for remand, the litigation should
12 remain with the Court precisely because the claims are now vested in the estate, not LVDF and
13 LVDF has no right to prosecute these claims.

14 **III. THE LITIGATION REMOVED TO THIS COURT IS DEEMED STAYED AND**
15 **SHOULD REMAIN STAYED, AS CAUSE DOES NOT EXIST TO TERMINATE THE**
16 **STAY, THE CLAIMS THEREIN CAN BE ADDRESSED AS A CLAIM OBJECTION**
17 **AND FRAUDULENT TRANSFERS, IF ANY, WILL BE ADDRESSED BY THE**
18 **ESTATE AND THE CREDITORS’ COMMITTEE**

19 When a matter subject to the bankruptcy automatic stay is removed to the bankruptcy court,
20 the automatic stay remains in place until, or unless, the bankruptcy court lifts the stay. Fed. R.
21 Bankr. P. 9027, Advisory Committee’s Note (1983) (“If the claim or cause of action which is
22 removed to the bankruptcy court is subject to the automatic stay of § 362 of the Code, the litigation
23 may not proceed in the bankruptcy court until relief from the stay is granted.”); *see also In re*
24 *Cashco, Inc.*, 599 B.R. 138, 148 (“where a state court cause of action is stayed, the litigation is
25 likewise stayed following removal of the action to the bankruptcy court”). As the real party in
26 interest on the counterclaims and third-party claims made by LVDF, the Debtor does not seek to
27 have the stay lifted because the Debtor believes that (i) cause does not exist to terminate the stay,
28 and (ii) LVDF’s claim can be addressed in the claim objection and claim estimation process.
Further, the estate and the Official Committee of Unsecured Creditors (the “Committee”) are
currently investigating whether any fraudulent transfers occurred and, to the extent that investigation

1 reveals such claims, the Debtor and the Committee can seek redress at that time. To be clear, the
2 Debtor does not seek to abandon these claims, but simply address them efficiently in the context of
3 its bankruptcy case.

4 **A. Good Cause Does Not Exist to Lift the Stay at this Time**

5 LVDF simply cannot meet its initial burden to establish the requisite cause necessary for
6 such relief. *See* 11 U.S.C. § 362(d)(1); *In re Plumberex*, 311 B.R. 551, 557 (Bankr. C.D. Cal. 2004)
7 (“party seeking relief must first establish a *prima facie* case that ‘cause’ exists”); *In re Curtis*, 40
8 B.R. 795, 799-800 (Bankr. D. Utah 1984) (“This Court holds that one who seeks relief from the
9 automatic stay must, in the first instance, establish a legally sufficient basis, i.e., “cause,” for such
10 relief.”). As the *In re Curtis* court noted, “[m]ost cases arising under Section 362(d)(1) involve
11 creditors holding secured claims who allege that there is insufficient equity in the collateral to
12 adequately protect their interests.” 40 B.R. at 802. .

13 This is not a situation where there is insufficient equity in the property to adequately protect
14 LVDF. Compare *In re Martens*, 331 B.R. 395 (B.A.P. 8th Cir. 2005) (“cause” existed to grant
15 creditor relief from automatic stay where Chapter 7 debtor failed to make any mortgage payments
16 for nearly a year and there was insufficient equity in the property to adequately protect the creditor)
17 with *In re Snyder*, 420 B.R. 794 (Bankr. D. Mont. 2009) (fact that debtor was behind in real estate
18 taxes and filed two bankruptcy cases on the eve of foreclosure was not cause; the amended Chapter
19 13 plan and an equity cushion protected the creditor). Rather, LVDF is fully protected not only by
20 its security interest in the Debtor’s assets, but also by the stalking horse agreement that ensures
21 complete payment to LVDF (even under the worst-case scenario where LVDF would be entitled to
22 the full amount of its claim).

23 LVDF simply cannot establish that any harm would befall it if the stay remains in place in
24 light of the fact that there is an equity cushion as to its claim and the counterclaims and third-party
25 claims it seeks to prosecute are estate claims (with any recovery inuring to the benefit of the estate).
26 *In re Curtis*, 40 B.R. at 802 (“[a] creditor’s mere unsupported allegation that continuance of the stay
27 will cause it irreparable harm will not suffice”). In other words, even if LVDF’s counterclaims and
28 third-party claims have merit, no recoveries thereon would inure to LVDF’s benefit. It simply has

1 no interest in the recoveries. Rather, any such recoveries would inure to the benefit of the estate and
2 general unsecured creditors.

3 Nevertheless, and assuming that LVDF has standing, the determination of what constitutes
4 cause sufficient to lift the automatic stay “is decided on a case-by-case basis.” *In re Kronemyer*, 405
5 B.R. at 921 citing *Christensen v. Tucson Estates, Inc. (In re Tucson Estates, Inc.)*, 912 F.2d 1162,
6 1166 (9th Cir.1990).

7 In *In re Curtis*, a Utah bankruptcy court identified twelve nonexclusive factors (the “*Curtis*
8 factors”) it weighed “in determining whether to lift the stay to permit pending litigation to continue
9 in another forum:”¹

- 10 1. Whether the relief will result in a partial or complete resolution of
11 the issues;
- 12 2. The lack of any connection with or interference with the bankruptcy
13 case;
- 14 3. Whether the foreign proceeding involves the debtor as a fiduciary;
- 15 4. Whether a specialized tribunal has been established to hear the
16 particular cause of action and whether that tribunal has the expertise to
17 hear such cases;
- 18 5. Whether the debtor's insurance carrier has assumed full financial
19 responsibility for defending the litigation;
- 20 6. Whether the action essentially involves third parties, and the debtor
21 functions only as a bailee or conduit for the goods or proceeds in
22 question;
- 23 7. Whether the litigation in another forum would prejudice the
24 interests of other creditors, the creditors' committee and other
25 interested parties;
- 26 8. Whether the judgment claim arising from the foreign action is
27 subject to equitable subordination under Section 510(c);
- 28 9. Whether movant's success in the foreign proceeding would result in
a judicial lien avoidable by the debtor under Section 522(f);

1 The Debtor submits that the instant situation does not present the typical fact pattern given that, as set forth in the Debtor’s companion opposition to LVDF’s motion for remand, remand should not be granted because the counterclaims and third-party claims belong to the estate. Accordingly, the instant issue is not whether the stay should be lifted to allow a creditor to proceed before another tribunal, but whether the stay should be lifted to allow the estate, not LVDF, to proceed with the litigation in this forum.

10. The interests of judicial economy and the expeditious and economical determination of litigation for the parties;

11. Whether the foreign proceedings have progressed to the point where the parties are prepared for trial, and

12. The impact of the stay on the parties and the “balance of hurt.”

In re Plumberex Specialty Products, Inc., 311 B.R. 551, 558 (Bankr. C.D. Cal. 2004) quoting *In re Curtis*, 40 B.R. at 799-780; *see also In re Kronemyer*, 405 B.R. at 921 (applying *Curtis* factors).

The Debtor submits that applying these factors to the facts surrounding the LVDF litigation illustrate that the Motion should be denied.

1. Lifting the Stay Will Not Result in Partial or Complete Resolution of the Issues.

Simply stated, the state court action will not resolve the core bankruptcy issue relating to the allowance or disallowance of LVDF’s disputed claim and the offsets thereto, and removing the litigation and granting relief from stay would essentially foreclose the Committee’s ability to participate in any objections to LVDF’s claim or attempt to subordinate LVDF’s claim. Indeed, given (i) the facts surrounding LVDF’s failure to fully fund under its loan agreement, (ii) LVDF’s wrongful foreclosure action (which impacted the Debtor’s ability to obtain takeout financing), (iii) its exorbitant fees and interest (in excess of \$4.6 million on a \$6.375 million principal loan amount), (iv) its postpetition scorched-earth litigation tactics when it is an oversecured secured creditor (which tactics are costing the estate an astronomical amount of fees given that the estate is liable for Debtor’s counsel’s fees, Committee’s counsel’s fees and potentially LVDF’s fees), and (v) its multiple stay violations [Adv. ECF No. 51], the Debtor believes that it may be appropriate to seek to equitably subordinate LVDF’s claims to those of general unsecured creditors. Litigation this action in another forum could result in inconsistent rulings and orders, and any state court judgment would not be *res judicata* with respect to the Committee their rights vis-à-vis LVDF.

This factor favors maintaining the stay.

2. The State Court Claims are Intertwined with the Bankruptcy Case.

The Debtor’s claims in the litigation go directly to the extent and validity of LVDF’s claims and whether the Debtor has offsets to such claims – i.e., they are core claims pursuant to 28 U.S.C. §§ 157 (b)(2)(A), (C), (K) and (O). While the Debtor initiated the removed action, in the context of

1 this bankruptcy case, LVDF has a secured claim pursuant to its deed of trust and it is the Debtor's
2 burden to object to that claim and assert any counterclaims and offsets. LVDF's counterclaims and
3 third-party claims in the litigation are also core claims relating to purported fraudulent transfers or
4 other causes of action alleging injury to the corporation. The state law claims are not collateral to
5 bankruptcy and are not the type of claims contemplated by Congress as appropriate for relief from
6 stay. *In re Curtis*, 40 B.R. at 804-805 ("Congress contemplated that relief from the stay may be
7 appropriate to permit state court adjudication of such matters as divorce child custody and probate
8 proceedings where such matters bear no relation to the bankruptcy case"). Rather, this Court has
9 jurisdiction over LVDF's claim and can enter final judgment thereon. *See Stern v. Marshall*, 564
10 U.S. 462, 503 (2011) (bankruptcy court only lacks jurisdiction on state law claims that cannot be
11 resolved in the context of resolving a creditor's proof of claim).

12 This factor favors maintaining the stay.

13 **3. The State Court Action Does Not Allege Claims Where the Debtor is a**
14 **Fiduciary**

15 There are no claims in the state court action founded upon the Debtor in its capacity as a
16 fiduciary.

17 This factor does not apply.

18 **4. The Bankruptcy Court Is the Specialized Tribunal with Respect to**
19 **Claims and Claims of Fraudulent Transfer**

20 Although LVDF touts the bona fides of the state court, it is clear that this Court is not only a
21 specialized tribunal, but one specifically established to determine claim allowance, claim estimation
22 and the subordination claims. To the extent the counterclaims and third-party claims are fraudulent
23 transfer, conversion and alter-ego claims, they are estate claims that both the Debtor's financial
24 advisor and the Committee's financial advisor are investigating. LVDF cannot credibly claim that
25 the state court tribunal was established to hear the particular causes of action at issue in the removed
26 action. *See In re Curtis*, 40 B.R. at 800 (identifying examples of specialized courts designed to
27 handle particularized claims).

28 This factor favors maintaining the stay.

1 **5. Insurance Is Not an Issue**

2 This factor is not applicable.

3 **6. The Debtor is Not a Mere Bailee or Conduit in the State Court Action**

4 Here, the Debtor is both the plaintiff and a counter-defendant in the state court action. The
5 Debtor is not a mere conduit. Rather, the Debtor and its loan with LVDF are central to all claims
6 brought in the removed action, and most, if not all, of the counterclaims and third-party claims are
7 estate claims affecting estate property.

8 This factor favors maintaining the stay.

9 **7. The State Court Litigation Would Clearly Prejudice the Rights of Other
10 Creditors**

11 There is no question this litigation prejudices the rights of other creditors. The United States
12 Trustee appointed the Committee on June 9, 2022 and the Committee has a fiduciary duty to all
13 general unsecured creditors to, among other things, investigate the Debtor’s assets, liabilities and
14 financial condition as well as estate causes of actions and the Debtor is cooperating with the
15 Committee’s investigation. LVDF’s counterclaims and third-party claims belong to the estate, and as
16 explained in detailed on the Debtor’s opposition to LVDF’s motion to remand any resulting recovery
17 would inure to the benefit of the unsecured creditors, not LVDF. LVDF simply has no right to
18 prosecute fraudulent transfer claims and other estate claims, including other claims that are merely
19 fraudulent transfer claims in disguise. It, likewise, has no right to the proceeds of any such claims.

20 This factor favors maintaining the stay.

21 **8. LVDF’s Claim May Be Subject to Equitable Subordination**

22 Based on the Debtor’s allegations of LVDF’s malfeasance—agreeing to provide a \$75
23 million loan and then funding less than 10%--and the Debtor’s claim of damages as a result thereof,
24 it is quite likely that LVDF’s claims may be subject to equitable subordination pursuant to 11 U.S.C.
25 § 510(C). Although is it premature to make this ultimate determination, it certainly cannot be ruled
26 out at this stage and the stay will allow the Debtor and the Committee to conduct a thorough
27 investigation thereon.

