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UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

In re:
FRONT SIGHT MANAGEMENT LLC,
Debtor.

Case No. 22-11824-abl
Chapter 11

FRONT SIGHT MANAGEMENT LLC, a
Nevada limited liability company,
v.
LAS VEGAS DEVELOPMENT FUND LLC, a
Nevada limited liability company, et al.

Adv. No. 22-01116-abl

And all related counterclaims.

Hearing Date: OST Pending
Hearing Time: OST Pending

**MOTION OF THE OFFICIAL COMMITTEE OF UNSECURED
CREDITORS TO INTERVENE UNDER BANKRUPTCY RULE 7024**

The Official Committee of Unsecured Creditors (the “Committee”) of the above-captioned debtor and debtor-in-possession (the “Debtor”), by and through its proposed undersigned counsel, hereby files this motion (the “Motion”) requesting entry of an order (the “Proposed Order”), granting the Committee the right to intervene and participate in the above-

1 captioned adversary proceeding (the “Adversary Proceeding”) including the filing of the
2 Committee’s proposed response to the *Motion for Remand* (the “Remand Motion”) filed by Las
3 Vegas Development Fund, LLC (“LVDF”).¹

4 The Debtor has consented to the relief requested in this Motion.

5 This Motion is made and based on the points and authorities herein, the papers and
6 pleadings on file in the Debtor’s bankruptcy case and in this Adversary Proceeding, judicial notice
7 of which are requested, and any arguments of counsel entertained by the Court at the hearing on
8 this Motion. In support of its Motion, the Committee respectfully states as follows:

9
10 **JURISDICTION AND VENUE**

11 1. The United States Bankruptcy Court for the District of Nevada (the “Court”)
12 has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334 and Rule 1001(b)(1) of
13 the Local Rules of Bankruptcy Practice and Procedure for the Bankruptcy Court for the District of
14 Nevada (the “Local Rules”).

15
16 2. Venue of this proceeding and this Motion is proper in this district pursuant
17 to 28 U.S.C. §§ 1408 and 1409.

18 3. The statutory predicates for the relief requested herein section 1109(b) of
19 title 11 of the United States Code (the “Bankruptcy Code”) and Rule 24 of the Federal Rules of
20 Civil Procedure, made applicable to this Adversary Proceeding by Rule 7024 of the Federal Rules
21 of Bankruptcy Procedure (the “Bankruptcy Rules”).

22
23 4. Pursuant to Local Rules 7008 and 7012, the Committee consents to the entry
24 of a final judgment or order with respect to the Motion if it is determined that the Court, absent
25 consent of the parties, cannot enter final orders or judgments consistent with Article III of the United
26 States Constitution.

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¹ Docket No. 4.

BACKGROUND

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2 5. On May 24, 2022 (the “Petition Date”), the Debtor filed a voluntary petition
3 for relief under chapter 11 of the Bankruptcy Code with this Court. Since the Petition Date, the
4 Debtor has remained in possession of its assets and has continued to operate and manage its
5 business as a debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

6
7 6. On June 9, 2022, the Office of the United States Trustee for Region 17
8 appointed a five-member Committee consisting of: (i) Steven M. Huen; (ii) Gary Cecchi;
9 (iii) David Streck; (iv) Thomas E. Donaghy; and (v) ALM Investments LLC.² The Committee
10 selected Kelley Drye & Warren LLP as its proposed lead counsel and Carlyon Cica Chtd. as
11 proposed Nevada counsel. The Committee also selected Dundon Advisers, LLC as its proposed
12 financial advisor.

13
14 7. On June 23, 2022, the Debtor filed a notice removing the action titled *Front*
15 *Sight Management, LLC v. Las Vegas Development Fund LLC, et al.*, Case No. A-18-781084-B
16 (the “Removed Action”) from the District Court, Clark County, Nevada to this Court, thereby
17 initiating this Adversary Proceeding.³

18
19 8. The Removed Action relates to, among other things, the Debtor’s attempts
20 to develop its firearms training facility and the funding (or lack thereof) from the Defendants to do
21 so. In the action, the Debtor alleges claims against the Defendants for fraud in the inducement,
22 intentional misrepresentation, breach of fiduciary duty and conversion.⁴

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25 _____
² Case No. 22-11824, Docket No. 116.

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27 ³ Docket No. 1. In addition to Las Vegas Development Fund LLC (“LVDF”), the complaint
named EB5 Impact Capital Regional Center, LLC, EB Impact Advisors LLC, Robert W.
Dziubla and John Fleming as defendants (together with LVDF, the “Defendants”).

28 ⁴ *See Debtor’s Amended Motion For Entry of an Order Confirming Terminating Sanctions
Order is Void as a Violation of the Automatic Stay or, in the Alternative, Motion for Relief
From Order Pursuant to Federal Rule of Civil Procedure 60(b) [Docket No. 51].*

ARGUMENT

I. The Committee Has an Unconditional Right to Intervene

12. Pursuant to Bankruptcy Code section 1109(b) and Federal Rule 24(a)(1), the Committee is entitled to intervene in the Adversary Proceeding unconditionally and as a matter of right. Federal Rule 24(a)(1), as incorporated into the Bankruptcy Code by Rule 7024, states in relevant part that “[o]n timely motion, the court must permit anyone to intervene who . . . is given an unconditional right to intervene by a federal statute” Fed. R. Civ. P. 24(a)(1). Section 1109(b) of the Bankruptcy Code grants such unconditional right to intervene to “part[ies] in interest” such as the Committee. *See* 11 U.S.C. § 1109(b) (providing that a “party in interest, including . . . a creditors’ committee . . . may raise and may appear and be heard on any issue in a [chapter 11] case”); *see also Assured Guaranty Corp. v Financial Oversight and Management Board for Puerto Rico* (“*Assured Guaranty Corp.*”), 872 F.3d 57, 59 (1st Cir. 2017) (holding that “11 U.S.C. §1109(b) . . . provides [the Committee] an ‘unconditional right to intervene’ within the meaning of Fed. R. Civ. P. 24(a)(1)”); *Term Loan Holder Comm. V. Ozer Grp., L.L.C. (In re The Caldor Corp.)* (“*Caldor*”), 303 F.