28 This factor favors maintaining the stay.

9. Section 522(f) Is Not Implicated

This factor is not applicable.

10. The State Court Action Is Not Ready for Trial

LVDF does not seek to try the underlying action or declare that it is ready to do; rather, it seeks to impose terminating sanctions against certain individuals that, in turn, will cause significant harm to the Debtor. Notably, while LVDF claims harm because of its inability to take depositions, it failed to go forward with Section 2004 examinations of these same principals notwithstanding its right to do so.

The Debtor submits that LVDF does not want to try this litigation on the merits, but rather seeks a gotcha result that, in any event, will not benefit LVDF—because the proceeds of any fraudulent transfer action belong to the estate, not LVDF.

This factor is neutral or favors maintaining the stay.

11. Judicial Economy and Expedious Determination of the Claims Will Best Be Served by Maintaining the Stay

As explained above, LVDF’s counterclaims and third-party claims do not belong to LVDF and the Debtor’s and the Committee’s respective financial advisors are investigating the existence of any fraudulent transfers. To the extent there are fraudulent transfer claims, those claims are core claims pursuant to 28 U.S.C. §§ 157(b)(2)(H) and this Court may make a final determination on such claims.

Allowing the estate’s financial advisors (one employed by the Debtor and one by the Committee) to conduct their investigations without the Debtor incurring substantial fees to litigate these claims promotes judicial economy especially where, as here, it is unsecured creditors, and not LVDF, that will stand to be harmed by the lifting of the stay and the fees and costs associated with the litigation—which will simply serve to reduce the corpus of funds available to the unsecured creditors and will increased LVDF’s secured claim. If past is prologue, LVDF (even though its lacks standing) will continue to bombard the Debtor with motions and filings whose twin purposes are to deflect from LVDF’s wrongful conduct and drive up estate costs. Rejecting LVDF’s request for remand coupled with maintaining the stay will provide this Court with complete oversight and control over these issues for the benefit of the estate.

1 This factor favors maintaining the stay.

2 **12. LVDF Cannot Establish Any Harm if the Stay Is Maintained**

3 As discussed at length above, LVDF cannot identify any harm it has or will suffer by
4 continuance of the stay. These are not its claims; the proceeds, if any, from these claims do not
5 belong to it. It is protected not only by the value of the Debtor's property but by the stalking horse
6 agreement. As explained by the *In re Curtis* court, this is the most important factor for the Court to
7 consider:

8 The most important factor in determining whether to grant relief from
9 the automatic stay to permit litigation against the debtor in another
10 forum is the effect of such litigation on the administration of the estate.
Even slight interference with the administration may be enough to
preclude relief in the absence of a commensurate benefit.

11 40 B.R. at 806.

12 Here, lifting the stay will negatively affect the administration of this estate, will considerably
13 delay what should merely be an objection to LVDF's claim and will not result in finality with
14 respect to the LVDF's proof of claim. Of course, this factor, as with the others, focuses on the harm
15 in allowing the action to proceed in another tribunal [*id.*], and not, as here, the continuation of the
16 litigation before this Court. As explained in the opposition to the motion for remand filed by LVDF,
17 these are not LVDF's claims to prosecute and, if anything, the Committee has a right to investigate
18 and be heard both with respect to the Debtor's objection to LVDF's claims and with respect to
19 LVDF's counterclaims and third-party claims (which are mostly, if not all, estate claims).

20 On this record, LVDF cannot identify any harm, let alone that the harm to it would outweigh
21 the hardship to the Debtor, its estate and its creditors. In fact, LVDF has no legitimate basis to have
22 pursued its counterclaims and third-party claims against the Debtor prepetition as it was significantly
23 oversecured at all relevant times as it was the first lienholder. Pursuing fraudulent transfer and
24 related claims alleging injury to the corporation when the value of LVDF's collateral far exceeded
25 the value of its claim at all times is inexplicable as it resulted in over \$4.6 million in fees and interest
26 on a \$6.375 million principal balance. Prepetition, LVDF was the first priority lienholder over the
27 Debtor's real property and instead of consenting to the Debtor's attempt in October of 2019 to
28 interplead the entire principal loan amount plus \$700,000 in fees, LVDF fought this attempt and

1 argued that the loan specifically provides that there is no prepayment – despite the fact that
2 Paragraph 5 of the Promissory Note states as follows: “Prepayment. The Principal Balance and
3 accrued interest thereon **may be prepaid in full or in part** only as provided in the Loan
4 Agreement.” *See*, Exhibits 2 and 5 to the Dziubla declaration filed in support of LVDF’s opposition
5 to the Debtor’s first day motions [ECF No. 37]. *See also*, October 23, 2019 state court transcript,
6 23:1-18, a copy of which is attached hereto as **Exhibit 1**.

7 Given what happened prepetition with respect to what appears to be an abuse of process, as
8 well as the postpetition stay violations and onslaught of motions filed by LVDF, the Debtor submits
9 that all litigation involving LVDF should remain before this Court to ensure a timely claim objection
10 and claim estimation process so that the Debtor can successfully emerge from bankruptcy as a viable
11 going concern. The only parties that will be harmed by the Motion be granting and this action being
12 remanded to state court are the Debtor, its creditors, its employees and its customers.

13 This factor favors maintaining the stay.

14 **B. The Claims for Relief Can Be Determined in the Claim Objection and Claim**
15 **Estimation Process or, the Stay May Be Revisited if the Committee Seeks to**
16 **Pursue Estate Claims**

17 At its core, this is a claim objection dispute. The entirety of this dispute between LVDF, on
18 the one hand, and the Debtor and its principals, on the other hand, is over how much, if anything, the
19 Debtor owes LVDF. But, this is not a two-party dispute because the unsecured creditors may have
20 rights that are affected by this dispute. To the extent that the Debtor is correct in its theories and
21 LVDF breached and failed to honor its contractual obligations, and those breaches led to the
22 Debtor’s demise, LVDF’s claim may be subject to disallowance or subordination. It may be subject
23 not only to objections by the Debtor, but also objections by other creditors. LVDF does not explain
24 how other creditors could intervene in the litigation (especially if it were remanded). Likewise,
25 LVDF does not explain how these creditors would be barred by *res judicata* or collateral estoppel,
26 such that LVDF’s attempts to secure terminating sanctions would not prevent other creditors from
27 attacking LVDF’s claim and seeking subordination—thus leading to a multiplicity of effort, not the
28 judicial economy the stay provides.

1 Conversely, if LVDF’s claims that certain insiders received fraudulent transfers (whether
2 denoted a fraudulent transfer, conversion, conspiracy, alter ego, etc.), those claims will not impact
3 LVDF’s claim as it has no right to any such proceeds.

4 LVDF seeks a rush to judgment, not on the merits, but based on terminating sanctions whose
5 entry may impact other creditors and the Debtor. LVDF’s attempt to push forward (on claims for
6 which it lacks standing) is the antithesis of the fundamental purpose of the automatic stay, which is
7 to give “the debtor a breathing spell from his creditors.” *Benedor Corp. v. Conejo Enters., Inc. (In*
8 *re Conejo Enters., Inc.)*, 96 F.3d 346, 352 (9th Cir.1996). As explained by one bankruptcy court:

9 While this breathing spell is often thought of in terms of relief from
10 collection efforts, to this Court’s mind a related fundamental purpose
11 is to provide relief from litigation. While plaintiffs typically choose the
12 forum and direct the pace of litigation in nonbankruptcy courts, it is
13 the debtor who chooses the forum and directs the pace of much
14 litigation in bankruptcy court. For example, while creditors can file
15 proofs of claim at virtually any time, they are not in charge of
16 scheduling the litigation to resolve those claims. There is not even a
17 contested matter until the debtor or someone else objects to such
18 claims, and the Bankruptcy Code imposes no deadlines for such
19 objections. Consequently the timing of the initiation of contested
20 claims litigation is basically put in the hands of the debtor, debtor-in-
21 possession or trustee. This breathing spell permits the debtor to focus
22 on matters of more general importance to the estate and the creditor
23 body, such as stabilizing operations, stemming losses and returning to
24 profitability, selling burdensome assets, and negotiating a plan of
25 reorganization. While the debtor focuses on those issues, it can put off
26 claims litigation even until after confirmation of a plan by the simple
27 expedient of not filing objections to claims until it is ready to focus on
28 that process. Consequently the “breathing spell” provided by the
automatic stay is not merely for the benefit of the debtor, but is for the
benefit of the entire estate and creditor body. Thus for this reason as
well, the administrative bankruptcy processes are better suited to the
interests of multiple parties, which is a valuable benefit to the estate
that should not lightly be foregone simply due to the happenstance that
a creditor’s litigation was close to trial or close to judgment before the
bankruptcy case was filed. That fluke of timing has little or nothing to
do with what the debtor’s energies and resources should be focused on
for the benefit of the entire estate and creditor body.

24 *In re Patel*, 291 B.R. 169, 173 (Bankr. D. Az. 2003).

25 Thus, the Debtor submits that continuing the stay will allow the Debtor to focus on the more
26 critical, urgent affairs of, among other things, proposing and confirming a plan of reorganization. It
27 will also allow the Committee time to complete its investigations into the allegations made by LVDF
28 as well as its investigations of LVDF’s claims.

IV. CONCLUSION

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Based on the foregoing, the Motion should be denied.

Dated: June 22, 2022

Respectfully Submitted,

BG Law LLP

/s/ Susan K. Seflin
Susan K. Seflin
Admitted Pro Hac Vice
Attorneys for Chapter 11
Debtor in Possession

EXHIBIT 1

1 CASE NO. A-18-781084-B

2 DOCKET U

3 DEPT. XVI

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DISTRICT COURT

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CLARK COUNTY, NEVADA

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FRONT SIGHT MANAGEMENT LLC,)

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Plaintiff,)

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vs.)

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LAS VEGAS DEVELOPMENT FUND LLC,)

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Defendant.)

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REPORTER'S TRANSCRIPT

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OF
MOTIONS

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BEFORE THE HONORABLE JUDGE TIMOTHY C. WILLIAMS

19

DISTRICT COURT JUDGE

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DATED WEDNESDAY, OCTOBER 23, 2019

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REPORTED BY: PEGGY ISOM, RMR, NV CCR #541

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1 LAS VEGAS, NEVADA, WEDNESDAY, OCTOBER 23, 2019

2 1:06 P..M.

3 P R O C E E D I N G S

4 * * * * *

12:00:00

5
6 THE COURT: Good morning. Good afternoon.

7 MR. GREER: It was a long morning.

8 THE COURT: You can imagine what my day's been
9 like.

01:11:03

10 MS. HOLBERT: Right.

11 THE COURT: Anyway, let's go ahead and place
12 our appearances on the record.

13 MR. ALDRICH: Good afternoon, your Honor.

01:11:11

14 John Aldrich on behalf of the plaintiff. Also in the
15 courtroom is Mike Meacher.

16 MS. HOLBERT: Good afternoon, your Honor.

17 Kathryn Holbert on behalf of the defendants.

18 MR. GREER: Keith Greer also on behalf of the
19 defendants, your Honor, here with defendant Robert
01:11:20 20 Dziubla.

21 THE COURT: Okay. So where do we go from
22 here?

23 MR. GREER: I think we had the motion to quash
24 the Morales group subpoenas was where we left off the
01:11:35 25 last hearing.

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THE COURT: Yes.

MR. GREER: At the end of the day, your Honor allowed Mr. Aldrich to send in a supplemental reply of sorts addressing any specific requests that you took exception to.

THE COURT: Yes. Yes.

MR. GREER: And --

THE COURT: Can we go over those now, or what do you think?

MS. HOLBERT: We'd like to go over them now.

MR. GREER: Finish one up before we go on to the next one.

MR. ALDRICH: I don't have anything to add. Honestly, I did not have that in my notes.

THE COURT: That's okay.

MR. ALDRICH: So I didn't bring that stuff with me.

THE COURT: You know what I can do then? I don't want to -- we took a look at it. In fact, I think I remember specifically, for example, you felt some might have been cumulative or duplicative and covered by others, and that seemed to be the gist of it. So I'll take a look at that.

And it's one of those things where you can see how busy we've been.

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MS. HOLBERT: Right.

MR. GREER: Yeah.

THE COURT: It's been oppressive.

Sir?

MR. GREER: If I could, your Honor, the Court's -- that's -- my assessment of the supplemental response was the same. There's -- there's no objection as to privilege --

THE COURT: Right.

MR. GREER: -- or privacy or proprietary rights or anything like that. There are some arguments that there is some duplication.

THE COURT: Right.

MR. GREER: I think there may be a little duplication.

THE COURT: That's kind of what I thought.

MR. GREER: -- in some of them. I mean, if we start off in the beginning with expressly we just want this. And then later on we say we'd like things related to this including and just went beyond that.

So I think there are some that elaborate more --

THE COURT: Right.

MR. GREER: -- on the earlier ones.

But some of them, there are subtle differences in them. And so I think it would be most appropriate,

01:13:23 1 unless we refashion the entire response, would be to
2 leave that up to the responding parties to deal with
3 when they -- if we've asked them a question. And then
4 the next question has already been complied with
01:13:37 5 because they've already given us documents related to
6 it, they would just respond --

7 THE COURT: That's more efficient.

8 MS. HOLBERT: Right.

9 MR. GREER: -- respond and say, No, we've
01:13:43 10 already given you -- we don't have to do any more on
11 this one. See No. 1, see No. 2, whatever it might be.

12 Some of them are different and the
13 distinctions are important. And so even though there
14 is some overlap and duplication --

01:13:57 15 THE COURT: As far as the ones that -- and
16 without even going into argument, we can just do this:
17 The ones where you want me to look at you feel that are
18 distinctive so I can spend more time with it, just give
19 me the numbers. And that way I'll go look at it and
01:14:11 20 then I'll make a determination.

21 Does that make sense, Mr. Aldrich?

22 MR. ALDRICH: Yes, it does.

23 And I really have nothing else to add other
24 than what I put in the supplement.

01:14:20 25 THE COURT: Right. Right.

01:14:20 1 MR. GREER: They're all three basically the
2 same, your Honor, just to different parties.

3 I used the top rank as my sample, you know,
4 the ones that's -- rather than -- that's repeated in
01:14:31 5 all the rest.

6 I have some big stars.

7 THE COURT: Give me the big stars.

8 MR. GREER: No. 28 to No. 30.

9 THE COURT: Okay.

01:14:43 10 MR. GREER: I have big stars because they're
11 not duplicative. They say they are duplicative, but
12 they're -- those really aren't duplicative if you look
13 at those closely.

14 THE COURT: I'll look at them.

01:14:57 15 MR. GREER: 10, 11, 12, and 13 aren't objected
16 to. And those ask for completion date, any permits,
17 any plans, any schedules.

18 And then 28 asks for documents reflecting
19 construction work that has been completed thus far on
01:15:10 20 the project. Very important.

21 THE COURT: I understand.

22 MR. GREER: And then also -- and it asks it
23 to -- that same question to two different individuals.

24 Let's see. Oh, and the next one is -- 29 is
01:15:23 25 relating to matters that are -- have been scheduled or

01:15:26 1 projected to be completed in the project. And so --

2 THE COURT: Future. I get that.

3 MR. GREER: In cases where -- I don't think

4 the duplication argument is well taken because there

01:15:36 5 are differences. But if we're going to keep one or the

6 other, I'd rather keep the ones that they said are

7 duplicative because that's -- because the first ones

8 that aren't objected to, the very first part of the

9 request are very simple straightforward, this document,

01:15:50 10 this document, this document. The later ones would

11 cover that document and anything else related to that

12 general topic. So the danger of throwing out the ones

13 that are being objected to as being duplicative is that

14 the latter ones actually are broader and request more

01:16:03 15 documents than the earlier specific ones.

16 And the overburdensome argument I just don't

17 think applies because we don't know. The responding

18 party would know. I think in some of these cases, what

19 may be very relevant is we ask for documents, for

01:16:23 20 example, regarding Front Sight's financials and the

21 objection is overburdensome. And they may come back

22 and say we have none. And that has -- that has

23 evidentiary relevance to us in determining whether this

24 is a legitimate line of credit or a sham of some type.

01:16:37 25 So that overburdensome argument, I think, needs to be

01:16:40 1 left for the producing party, responding party, to
2 assert in response to the request.

3 And then -- and then the objection that we
4 already have -- Front Sight already -- excuse me --

01:16:55 5 Las Vegas Development Fund already has these documents?
6 I think that that argument is completely misplaced,
7 because the reason why we're looking for all this stuff
8 and the reason why we're sending out now with some
9 urgency these subpoenas to Morales, the Morales group,

01:17:11 10 is because they are "the lenders," and the folks who
11 provided construction at the time and who the bank --
12 which the Court will be seeing soon; we'll be
13 requesting subpoenas to the banks, we get bank
14 statements of Front Sight. And then to sending

01:17:27 15 subpoena out to the accountants for Front Sight so we
16 get the tax returns because these are all things that
17 are required to be produced pursuant to the
18 construction loan agreement because they're important
19 components of the EB5 reporting to the USCIS. And that

01:17:42 20 report is coming up, needs to be done before year-end.
21 November 31 -- it has to be in the door to USCIS by --

22 MR. DZIUBLA: December 28.

23 MR. GREER: It's December 28. So because we
24 don't have those documents from Front Sight, we're

01:17:55 25 going directly to the sources to get those documents.

01:17:59 1 One, it's relevant to the case. Two, it's timely
2 because of the end of the year EB5 reporting.

3 THE COURT: I understand, sir.

4 Okay. So where do we go from here after that?

01:18:21 5 MR. ALDRICH: Your Honor, we have three
6 motions on today. There's a motion for sanctions

7 related to spoliation of evidence. There is a motion
8 to compel related to defendant's responses to the
9 request for production. And then there is the motion

01:18:46 10 that we entitled "Plaintiff's Motion to Extinguish
11 Defendant's Deed of Trust or Alternatively Grant Senior
12 Debt Lender Romspen a First Lien Position and Motion to
13 Deposit Funds Pursuant to NRC 67."

14 In Front Sight's view, we understand that the
01:19:05 15 court reporter has limited time this afternoon. If
16 there's a risk that we're not going to get to all these
17 motions, we would prefer to start with the third one I
18 mentioned, the motion to extinguish, and then take care
19 of the discovery ones later if we have to.

01:19:25 20 THE COURT: Is that fine with the defense?

21 MR. GREER: Yes, your Honor.

22 THE COURT: Okay. That's what we'll do.

23 MR. GREER: Your Honor, on a side note, could
24 we just -- on that last Morales issue, I had a big star
01:19:48 25 next to No. 16 on the top rank which was the one

01:19:52 1 requesting anything relating to inspection of the
2 property because I believe we haven't been allowed to
3 inspect the property.

4 And then also Nos. 21 and 22, identify
01:20:05 5 witnesses who interacted with Front Sight regarding the
6 construction line of credit and with regard to
7 construction on the project. And identifying those
8 witnesses would be very important to us.

9 THE COURT: I understand.

01:20:20 10 MR. GREER: Thank you.

11 THE COURT: Mr. Aldrich.

12 MR. ALDRICH: Thank you, your Honor.

13 As I've gone back and worked on the reply on
14 this motion, I realize the title may not be quite right
01:20:34 15 and my initial explanation of the ruling we're looking
16 for wasn't as good as it could have been. I did have
17 it in the conclusion of the motion, so I want to start
18 by making sure that I have made it clear to the Court
19 what it is we're asking for.

01:20:49 20 I'll note that the Court has seen us many
21 times on this case. When we were here back on
22 September 20, during arguments the Court asked a
23 question. The Court said, "I was just thinking. I
24 mean, could you still litigate the claims by just
01:21:05 25 paying off the deed of trust? You still reserve the

01:21:07 1 right to seek your damages if so; right? And this
2 whole EB5 issue becomes a nonissue."

3 That was the Court engaging in a dialogue with
4 me during a different argument.

01:21:21 5 THE COURT: And it was just something -- it
6 was just a thought I had.

7 MR. ALDRICH: Sure.

8 THE COURT: A fleeting thought.

9 MR. ALDRICH: Sure. And so here we are. And
01:21:27 10 that's essentially what we are here to do is -- is to
11 ask that question.

12 So what we're looking for is a couple of
13 things. We were looking for an order from the Court
14 that Front Sight is entitled to deposit the \$7 million
01:21:43 15 under Rule 67 with the clerk of court. It would be in
16 a blocked account. We'd preserve the money.

17 We're also looking for declaratory relief that
18 Front Sight has full legal authority to repay the loan
19 proceeds to Las Vegas Development Fund under
01:22:00 20 Section 1.3 of the construction loan agreement
21 authorizing Front Sight to prepay the \$6.375 million in
22 loan proceeds, and that Las Vegas Development Fund must
23 accept tender of the outstanding loan proceeds from
24 Front Sight once it's presented in negotiable form.

01:22:23 25 The proposal from us is that the money that

01:22:30 1 Las Vegas Development Fund continues to claim related
2 to default interest, which is disputed, and attorney's
3 fees and costs, which is disputed and still the
4 documentation hasn't been provided, would -- would then
01:22:41 5 go with the clerk of court.

6 We're also seeking a declaration from the
7 Court ordering that once the Court issues the order
8 related to the Rule 67 deposit and Front Sight's
9 deposited the \$6.375 million, that Front Sight has
01:23:02 10 tendered payment, doesn't have to pay interest, and
11 that the deed of trust can be extinguished.

12 If the Court is not going to extinguish the
13 deed of trust, then the Court should also enter a
14 declaration that, once paid, the Romspen loan or really
01:23:24 15 any loan that Front Sight's able to find is senior to
16 the amended deed of trust and senior to any other
17 encumbrances. Obviously, this is significant because
18 if Front Sight can't ensure a first position, it's
19 going to be impossible for them to obtain funds.

01:23:45 20 And then lastly, we've asked for a declaration
21 from the Court that the ongoing proceeding that the
22 notice of default and intent to sell is deficient and
23 that they can't proceed in that regard.

24 So we've gone through in the motion, talked
01:24:09 25 about that we're entitled to declaratory relief under

01:24:12 1 NRS 30.040. And so I want to address a few of these
2 items.

3 The first thing to address is paragraph 1.3 of
4 the construction loan agreement. And that paragraph
01:24:30 5 specifically allows early payment or prepayment of the
6 loan.

7 Now, there is a condition. And that condition
8 is that if the I-829s haven't been approved, then we
9 can't prepay the loan. But here's -- here's the issue:
01:24:55 10 The issue is Front Sight now is coming forward saying
11 we want to prepay this and we're entitled to it under
12 the agreement. Defendants are saying, well, you can't
13 because this condition exists.

14 We have asked over and over and over again for
01:25:11 15 proof that this condition exists, that there are
16 investors that as to the status of the I-829s or the
17 I-526 applications, whatever, and at every turn have
18 been told, no, that's proprietary; you can't know that.
19 Now, the USCIS gets to know it, but they won't allow
01:25:32 20 Front Sight to know it.

21 It is our position that if we're in a position
22 to pay off the loan, we're entitled to do it. And if
23 there's a condition that exists, defendants have to
24 come forward with that proof. And they have failed to
01:25:47 25 do so. They didn't do it in an opposition. They've

01:25:50 1 refused to provide that in discovery when we've asked
2 for it. And we should be able to pay that off.

3 I walked through the conditions related to the
4 senior lender piece. We do have -- we meet three of
01:26:11 5 the four conditions. The fourth condition is that it
6 was supposed to have been obtained, if it were
7 obtained, by July 30 of last year. I've addressed that
8 in a couple of different ways in my motion.

9 I've gone in to explain to the Court, and I
01:26:30 10 know the Court is aware of the equitable estoppel
11 doctrine, but I've gone through and addressed that as
12 to why that applies here. And, again, what's becoming
13 a familiar citation to the case that says if there's
14 anything well settled, it is that the party who commits
01:26:44 15 the first breach of contract cannot maintain an action
16 against the other for a subsequent failure to perform.

17 I've set forth facts in the pleadings and we
18 have many times before about the many breaches on the
19 part of the defendants, and they cannot enforce that
01:27:03 20 provision against us that it would claim that, you
21 know, we didn't -- didn't get this by July of last year
22 and so we're precluded. That's -- that's a nonstarter.

23 In addition, I want to talk about the Rule 67
24 for just a minute. There are -- there's A1 and A2.

01:27:29 25 The opposition defendants addressed A2, but not A1. I

01:27:35 1 believe they cited one single case. That one single
2 case dealt with a situation that's very different from
3 what we have here. It dealt with a situation where a
4 plaintiff was trying to force a defendant to make
01:27:50 5 deposits into an account centered by Rule 67. And it
6 talked about the fact that because the defendant wasn't
7 agreeing that the money was owed, that wasn't proper
8 because it was akin to a writ -- a prejudgment writ of
9 attachment. That's very different than what we have
01:28:06 10 here.

11 Section A1 talks about exactly the situation
12 that we have here, that there's money in dispute, that
13 there's -- that it needs to be preserved for a later
14 time.

01:28:17 15 We've walked through the case law on that.
16 And that really has been largely unrefuted. Not
17 largely unrefuted. With the exception of the one case,
18 it doesn't apply. It is unrefuted.

19 And we think -- and that makes sense in this
01:28:34 20 case to have the money put into an account. And I've
21 cited the case law that talks about how once it's
22 there, then interest can't be charged anymore either.

23 And so -- and finally the last point that I
24 raised in the motion was explaining why Ms. Holbert's
01:29:01 25 filing this notice is improper. She's not the proper

01:29:04 1 trustee for this. And it hasn't really been addressed
2 at all, so I don't think I need to address it at all
3 other than to remind the Court that it's there and it
4 has been unopposed in any fashion, and the motion
01:29:19 5 should be granted in that regard as well.

6 If I can have the Court's indulgence for just
7 one second.

8 There are a couple of things that came up in
9 the opposition that I wanted to address just briefly.
01:29:51 10 One of those is that there was this discussion about
11 whether the Romspen commitment letter is really a loan
12 or not a loan. And our point on that is it doesn't
13 really matter. The Court would make a declaration that
14 they get a first position and what we can do with the
01:30:07 15 money, that's what we're asking. Whether the Romspen
16 loan comes to fruition or not doesn't matter. I can
17 certainly say with confidence the Romspen motion is not
18 going to come to fruition if they don't get a first
19 position. That part's easy.

01:30:24 20 The next thing -- well, actually I think I
21 already addressed it. The -- we have the right to
22 repay it. I think I've addressed all the points.

23 What questions does the Court have for me?

24 MR. GREER: None at this time. I guess one
01:30:39 25 question: Why would the deposit under Rule 67, why

01:30:42 1 would it automatically discharge or extinguish the
2 first deed of trust on the property?

3 MR. ALDRICH: Well, the money is there. There
4 is no even possibility for damages. It's -- it's
01:30:56 5 essentially paid. It's sitting there. If the
6 defendants prevail, it's in an account sitting there
7 waiting for them.

8 I've cited the case law that talks about it
9 resolving the interest issue. Okay? There's no need
01:31:09 10 to pay interest anymore if the money has been deposited
11 into an account under Rule 67.

12 It logically follows from there the reason
13 that interest doesn't apply is because they're
14 protected. The money is there.

01:31:25 15 So the same goes here. The money is sitting
16 there. It -- well, let me back up. I guess -- I see
17 your Honor is asking me about extinguishing the deed of
18 trust --

19 THE COURT: Yes.

01:31:34 20 MR. ALDRICH: -- versus --

21 THE COURT: Just making a deposit.

22 MR. ALDRICH: -- making a deposit.

23 THE COURT: Yes.

24 MR. ALDRICH: Got you. Okay. So in this
01:31:41 25 instance again it's --

01:31:42 1 THE COURT: Because I'm wondering if I could
2 even do that, right?

3 MR. ALDRICH: Um-hum. Sure.

4 THE COURT: Because ultimately, when it comes
01:31:47 5 to deeds of trust or other notes and the like, you're
6 talking about satisfaction, right?

7 MR. ALDRICH: Correct.

8 THE COURT: And so in order to satisfy it, it
9 would have to be -- unless agreed upon, it would have
01:32:01 10 to fulfill all requirements under the note and deed of
11 trust, and it would have to be in the hands of the note
12 holder in order for -- and they'd have to have the
13 money.

14 MR. ALDRICH: Um-hum.

01:32:13 15 THE COURT: And then they take the money and
16 do what they have to do with the money, right?

17 And under these circumstances, potentially it
18 would be redistribution to EB5 investors, something
19 like that. I mean, I don't know for sure, but we'll
01:32:26 20 hear.

21 MR. ALDRICH: It may even be a little more
22 complex than that because they're EB5 investors.

23 THE COURT: Yeah.

24 MR. ALDRICH: It may mean that Mr. Dziubla has
01:32:33 25 to go find a different project --

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THE COURT: Could be.

MR. ALDRICH: -- for them. But the point is this.

THE COURT: If you can't find a different project, I think at some level at some point he's going to have to repay, potentially.

MR. ALDRICH: Right.

So -- but with regard to -- so there's really a couple points. The interest would go away; you don't have to pay interest anymore. Where the money is there and they're fully protected, I think it would meet the requirements to -- to extinguish the deed of trust. But the key to that is -- really comes back to under the construction loan agreement the Court would need to make a determination that we're entitled to pay it back. If we are entitled to pay it back, then the provisions related to the I-829 petitions pending and all that stuff doesn't matter anymore, which goes back to my argument that we still haven't seen that that really exists. We think it does. And we've heard it does. And the defendants have been consistent in that position. But we've seen nothing that proves that that condition exists at all. And we've been raising that for a very long time. And certainly there was no opposition set forth to this motion that would say that

01:33:44 1 that condition applies.

2 So once that money goes in, \$7 million into
3 the account, really the conditions are met. So I
4 understand the Court may tell me come back on that
01:33:59 5 motion to extinguish after the other, but certainly the
6 ruling that we're entitled to pay it off, the interest
7 stops, then it goes into Rule 67 account, we're good on
8 all that.

9 Does the Court have more questions for me?

01:34:14 10 THE COURT: Not at this time.

11 MR. ALDRICH: All right. Thank you, your
12 Honor.

13 MR. GREER: Your Honor, I think we need to
14 keep focused on the reason why Las Vegas Development
01:34:30 15 Fund isn't able to simply take a second position and
16 have a senior lender come in is because of the actions
17 of Front Sight in this case.

18 We've gone over this in every single hearing.
19 They have defaulted on every single condition in the
01:34:47 20 construction loan agreements, including now being still
21 in default on paying the default interest on the three
22 monthly payments that they ultimately refused to pay in
23 this court.

24 And now, having met none of the obligations of
01:35:06 25 the contract and for now a year being in these

01:35:09 1 proceedings, they're trying to get relief which they
2 don't have a right to under the contract, they don't
3 have a right to as a matter of law.

4 First of all, as to the deposit, your Honor,
01:35:18 5 as we cite the authority, I mean, that's -- this --
6 this is a situation -- Rule 67 is a situation where
7 somebody gives up the right to money. They don't claim
8 any right to it. They give it to the Court and whoever
9 wants to have a right to it, they can fight for it.

01:35:33 10 That's not what's happening here. What's happening
11 here is that Front Sight's attempting to use Rule 67 to
12 not pay off the loan but put some money aside but stop
13 interest payments on the loan while the lender isn't
14 getting paid, so it's a nonpayment of a loan.

01:35:51 15 So basically not only violate every provision
16 of the contract, but then finally the obligation to pay
17 it off, not do that, yet now have the right to pay
18 interest, be relieved of that by the Court. It doesn't
19 work. We have Nevada authority here that says it's
01:36:12 20 beyond the Court's discretion to do so. It's just not
21 fair, your Honor.

22 With regard to us not contesting the validity
23 of the jobs report and the EB5 accounting, I think,
24 your Honor, if -- it may be a good time for the Court
01:36:25 25 to order that experts come into this courtroom and

01:36:28 1 discuss with the Court all these EB5 implications,
2 because what Mr. Aldrich has said, "We don't have any
3 proof that the investors don't already have their
4 I-829s approved or that there are investors."

01:36:42 5 Well, that's just ridiculous, because every
6 time an investor came in, the money was given to them.
7 They know the people, the investors are coming in.

8 THE COURT: I mean, there has to be investors,
9 6, \$7 million.

01:36:54 10 MR. GREER: Right.

11 MS. HOLBERT: Right.

12 THE COURT: I can probably -- I mean, I don't
13 know if I can take judicial notice of it, but common
14 sense dictates, unless Mr. Dziubla came up with the 6
01:37:01 15 or \$7 million out of his pocket.

16 MR. GREER: And tied it to some funky EB5
17 thing so that his money would be harder to get ahold of
18 and more government reporting just for the heck of it.

19 But here's what -- what's most important is --
01:37:14 20 and Front Sight agrees -- that one of the requirements
21 for it to be able to pay off the loan early is that the
22 I-829s have to have been processed.

23 Your Honor, that's it. They have to -- they
24 can only prepay the loan when the I-829 has been
01:37:33 25 approved.

01:37:34 1 They have no I-829s approved, so they cannot
2 prepay any of the loan. In fact, at this point in
3 time, there is only one investor living in the United
4 States, and they have to be here for two years in order
01:37:47 5 to qualify to go through the program.

6 And so this -- these I-829s are going to be
7 coming in slowly over a long period of time. The
8 investor's money has to remain at risk, and, thus, it's
9 a situation where this isn't a loan that -- this is a
01:38:03 10 loan specifically that cannot be prepaid because of all
11 of the EB5 and USCIS conditions that are attached to
12 it.

13 And simply putting money up doesn't fix it.
14 The trust deed, your Honor, was originally filed
01:38:16 15 because of breaches of all of the performance
16 requirements under the contract which are essential for
17 the EB5 program and EB5 compliance and reporting.
18 That's what the original trust deed is for.

19 There was also -- also the default interest
01:38:33 20 and the attorney's fees associated with that. But the
21 primary focus was Front Sight was not complying with
22 the performance terms of the contract. So paying it
23 off does not relieve the responsibility of the trust
24 deed even if there was a prepayment ability here.

01:38:51 25 And, your Honor, what really needs to be done

01:38:53 1 here -- and this is -- we're going on a year now.
2 We've got a contract loan agreement that says that the
3 lender has a right to appoint a receiver in case of
4 default. We've got Nevada law that allows receivers to
01:39:06 5 be appointed here. We don't need somebody to
6 necessarily get in and collect-the-till receiver, but
7 we need somebody to get in here and make sure that
8 Front Sight is complying with its obligations under the
9 contract, that it is providing the information that's
01:39:19 10 necessary for Mr. Dziubla and LVD Fund to report to
11 USCIS that the money that's coming in is in good faith
12 being used to construct the project, not being shuttled
13 off somewhere in some dynasty trust for the personal
14 benefit of Mr. Piazza.

01:39:38 15 And having personal experience with this --
16 and the Court is aware of this because we have the
17 papers of the prior receivership in the class action.
18 Once that happens and the receiver jumps in and Front
19 Sight and Mr. Piazza are made to do something, it
01:39:52 20 happens.

21 Mr. Dziubla has a million and a half plus
22 dollars in the bank ready to give to Front Sight from
23 investors. Got two emails today from EB5 investors
24 wanting to get in the program before the program
01:40:06 25 changes in November. So we've got more money coming in

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to the project.

We just need to have compliance. And the only way we're going to get compliance, your Honor, is to let this process run its course and have the Court step out of the way and let the foreclosure take over, because then I guarantee you that Mr. Piazza will step up.

We're ready to make a deal. We're ready to fix this thing. We're ready to work together, to pump in more money, to get a second position underneath that loan, if it's a real loan, and get the money coming in so that we can see 8 to \$10 million of construction on that project, the investors that are there now and the investors that Mr. Dziubla has on the sidelines ready to come in will be taken care of. Just 10 million more dollars.

Right now with the loan that's been before this Court professed to be a real loan, they're offering to put together -- aside \$7 million, put it aside; right? They won't even have to do that. They could make the deal here and spend that 7 million on construction. And if they just put in one more million, that's 8 million, we probably have enough jobs to cover all the EB5 investors and this thing is done.

And then Front Sight can continue on its way, finish

01:41:18 1 the project, not finish the project, doesn't matter.

2 And so really, your Honor, all of these
3 sideshows and tricks and procedural methods, they're
4 just dragging this thing out while Mr. Piazza sends out
01:41:32 5 his blast emails to his 200,000 members, every one of
6 them, which says that the money-grabbing,
7 Hillary-Clinton-loving conman Robert Dziubla is causing
8 the Front Sight development to not take place so all
9 you folks need to give us more money so that we can put
01:41:50 10 it into the project.

11 And this money comes in and yet we have no
12 evidence of anything being done on the project.

13 Your Honor, we're all part of a really ugly,
14 ugly thing right now. And we need to just do something
01:42:06 15 about it. It's not this. It's not to cause harm to
16 innocent EB5 investors. They can't find another
17 project. This project is the one they're in. If this
18 one ends, they're at the end of the line. They've lost
19 their investment, they've lost their ability to become
01:42:24 20 citizens, and everything they've bargained for -- and
21 they're innocent people -- is -- has been destroyed.

22 What we need to do is deny this motion. There
23 is no basis for it. So far as, you know, it's
24 contesting the jobs on the EB5 jobs report, your Honor,
01:42:43 25 I mentioned earlier when I started this argument, maybe

01:42:46 1 we should get the experts in here because what's wrong
2 with reports that are being presented by Front Sight --
3 and we cite this flaw in our brief -- is that in order
4 for the constructor, the contractor, to get credit for
01:43:01 5 jobs that were created and work that was done before
6 the EB5 money came in, there has to have been a bridge
7 loan in place or equity put up by the contractor saying
8 here's a chunk of our company, do this work and we'll
9 pay you back when the EB5 money comes in, or a bridge
01:43:19 10 loan that covers the work and that gets paid off when
11 the EB5 investor comes in. And that just didn't happen
12 here.

13 And so the jobs reports that have been put up
14 for this Court are just worthless basically, because
01:43:32 15 the basis on which they're made is a false premise that
16 correct information hasn't been given to the gentleman,
17 Mr. Evans, who made the report.

18 THE COURT: Anything else?

19 MR. GREER: Is the 67, Rule 67?

01:43:52 20 THE COURT: No. Well, you know, I always look
21 at Moore's Federal Practice and Procedure.

22 MR. GREER: Um-hum.

23 THE COURT: I wish I had Wright & Miller. I
24 don't have that. The courts can't afford it. But I
01:44:03 25 was just looking at specific provisions under -- as I

01:44:06 1 was listening to you --

2 MR. GREER: Right. Right.

3 THE COURT: -- as it -- because, you know,
4 let's be really candid. You don't see Rule 67 utilized
01:44:13 5 very much.

6 MR. GREER: Right.

7 THE COURT: I haven't. And I'm sitting here
8 looking at it. It talks about it in a general sense.
9 For example, at Section 67.5 provides deposits into
01:44:26 10 courts are commonly made in several situations:

11 Interpleader actions brought by the Federal
12 Interpleader Act; interpleader actions brought under
13 Rule 22; actions in rem and admiralty. And more
14 generally -- more generally when deposits is in effect,
01:44:48 15 an offer of settlement or a tender of payment designed
16 to stop the running of interest.

17 MR. GREER: Here's -- the big problem here,
18 your Honor, is it's not the money -- the money is one
19 thing. But that loan, it's meant to be a long-term
01:45:03 20 loan. It has to be a long-term loan.

21 THE COURT: I understand.

22 MR. GREER: It has to last -- (indiscernible)

23 And even if we agreed some way to subordinate
24 the EB5 money to a new lender, we still have the
01:45:15 25 problem with performance. If they're building out

01:45:18 1 there, Mr. Dziubla has to have reports about what's
2 being built, has to be able to inspect. So it's --

3 THE COURT: I'm going to -- as far as -- and I
4 understand that's an important component. I think
01:45:29 5 that's a reasonable discovery request. And I don't
6 mind telling you that as it relates --

7 MR. GREER: To go out and inspect?

8 THE COURT: Well, that was the purpose of the
9 EB5 money. I get that. We're in a different position
01:45:42 10 as far as information is concerned today than we were a
11 year ago where I knew nothing about the program. I
12 understand the purpose of the program and those types
13 of things. So I think the best way to look at it is
14 over the next 30 days or so, there will be some action
01:45:58 15 as far as procedurally, discovery, documents will be
16 required to be produced and those types of things at a
17 very minimum. I'm not saying how I'm going to rule on
18 other items, but things have to get going. They do. I
19 get that.

01:46:11 20 MR. GREER: Fair. Your Honor, this just isn't
21 the way to go. We can't get there from here on this
22 under Rule 67.

23 THE COURT: I understand.

24 MR. GREER: Okay. Thank you.

01:46:25 25 One last thing, a little footnote here. On

01:46:28 1 these -- kind of the red herring of Ms. Holbert not
2 being the proper trustee, Mr. Aldrich said there is no
3 authority to the contrary. Well, there is no authority
4 for his position at all. It's just Aldrich on
01:46:40 5 trusteeship. And so I think that is just simply a red
6 herring.

7 MR. ALDRICH: Are you saying I'm not an
8 authority on trusteeship? That's rude.

9 MR. GREER: If you'd print the book, I'd buy
01:46:52 10 it.

11 MR. ALDRICH: All right, your Honor. I want
12 to just point out what's happened here. So I walk
13 through the motion, the basis for what we're asking
14 for. And we heard a brief reference to what defendants
01:47:12 15 claim are Front Sight's defaults, which the Court's
16 heard that more times than I'm sure it cares to
17 remember.

18 We refuted every single allegation.

19 THE COURT: Yeah. You're right.

01:47:24 20 MR. ALDRICH: Then we -- we have provided a
21 report from a renowned expert on the jobs who had all
22 the documentation he needed to look at and concluded
23 that we had produced or created well in excess of the
24 necessary jobs.

01:47:50 25 That is uncontroverted other than the

01:47:55 1 arguments that the Court has heard.

2 There's no case law. There's no nothing that
3 addresses that. And with respect to Mr. Dziubla, he
4 can't be the authority on it because he admitted he
01:48:10 5 doesn't have any EB5 experience.

6 So we -- we have to look at who -- who is the
7 person that knows what they're talking about. Well,
8 it's the guy that we've produced, and there's been
9 nothing to contradict that.

01:48:26 10 The next question is now that all those jobs
11 have been created, as of quite some time ago, at least
12 running on a couple of years ago, what has Mr. Dziubla
13 done to uphold his end of this deal, under that
14 provision, regarding I-829s being submitted and that
01:48:48 15 stuff? I'm back to if there's a condition that

16 exists -- and I understand that the Court assumes that
17 these guys exist, and so do I. We assume that they do.
18 You know, we don't apparently get to know anything
19 about them. But what has Mr. Dziubla done in the last

01:49:01 20 two years since the jobs were created? I would submit
21 nothing for two reasons: One, we haven't been shown he
22 did anything. Number two, they're disputing the jobs
23 report, which as I mentioned the last time we talked
24 about them is a little bit baffling because isn't the
01:49:20 25 purpose to do -- create enough jobs to protect these

01:49:25 1 investors? Well, I would submit to the Court that,
2 indeed, we have created enough jobs and there is no
3 prejudice or damage to the investors because the jobs
4 requirement has been met and then some.

01:49:36 5 Again, uncontroverted.

6 Mr. Greer talked about a motion for
7 appointment of a receiver which isn't what we're here
8 to talk about today. Doesn't have anything to do with
9 my motion.

01:49:51 10 And then we had the reference to, wait,
11 there's more money coming in, a couple of new people in
12 the last few days. Well, we know that Mr. Dziubla's
13 got a million and a half that he held on to in
14 violation of the contract that apparently is still

01:50:09 15 there. But what's interesting about the representation
16 that there's more money coming in, I'll just -- we
17 actually -- I attached it to my motion. We made a
18 chart of the misrepresentations. And there's a whole
19 bunch of them. And I'm not going to belabor that point
01:50:27 20 other than to say that denoted in my chart are lots of
21 representations talking about raising \$75 million,
22 \$50 million, we'll have \$25 million by Thanksgiving, on
23 and on and on.

24 Now, we're here in court today hearing that
01:50:44 25 there's more investors wanting to come. We have no

01:50:48 1 idea if that's true.

2 When Mr. -- Dr. Piazza was here, he talked
3 about back in May of 2016 when they had a meeting and
4 all the promises of all the investors that were lined
01:50:59 5 up and ready to go if we would just agree to remove the
6 \$25 million minimum raise, which he did. Investors
7 didn't come.

8 So that's what defendants decided to talk
9 about in opposition to the motion, just not the
01:51:14 10 substance of the motion.

11 Then, the reference to blast emails which have
12 nothing to do with anything. And then reference to EB5
13 law cited in the brief that -- and something about a
14 bridge loan. Again, no evidence. Nothing that
01:51:32 15 controverts what our expert says.

16 So we would submit that the relief we're
17 asking for is proper and that the Court make the
18 requested rulings.

19 Does the Court have questions for me?

01:51:49 20 THE COURT: No. I'm just sitting here
21 thinking. I'm listening to everyone's position and
22 just thinking about what you're saying, sir. I just
23 want to tell you that.

24 MR. ALDRICH: Okay.

01:51:57 25 MR. GREER: All right.

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THE COURT: All right.

MR. ALDRICH: Thank you.

THE COURT: Mr. Greer, did you want to add something?

MR. GREER: Yes, your Honor.

Mr. Aldrich said that, you know, it's nothing controverting what they presented to the Court by way of evidence of the renowned expert. Your Honor, they haven't presented any admissible evidence to this Court regarding EB5. There's no -- declarations are hearsay. The report itself wasn't even under penalty of perjury. We don't know -- does the Court know what information the expert, Mr. Evans, looked at in coming to its decision? No. None of us do.

It's -- that's why it's not admissible evidence. There has been nothing put before this Court to show that the jobs have been met.

And I think that's by design. Once those witnesses get on the stand, it will be clear that they have not met the jobs requirements.

Two, also, your Honor, and this -- I didn't cover this early on. It is in our papers. This isn't a loan. This is a commitment letter.

So what they're asking the Court to do is give an advisory opinion at this point that says if we sign

01:52:58 1 this letter and it actually becomes a loan, you know,
2 can we do this with it? And if it's like every other
3 commitment letter that they've had in the past, it's
4 not going to come to fruition. But right now we're not
01:53:12 5 dealing with a loan where they have money here that's
6 committed that they can do what they're asking this
7 Court to have them do.

8 This is an advisory request, your Honor.
9 They're just feeling out the situation here and seeing
01:53:23 10 what they can get the Court to do. I don't think it
11 would be appropriate in any account to give an advisory
12 opinion when they haven't even come up with a real loan
13 yet. That just shows what a charade this whole thing
14 is.

01:53:35 15 And with regard to the appointment of the
16 receiver not being at issue here in this motion, that
17 is something that is currently before the Court. It's
18 pending before the Court. And when we had the last
19 hearing, I actually agreed to have us move the hearing
01:53:47 20 on this motion to this date, advanced to be this date
21 because I think it's an important part of the
22 consideration of whether the Court should appoint a
23 receiver. Because if the Court really wants to know
24 what's going on here, who's right on this, is it
01:54:02 25 Mr. Greer, is it Mr. Aldrich, is it Mr. Dziubla, is it

01:54:05 1 Mr. Piazza, the Court really wants to take charge of
2 this thing. The way to do it is with a receiver,
3 function like a special master to step in and really
4 look through the smoke, see what's right, and advise
01:54:17 5 the Court from an unbiased, neutral position, which is
6 something that we strongly encourage.

7 That's it, your Honor.

8 THE COURT: Thank you, sir.

9 Anything you want to add?

01:54:33 10 MR. ALDRICH: Only if the Court is talking
11 about a receiver today.

12 THE COURT: I mean, it's one of the issues we
13 have to decide. I mean, I'm not going to decide it
14 until we start arguing that motion.

01:54:45 15 And here -- Mr. Aldrich, it's important for
16 you to understand this. I do get the complexity of
17 some of the issues that are here regarding Rule 67.
18 The appointment of a receivership. Would this come
19 under -- I think we had -- we had an amendment to the
01:55:03 20 statute regarding real estate receiver. I don't know
21 where this would go or which hole it would fit in.
22 Courts are typically reluctant to grant motions to
23 appoint receivers. I know you understand that.

24 MR. ALDRICH: I do.

01:55:15 25 THE COURT: And so these are all things I'm

01:55:18 1 thinking about. And nothing is clear cut.

2 At some point -- and this is kind of how I'm
3 looking at it. I mean, we have potential time of the
4 essence issues before the end of the year.

01:55:29 5 And some of these matters are ultimately going
6 to have to be resolved at some point, you know.

7 MR. ALDRICH: Sure. So on the time of the
8 essence piece, I just want to make sure that I -- that
9 the Court is aware, we've --

01:55:43 10 THE COURT: I understand maybe that was an
11 inappropriate legal term of art, because time of the
12 essence is typically a term of art contained in a
13 contract.

14 MR. ALDRICH: Sure.

01:55:52 15 THE COURT: The only reason I termed it that
16 way was based upon some of the representations
17 Mr. Greer made as to what has to happen before the end
18 of the year.

19 MR. ALDRICH: Correct. Reporting.

01:56:01 20 THE COURT: Right. Reporting.

21 MR. ALDRICH: Correct. So I want to address
22 that. Okay?

23 We answered the written discovery that came to
24 us and have had no objections to that.

01:56:10 25 I asked if you are -- if saying that we are

01:56:13 1 not providing information that you need for reporting,
2 let me know what it is. I've made that statement here
3 in court. I've made it in conversations. I think I
4 made it in an email, but I can't confirm that as I
01:56:26 5 stand here.

6 But I'm not hearing, hey, we need this or that
7 or the other. And with regard to, you know, what we
8 need to be able to report at the end of the year.
9 Yesterday --

01:56:40 10 THE COURT: I think they need to know -- and
11 this is just sitting back listening passively. I think
12 they need to know a couple of things: What type of
13 construction activities that have been performed at the
14 site. And there is a series of requests for production
01:57:02 15 of documents that deal specifically with those issues.

16 MR. ALDRICH: There are.

17 THE COURT: And so they need to know that.

18 MR. ALDRICH: Your Honor, again, I've answered
19 everything that came to me. I received nothing in
01:57:14 20 response that says my answers were not complete.

21 Discovery officially opened the day after the
22 Court imposed the 14-day deadline for answering request
23 for production of documents. That's when we filed the
24 JCCR. That was July, so 90 days ago. They haven't
01:57:33 25 requested in a request for production or actually

01:57:35 1 informally to come out and see the project. So we're
2 not hiding the ball. We're providing what we're
3 supposed to provide.

4 MR. GREER: I call hogwash. I call total
01:57:48 5 hogwash to that. That's a legal term.

6 THE COURT: I understand.

7 MR. GREER: And I don't have to say this
8 anymore.

9 THE COURT: It's a legal term of art.

01:57:54 10 MR. ALDRICH: So --

11 MR. GREER: It saves me going into detail, and
12 it's all hogwash.

13 THE COURT: But go ahead and he'll clarify a
14 little bit.

01:58:02 15 MR. ALDRICH: No. I was just addressing the
16 time is of the essence piece. I mean, we think time is
17 of the essence too because they -- we are -- we've got
18 a motion for preliminary injunction that's ongoing.

19 The Court has indicated that it wants the case to move
01:58:17 20 along. We're about to talk about the discovery we've
21 been trying to do. So, yeah, I'm concerned about it.

22 And we -- you know, the appointment of a receiver,
23 we've argued that to the end. If we're going to go

24 back there, I'll need to pull up my office computer to
01:58:32 25 talk more about it.

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But that doesn't fit here.

And -- and the problem is if -- if the argument is going to come in to be saying, oh, well, we need a special master to let us know what's going on at Front Sight, we need a special master to let us know what's going on at the three entity defendants too. But none of that's really appropriate for where we are.

THE COURT: And understanding that there is some time constraints here. That's why I actually teed up the Rule 65(a)(2) issue.

MR. GREER: Um-hum.

MR. ALDRICH: Sure.

MR. GREER: Your Honor, on this, I think we do need to move to compel. I need to put some more heat on that probably. We sent a request. We got objections. We got nothing that we didn't already have before. It's -- there is a lot of stuff missing. We've figured out the quickest way to do this is going to be go right to the sources where we know we're going to get it because they're just going to tie us up on law and motion practice and stonewall us. And then when we get something from them, they're just going to say it was burned in the fire or they can't get their hands on it or it's been lost or whatever excuses they made.

01:59:40 1 So Mr. Dziubla has got very specific things
2 that have to be used in that USCIS report. We have
3 third-party discovery going that should cover most of
4 it with the exception of the on-site inspection. And
01:59:50 5 that we will be making a request for discovery to have
6 an on-site inspection shortly. It sounds like counsel
7 is going to stipulate to it. Anyway, we don't have
8 to -- will you stipulate to a date for inspection?

9 MR. ALDRICH: We'll work on a date. We'll
02:00:02 10 work on a date.

11 MR. GREER: Okay.

12 MR. ALDRICH: I'm a little -- I'm going to
13 call hogwash myself. I -- Mr. Greer --

14 MR. GREER: That's a double hogwash.

02:00:10 15 MR. ALDRICH: Mr. Greer hasn't had a chance to
16 look at it. I've provided several thousand pages of
17 things to him today --

18 MR. GREER: We did just get something today.

19 MR. ALDRICH: -- related to finances. We've
02:00:21 20 provided around -- I can't remember if it's 13,000 or
21 15,000 pages of documents. And if they're telling
22 me --

23 MR. GREER: This --

24 (Unreportable cross-talk)

02:00:30 25 THE COURT REPORTER: I need one at a time.

02:00:30 1 MR. GREER: This may be it. I mean,
2 literally, yeah, this could resolve a lot of the
3 issues. Yeah. I forget he handed it to me today.

4 MR. ALDRICH: And I, by the way, supplemented
02:00:41 5 my responses to request for production each time I've
6 supplemented the documents to identify what applies to
7 each request for production.

8 And so -- but the documents that have been
9 produced by defendants, that's exactly my argument is
02:00:57 10 they gave us nothing that we didn't already have. We
11 produced all of Mr. Meacher's emails, and it's about
12 60 percent more than the emails we got from
13 Mr. Dziubla. So, I mean, we -- we ended up here
14 somehow talking about this particular issue. But
02:01:14 15 we're -- we are toeing the line and doing exactly what
16 we're supposed to do with regard to discovery,
17 providing everything that's been asked.

18 MR. GREER: As are we, but we're still here.

19 MR. ALDRICH: I respectfully disagree. We're
02:01:27 20 going to talk about that in a minute.

21 THE COURT: Here's my next question.
22 Mr. Greer, do you have any indication as to whether or
23 not these items that were requested pursuant --
24 pursuant to the request for production of documents
02:01:40 25 would have been covered by that --

02:01:42 1 MR. GREER: She's checking them now. We just
2 got the -- there's a lot of documents. The ones we had
3 before are things we'd already seen. They were just
4 basically exhibits that had already been presented in
02:01:49 5 proceedings.

6 THE COURT: That's not going to stop me from
7 issuing a decision.

8 MR. ALDRICH: Those are financial documents,
9 your Honor.

02:02:00 10 MR. GREER: So this could be a big --

11 MS. HOLBERT: There are 2,000 documents, it
12 looks like, organized into seven different files, eight
13 different files. Just labeled "Front Sight" and, you
14 know, Documents 13,428 through 491. So, I mean, I
02:02:22 15 can't look at this and tell you what I have there
16 without opening each one and looking at all the docs.

17 THE COURT: I understand.

18 MR. GREER: Are the 2018 financials in there?

19 MR. ALDRICH: I don't know what you mean by
02:02:31 20 "financials."

21 MR. GREER: Financial statements, profit and
22 loss.

23 MR. ALDRICH: No. No.

24 MR. GREER: Those things?

02:02:37 25 MR. ALDRICH: That's going to be related to

02:02:38 1 the project itself and the costs associated with that.

2 THE COURT REPORTER: Are we on the record
3 right now, or are you guys just talking back and forth?

4 MR. ALDRICH: On the record is fine.

02:02:51 5 THE COURT: You have to slow down and be more
6 specific. I think that's what she means.

7 Is that correct, ma'am?

8 THE COURT REPORTER: Yeah. And actually speak
9 up too.

02:02:54 10 MR. ALDRICH: Those are going to relate to
11 costs of the project. It's the stuff that the expert
12 looked at on the jobs report.

13 MR. GREER: So this is for 2013, '14, '15
14 which --

02:03:11 15 MS. HOLBERT: That's 2014. That's completely
16 irrelevant.

17 MR. GREER: -- won't be relevant. That's
18 completely irrelevant for us. So this may not fix
19 much.

02:03:15 20 MR. ALDRICH: It's all of it into 2017, I
21 think.

22 MR. DZIUBLA: We're -- it would take hours to
23 go through this. What we're seeing off the top is it's
24 documents from 2014 which is long before we ever made
02:03:37 25 the loan.

02:03:40 1 THE COURT: And maybe there is no documents
2 for 2016, 2017, or '18 --

3 MR. ALDRICH: They're in there.

4 THE COURT: -- that's an issue.

02:03:47 5 MR. ALDRICH: There are.

6 MR. GREER: That may be an issue.

7 THE COURT: All right. Okay. So where do we
8 go from here? It's --

9 MR. ALDRICH: So, okay, on the motion that
02:03:56 10 we've argued, is the Court taking it under advisement?

11 THE COURT: Yeah. I don't -- I have to --
12 whatever -- when I pull the trigger on this case, I
13 have to make sure I understand the ramifications all
14 the way through, the impact.

02:04:07 15 MR. ALDRICH: Okay. All right. Then if -- if
16 it pleases the Court, what we'll do is talk about
17 probably the motion to compel next?

18 THE COURT: Okay. That's -- that's -- I love
19 discovery. Let's go to discovery.

02:04:22 20 MR. ALDRICH: So there is -- the other motion
21 that's here today is a motion for sanctions, but I'd
22 rather address the motion to compel first.

23 THE COURT: Let's talk about the meat.

24 MR. ALDRICH: Yeah.

02:04:53 25 All right. Your Honor, the gist is this:

02:04:59 1 When we were here on July 10 arguing the motion for
2 appointment of a special master that defendants had
3 filed, the Court shortened the deadline for responding
4 to request for production to 14 days.

02:05:12 5 THE COURT: Great.

6 MR. ALDRICH: At that time, candidly, I wasn't
7 happy about that ruling, and I asked the Court, "Are
8 there any limitations?"

9 And the Court said, "No, there are no
02:05:22 10 limitations."

11 And so I said, "Okay."

12 And so I was ready to go. And I sent six sets
13 of request for production of documents, one for each
14 defendant.

02:05:32 15 And there are a whole bunch of them. I
16 certainly concede that there are a lot of them.
17 Roughly 67 of them are contention requests for
18 production, the type of -- your Honor knows what I'm
19 talking about, but, you know, provide all documents
02:05:51 20 that support your denial of paragraph 3 or paragraph 4,
21 and it goes through and addresses those.

22 By way of example, the responses that we
23 got -- I'll just look at Ms. Stanwood's, because I
24 wrote a letter about a week after I got the responses.

02:06:10 25 It was 13 pages long and walked through and explained

02:06:15 1 the problems with the responses.

2 And the problem is that out of the -- I forgot
3 to count them again today. Somewhere between 550 and
4 600 request for production of documents across the six
02:06:29 5 defendants, not one of them identified a single
6 document. At that time they didn't provide any
7 documents. They have provided documents since.

8 They still have not provided supplemental
9 responses. I walk through and talk about my attempts
02:06:45 10 to resolve it. I sent a letter July 30, and had a
11 telephone conference with Mr. Greer and Ms. Holbert
12 August 7.

13 Mr. Greer agreed to supplement the responses
14 with thousands of pages of documents by August 16. He
02:07:00 15 did deliver on August 20, much like I did today, a
16 memory stick with documents on it, but no supplemental
17 responses.

18 There's been some discussion about whether
19 those were produced in the ordinary course of business.
02:07:18 20 They weren't. In fact, what I -- we got a bunch of
21 emails. I actually then went back and sent another
22 request for production asking for the attachments
23 because it was not evident from what we got that there
24 were attachments. Mr. Greer told me that there were
02:07:33 25 attachments. He has since supplemented that. It was

02:07:39 1 maybe last Thursday or Friday that I received that in
2 my office.

3 But they definitely were not produced in the
4 ordinary course or as they would have been kept
02:07:50 5 normally at least initially. And -- and just with
6 respect to those.

7 So we went back. I wrote an email on
8 September 3. Sorry. Let me back up.

9 August 30, Mr. Greer and I spoke. September 3
02:08:02 10 I wrote an email, asked for supplemental responses by
11 September 6. September 5 I followed up. On the 6th,
12 Mr. Greer said he would supplement it by the 12th. On
13 the 12th -- 13th of September, Ms. Holbert called me,
14 asked until the 18th.

02:08:20 15 And I finally decided I wasn't going to get
16 supplemental response and filed this motion.

17 So those are all the attempts.

18 The Court can see, I mean, I've addressed
19 in -- certainly in the letter that I attached here, it
02:08:33 20 goes into the great detail of what I'm asking for.

21 There are -- I will admit there are a few of them that
22 are broader than they necessarily have to be.

23 But we're entitled to actual real responses.
24 We are entitled to explanation of what documents they
02:08:57 25 allege support their denials.

02:09:01 1 And so that's the gist of where I'm at. I
2 want supplemental responses. And then I want -- you
3 know, we've -- we've been here once already about
4 financial documentation. We have fraud allegations.
02:09:15 5 We've got -- you know, Mr. Dziubla -- or I'm sorry,
6 Front Sight was to reimburse Mr. Dziubla and defendant
7 EB5 IA for expenses, but he hasn't provided the
8 information. That's more the subject of the other
9 motion for sanctions. But we have asked for it here as
02:09:36 10 well. And we believe we're entitled to it. We --
11 obviously, we're here earlier on a motion --

12 THE COURT: Here's my question. And trust me,
13 I understand the importance of contention
14 interrogatories. I used to use them all the time.

02:09:51 15 MR. ALDRICH: Sure.

16 THE COURT: Specifically as it related to, for
17 example, in tort-based cases affirmative defenses upon
18 which the adverse party might have a burden of proof;
19 right?

02:10:01 20 MR. ALDRICH: Yes.

21 THE COURT: And there's a couple of ways to
22 look at it. I remember at the very beginning I used to
23 get frustrated, and I said should I run down to
24 Commissioner Biggar. And, ultimately, I made a
02:10:13 25 calculated decision not to.

02:10:15 1 But then, remember this, when you have
2 affirmative defenses or certain burdens of proof, the
3 party has to come forward with evidence to support
4 that.

02:10:26 5 MR. ALDRICH: Yeah.

6 THE COURT: If they don't, potentially it can
7 be problematic. And I think everybody understands
8 that.

9 And so there's no doubt you've made
02:10:39 10 significant requests.

11 Just as important, sometimes there is no
12 documents or very little.

13 MR. ALDRICH: But then they have to say that,
14 your Honor. They didn't say it, not one time. Not one
02:10:49 15 time. And the best example is Ms. Stanwood. I sent
16 stuff asking for communications with the investors from
17 Ms. Stanwood.

18 She testified on that screen right there and
19 said she didn't even know what entities she was the SVP
02:11:04 20 of. She didn't do anything.

21 THE COURT: Okay.

22 MR. ALDRICH: Right?

23 THE COURT: That has an impact, potentially.

24 MR. ALDRICH: Then why not say there aren't
02:11:10 25 any? Instead, we get this big, long objection. That's

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it. Right?
So am I barking up the wrong tree there?
Probably. But -- if we believe Ms. Stanwood.
But, come on, say they aren't -- don't exist
then and I'll chase something else. To say -- I asked
for payments she received from any of the entities.
Objections. If there aren't any, say there aren't any.
Right?
But if you're not going to say there aren't
any, what do I think? There might be. And I
absolutely have a duty to ask for that on behalf of my
client and come in here and get -- and have them
compelled to answer the discovery, because it is not
answered. It's objected to. And that's it.
Most of those objections are frivolous.
They're repetitive. Every single one is an objection
that it's overbroad. I asked for -- at the behest of
Mr. Winters, my financial expert, I asked for the --
the backup -- electronic backup to the QuickBooks that
had been provided, because he -- in his report, he
talked about it doesn't look quite right.
What did I get? An objection that it's overly
burdensome. Overly burdensome to click "save as" and
send it to me? No. This is gamesmanship.
And -- and again, here we are today.

02:12:39 1 Mr. Greer stands and says I'm not playing by the rules.
2 I'm not providing information. Front Sight is hiding
3 the ball. No. We are providing it. And we are asking
4 for it. And we are doing follow-up after follow-up
02:12:53 5 after follow-up, meet and confer, trying to get what we
6 need, and it is not coming.

7 And so we are entitled to legitimate, true
8 responses. And we're entitled to have them describe
9 the documents that -- that go to not only their
02:13:13 10 affirmative defenses but their denials. And we have
11 walked through very carefully and asked for all these
12 things. And, yes, we asked for some financial
13 documents in here too. And I know I've already been in
14 here arguing about subpoenas I wanted to issue and the
02:13:28 15 Court told me that I'm not going to get to right now.

16 But that comes back up here. We're asking for
17 information because Front Sight gave money. They're
18 supposed to reimburse for expenses. That means
19 documentation is supposed to be provided. And the
02:13:45 20 Court knows what we've gotten to some degree. We
21 haven't got that motion yet, but it isn't enough.
22 We're entitled to ask for where Front Sight's money
23 goes. We're entitled to find out who's getting paid
24 out of those entities. All of those things are in
02:14:00 25 these requests. And they need to be responded to.

02:14:03 1 There's repeated attorney-client privilege
2 objections. I mean, I've taught the CLE on
3 attorney-client privilege probably four or five times
4 with Commissioner Bulla who's now Judge Bulla, and you
02:14:17 5 have to -- if you're going to assert the privilege, you
6 have to make a privilege log. You have to identify
7 documents. You can't just assert the privilege and
8 then leave it out there for us to guess if those
9 documents exist.

02:14:32 10 These are -- these responses are completely
11 nonresponsive. And they're the ones who pushed for the
12 14 days. And now it's been 95 or more than that.

13 THE COURT: Now, some of the responses, it's
14 my recollection they did identify when certain
02:15:02 15 documents didn't exist, did they or --

16 MR. ALDRICH: I -- your Honor, my recollection
17 is --

18 THE COURT: Let me see here.

19 MR. ALDRICH: -- not one.

02:15:18 20 THE COURT: Like, for example, Ms. Stanwood's,
21 like, request for No. 1. Produce any and all
22 documents, writings and/or communications utilized or
23 consulted in the answer in the plaintiff's first
24 interrogatories to defendant Linda Stanwood.

02:15:36 25 Objection. This document requests information that

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does not exist.

Has there been --

MR. ALDRICH: The reason they don't exist is because I didn't get around to sending the interrogatories. This was a standard one I had in there as a mistake.

THE COURT: Okay.

MR. ALDRICH: I should have taken it out, but I didn't.

That -- that -- but that's it. I don't believe -- I looked at this a long time ago. I didn't go through every single one in extreme detail. I don't believe there's a single document identified in any of the six sets.

There's not in the answer. There's -- and there's not "we don't have these documents." It's just -- you know, and some of them do say, "We will produce documents related to the injunction issues that are responsive." But because one of the objections was at the time that we were in the middle of the preliminary injunction motion. But, again, still haven't been supplemented. Haven't identified any of those documents that relate to the injunction issues.

I'm quite confident, since we've been talking about this, that if there were any that had a single

02:16:53 1 document identified, we'd have heard about it by now.

2 THE COURT: Understand.

3 MR. ALDRICH: And -- and, like I said, I went
4 through in pretty painstaking detail in my letter, I
02:17:11 5 addressed every objection, I addressed every request.

6 And they need to be responded to and they need to be
7 responded to soon. I can live with two weeks, even
8 though that's what this original deadline was supposed
9 to be, but I need them in two weeks.

02:17:34 10 THE COURT: I understand.

11 MR. ALDRICH: Thank you, your Honor.

12 THE COURT REPORTER: I just want to say before
13 we get started, I need to be out of here in ten
14 minutes.

02:17:47 15 THE COURT: She has to be out of here in ten
16 minutes.

17 THE COURT REPORTER: No later.

18 THE COURT: I'm going to give a ruling on this
19 before we leave.

02:17:54 20 MR. GREER: Please provide copies of any and
21 all documents which support, refute, or in any way
22 relate to your denial of any portion of the allegations
23 of paragraph 12 of the second amended complaint.

24 Please provide copies of any and all documents
02:18:08 25 which support, refute, or in any way relate to your

02:18:11 1 denial of any portion of the allegations of
2 paragraph 13 of the second amended complaint.

3 And as to 14, and as to 15, and as to 19, and
4 as to 22, and as to 90 through 94, on and on for 60
02:18:28 5 pages.

6 Your Honor, we've cited the authority that
7 shows that we did this appropriately. We gave our
8 objections to each of the requests and then we produced
9 the documents as they were kept in the ordinary course
02:18:46 10 of business.

11 We are allowed to do that under Rule 34(b),
12 produce them as kept in the ordinary course of
13 business, or label them -- label production according
14 to the enumerated requests. We did it, everything we
02:19:05 15 have, normal course of business, give it to them. We
16 did have a glitch in the software which Mr. Aldrich
17 pointed out, and we were able to fix. And that was
18 that the emails, although they were extricated in what
19 we thought was -- they were extricated as they were
02:19:19 20 kept in the normal course of business. Our organizing
21 software separated the attachments from the emails so
22 that it wasn't easy for Mr. Aldrich to look at the
23 email and pull up the attachment that was right in that
24 email.

02:19:33 25 And so the policy is obviously to give the

02:19:37 1 documents as kept in the normal course of business so
2 that the requesting party has equal access to them as
3 to the providing party. We fixed that glitch. We gave
4 Mr. Aldrich another memory stick with those emails that
02:19:48 5 had attachments on them with the attachments associated
6 with them.

7 That's the appropriate way to do things. We
8 cite the authority in our brief. It's a Nevada
9 authority. It's in re Grand Jury Subpoenas, that this
02:20:01 10 type of request where you just go through and throw out
11 allegations of the complaint and say, hey, what do you
12 have that refutes this, what do you have that supports
13 that. This is the quote we use in our papers. This is
14 a request for documents already in the plaintiff's
02:20:17 15 possession. They're made with the precise goal of
16 learning what opposing counsel is thinking or strategy
17 may be and get their work product inappropriately.

18 This -- although Mr. Aldrich -- if Mr. Aldrich
19 would like things organized differently, we
02:20:33 20 respectfully submit, your Honor, that he should take
21 the time and ask them in an organized way that provides
22 for that type of production.

23 This -- as they are phrased, we have answered
24 them in an appropriate way. And that's why I did not
02:20:45 25 go and eventually supplement because, upon doing the

02:20:49 1 research, it was clear that this was the appropriate
2 way to handle it.

3 The question is, are we giving them all the
4 documents that are relevant to the case in our
02:20:58 5 possession? The answer is yes.

6 If there's anything that Mr. Aldrich feels is
7 missing, we have actually been pretty good at working
8 together. "Hey, Keith, I would expect to see something
9 like this. Do you have it?"

02:21:12 10 I would then look again and say, "No, we
11 probably don't have it because we have given you
12 everything," or I would look other ways and find what
13 was missing.

14 Either way, if I don't have it, the Court has
02:21:22 15 already mentioned that there are sanctions as we
16 approach trial and there are inferences that can be
17 given by a party's failure to properly provide
18 discovery responses.

19 With regard to EB5 Impact Advisors, they've
02:21:37 20 got all the docs. That was part of the accounting that
21 this Court did, and literally everything to that
22 entity. Mr. Aldrich was questioning whether there's
23 some things missing from that. And that's going to be
24 the next motion that the Court discussed. But we've
02:21:49 25 given them everything we have. And -- and there are --

02:21:52 1 and there are a lot of overbroad requests in this too.

2 And -- but I think by providing all the
3 documents that are responsive in our possession, we've
4 complied with discovery appropriately.

02:22:09 5 THE COURT: Thank you, sir.

6 MR. ALDRICH: Your Honor, it's not okay to
7 just say, "We provided everything we have." There are
8 specific requests that have not been addressed that
9 we've asked for relevant information. They're going to

02:22:25 10 claim it's not relevant. That's financial information
11 in particular.

12 But I go back to they say they've provided
13 everything they have. And it just begs the question:
14 If they've provided everything they have, how is it
02:22:39 15 that our set of emails is 60 percent larger than their
16 set of emails? I mean, is it a formatting thing? I
17 don't know. I'm just -- I'm just thinking out loud.

18 MR. GREER: We gave 7,000 emails.

19 MR. ALDRICH: Okay? And so -- and I think I
02:22:54 20 gave about 11. So --

21 THE COURT: That's not the number.

22 MR. ALDRICH: No, I know.

23 THE COURT: It's not.

24 MR. ALDRICH: I'm just saying in terms of
02:23:01 25 pages, it -- ours came out bigger. As I said, it could

02:23:04 1 be formatting. I don't know. But, you know --

2 THE COURT: Mr. Aldrich, the way I look at

3 it -- and we can just have a discussion here. I

4 understand in a way what you want. I'm not saying you

02:23:15 5 don't have a right to it. But I'm looking at it from a

6 format perspective. For example, I've kind of gone

7 through what I'm looking at, Request No. 63, provide

8 copies of any and all documents that support, refute,

9 or in any way relate to the denial of any portion of

02:23:35 10 the allegations in paragraph 70 of the second amended

11 complaint.

12 And so when I read that, I'm trying to figure

13 out, what do you need?

14 And --

02:23:47 15 MR. GREER: How do you do it?

16 THE COURT: And -- and the reason why I --

17 MR. ALDRICH: Well --

18 THE COURT: Wait, wait.

19 And the reason why I ask that, I mean, I

02:23:54 20 understand there might be some facts contained in the

21 complaint, right?

22 MR. ALDRICH: There are. Absolutely.

23 THE COURT: Or factual assertions, I should

24 say.

02:24:00 25 MR. ALDRICH: Correct. That were denied.

02:24:02 1 THE COURT: Okay. Remember, like when it
2 comes to -- and this is more under the new rules. We
3 have the rule of proportionality. We have that. And
4 so I'm just wondering is there a way -- because I don't
02:24:21 5 know what your case is. You don't even have to tell me
6 what your theories are. But is there a way to
7 efficiently request the documents or information that
8 you need that's slightly different from what's in front
9 of me?

02:24:40 10 And, for example -- and I'll give you -- like
11 when I was discussing contention interrogatories. And
12 I would, more than anything, focus on, like, for
13 example, affirmative defenses; right? And say if you
14 had an affirmative defense in a tort case and you say
02:24:58 15 third parties are responsible for it, you know, that
16 general rule. And so my first question would be:
17 Well, do you have any documents to support the second
18 affirmative defense asserting the third parties are
19 responsible for this? If so, please identify.

02:25:12 20 I'm just -- and it was more stylized than
21 that. But I think everyone understands where I'm kind
22 of going. And so -- and the reason I would ask that is
23 this: Okay. Here's a specific potential affirmative
24 defense I have to use -- I have to deal with; right?

02:25:29 25 And so I want to know what documents do you have to

02:25:34 1 support this affirmative defense?

2 Then the next -- and I do interrogatories for
3 that. Identify all witnesses that you have to support
4 this affirmative defense.

02:25:46 5 And the reason why you do it is instead of
6 just taking portions of a complaint or answer, you're
7 actually focusing on what you really need. And was it
8 slightly different and -- than -- than -- and I get --
9 and you're being very thorough. I'm not saying that.

02:26:03 10 But I would -- I know you have -- I know what
11 you want to get, and I'm trying to figure out a way
12 that it can be done that's efficient.

13 That's the best way I can say it.

14 THE COURT REPORTER: Judge, I've got three
02:26:22 15 minutes.

16 THE COURT: Yeah. She has three minutes.

17 Sir? And you can respond.

18 MR. GREER: All emails, all contracts, all
19 correspondence.

02:26:35 20 THE COURT: Well, no, you can -- I'm not
21 saying you should even have it that broad. For
22 example -- and I don't know. Hypothetically, what does
23 Request for No. 63 deal with?

24 MR. GREER: Paragraph 70 in the complaint.

02:26:49 25 THE COURT: Of the complaint.

02:26:55 1 MR. ALDRICH: Request 63 on paragraph 70 of
2 the complaint. Is that what you're talking about?

3 THE COURT: Yeah.

4 MR. ALDRICH: Well, I'm tapped into my office.
02:27:05 5 Give me a second, and I'll pull it up.

6 THE COURT: We don't want to -- bottom line, I
7 want you to get what you need. I really and truly do.

8 MR. ALDRICH: Right.

9 MR. GREER: I want to give him what he needs.

02:27:14 10 MR. ALDRICH: And I -- I mean, and I didn't
11 get a response. And that's my problem.

12 But, your Honor, there's -- the second amended
13 complaint is detailed, very detailed. There's not a
14 question as to what I need. And the reason you ask for

02:27:27 15 support or refute or relate to is because you have to
16 be clear that they don't get to not turn over stuff
17 that refutes their position. I mean, that's why you
18 ask the question like that. I'm -- so I'm confused,

19 honestly, truly, what the problem is. Like, I send
02:27:45 20 requests like this all the time. I -- if they don't

21 answer them, I get them answered. I -- you know, it
22 isn't hard. You read the paragraph of the second
23 amended complaint. Do you have anything that relates
24 to it? Yeah. You answer it.

02:28:01 25 I don't understand what the confusion is.

02:28:06 1 MR. GREER: This type --

2 THE COURT: I think part of it, there might be

3 90 requests, you know.

4 MR. GREER: Times six.

02:28:11 5 MS. HOLBERT: Times six.

6 THE COURT: Times six.

7 MR. ALDRICH: Your Honor, I could have sent a

8 request that said, you know, something that refutes,

9 relates to any denial of any paragraph. I could have

02:28:23 10 done that. But I didn't. I was more specific than

11 that.

12 MR. GREER: This is a very easy way to create

13 a lot of unnecessary work. I mean, each paragraph you

14 have to look at it. Then read each paragraph, get all

02:28:36 15 the nuances. Sometimes the paragraphs refer to other

16 paragraphs. And then as to each party, look at each

17 instance in each paragraph and then look at the 10,000

18 documents and identify which of those 10,000 documents

19 as to each sentence in each paragraph of the complaint

02:28:51 20 as to each party was it. That's why the statute

21 says -- let me read it.

22 MR. ALDRICH: And, yes, you do. And that's

23 why -- and I have to prove that before we go to trial.

24 THE COURT REPORTER: Judge, what do you want

02:29:00 25 me to do?

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THE COURT: She's leaving in --
Just 60 more seconds.
MR. GREER: Rule 34(b) says we can provide the documents as they're kept in the ordinary course of business or label the production according to enumerated requests.
We did it as -- as kept in the normal course of business so that all this work that's created here, if it wants to be done, they can do it.
MR. ALDRICH: But they didn't answer the enumerated requests.
MR. GREER: We answered by providing documents which are provided for by 34(b).
MS. HOLBERT: Maybe plaintiff should actually send some interrogatories.
THE COURT: That helps too.
MR. GREER: That would work.
THE COURT: It's very difficult for me to even --
Then we are going to let you go.
-- make a ruling on these, all of these, because they don't state or set forth, for example, with some particularity for me to have an idea as to specifically what's being requested. Because when you look at it from this perspective, why would you need to

02:30:28 1 ask questions as it relates to every specific paragraph
2 and answer; right?

3 MR. ALDRICH: Of course, you can ask for
4 every -- request for documents related to every denial
02:30:50 5 in an answer. Of course, you would.

6 THE COURT: I mean, every denial in an answer,
7 is it critical to the case? I mean, it depends on the
8 complaint; right? I mean --

9 MR. ALDRICH: Sure.

02:31:07 10 THE COURT: -- some -- it just -- I mean,
11 that's where it can be overbroad, because what I'm
12 trying to say is this: Clearly, you have a right to
13 focus on your claims for relief. There is no question
14 about it. But when I look at this, I can't make a
02:31:20 15 determination as to specifically what you need other
16 than going through every paragraph and requesting
17 documents.

18 THE COURT REPORTER: Judge, does this need to
19 be on the record? I've got to go.

02:31:32 20 THE COURT: She has to go. We'll let --

21 Peggy, you can go. You've got to go.

22 So off the record. We're done.

23

24 (Proceedings were concluded.)

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<p>MR. ALDRICH: [84] MR. DZIUBLA: [2] 10/22 46/22 MR. GREER: [70] 4/7 4/18 4/23 5/2 5/7 5/11 6/2 6/5 6/10 6/14 6/17 6/23 7/9 8/1 8/8 8/10 8/15 8/22 9/3 10/23 11/21 11/23 12/10 18/24 22/13 24/10 24/16 29/19 29/22 30/2 30/6 30/17 30/22 31/7 31/20 31/24 32/9 35/25 36/5 41/4 41/7 41/11 42/11 42/13 43/11 43/14 43/18 43/23 44/1 44/18 45/1 45/10 45/18 45/21 45/24 46/13 46/17 47/6 57/20 61/18 62/15 64/18 64/24 65/9 66/1 66/4 66/12 67/3 67/12 67/17 MS. HOLBERT: [10] 4/10 4/16 5/10 6/1 7/8 24/11 45/11 46/15 66/5 67/14 THE COURT REPORTER: [8] 43/25 46/2 46/8 57/12 57/17 64/14 66/24 68/18 THE COURT: [113]</p>	<p>13/14 22/2 24/9 24/15 27/19 \$75 [1] 34/21 \$75 million [1] 34/21 ' '14 [1] 46/13 '15 [1] 46/13 '18 [1] 47/2 1 1.3 [2] 13/20 15/3 10 [2] 8/15 48/1 10 million [1] 27/15 10,000 [2] 66/17 66/18 100 [1] 2/16 11 [2] 8/15 61/20 12 [2] 8/15 57/23 12th [2] 50/12 50/13 13 [3] 8/15 48/25 58/2 13,000 [1] 43/20 13,428 [1] 45/14 13th [1] 50/13 14 [3] 48/4 55/12 58/3 14-day [1] 40/22 15 [1] 58/3 15,000 [1] 43/21 16 [2] 11/25 49/14 160 [1] 3/8 1601 [1] 3/7 17150 [1] 2/15 18th [1] 50/14 19 [1] 58/3 1975 [1] 3/11 1:06 [1] 4/2</p>	<p>23 [2] 1/21 4/1 2510 [1] 2/5 28 [4] 8/8 8/18 10/22 10/23 29 [1] 8/24 3 30 [5] 8/8 16/7 31/14 49/10 50/9 30.040 [1] 15/1 31 [1] 10/21 34 [3] 58/11 67/3 67/13 3900 [1] 2/8 4 491 [1] 45/14 5 526 [1] 15/17 541 [2] 1/24 70/17 5490 [1] 3/10 550 [1] 49/3 579-3900 [1] 2/8 6 60 [2] 58/4 67/2 60 percent [2] 44/12 61/15 600 [1] 49/4 613-6677 [1] 2/18 613-6680 [1] 2/19 63 [3] 62/7 64/23 65/1 65 [1] 42/10 6677 [1] 2/18 6680 [1] 2/19 67 [16] 11/13 13/15 14/8 16/23 17/5 18/25 19/11 22/7 23/6 23/11 29/19 29/19 30/4 31/22 38/17 48/17 67.5 [1] 30/9 6th [1] 50/11 7 7,000 [1] 61/18 70 [3] 62/10 64/24 65/1 702 [3] 2/8 3/10 3/11 8 8 million [1] 27/23 829 [2] 21/17 24/24 829s [7] 15/8 15/16 24/4 24/22</p>	<p>25/1 25/6 33/14 853-5490 [1] 3/10 858 [2] 2/18 2/19 89074 [1] 2/7 89146 [1] 3/9 9 90 [3] 40/24 58/4 66/3 92127 [1] 2/17 94 [1] 58/4 95 [1] 55/12 : :SS [1] 70/2 A A1 [3] 16/24 16/25 17/11 A2 [2] 16/24 16/25 ability [3] 25/24 28/19 70/11 able [7] 14/15 16/2 22/15 24/21 31/2 40/8 58/17 about [49] 14/25 16/18 16/23 17/6 17/11 17/21 18/10 19/8 19/17 20/6 28/15 30/8 31/1 31/11 33/7 33/19 33/24 34/6 34/8 34/15 34/21 35/3 35/9 35/13 35/22 38/11 39/1 41/20 41/20 41/21 41/25 44/11 44/14 44/20 47/16 47/23 48/7 48/19 48/24 49/9 49/18 51/3 53/21 54/14 56/25 57/1 61/20 65/2 68/14 absolutely [2] 53/11 62/22 accept [1] 13/23 access [1] 59/2 according [2] 58/13 67/5 account [8] 13/16 17/5 17/20 19/6 19/11 22/3 22/7 37/11 accountants [1] 10/15 accounting [2] 23/23 60/20 ACCURATE [1] 70/11 across [1] 49/4</p>	<p>Act [1] 30/12 action [3] 16/15 26/17 31/14 actions [4] 22/16 30/11 30/12 30/13 activities [1] 40/13 actual [1] 50/23 actually [12] 9/14 18/20 34/17 37/1 37/19 40/25 42/9 46/8 49/21 60/7 64/7 67/14 add [4] 5/13 7/23 36/3 38/9 addition [1] 16/23 address [6] 15/1 15/3 18/2 18/9 39/21 47/22 addressed [10] 16/7 16/11 16/25 18/1 18/21 18/22 50/18 57/5 57/5 61/8 addresses [2] 33/3 48/21 addressing [2] 5/4 41/15 admiralty [1] 30/13 admissible [2] 36/9 36/15 admit [1] 50/21 admitted [1] 33/4 advanced [1] 37/20 adverse [1] 51/18 advise [1] 38/4 advisement [1] 47/10 Advisors [1] 60/19 advisory [3] 36/25 37/8 37/11 affirmative [9] 51/17 52/2 54/10 63/13 63/14 63/18 63/23 64/1 64/4 afford [1] 29/24 after [6] 11/4 22/5 40/21 48/24 54/4 54/5 afternoon [4] 4/6 4/13 4/16 11/15 again [10] 15/14 16/12 19/25 34/5 35/14 40/18 49/3 53/25 56/21 60/10 against [2] 16/16 16/20</p>
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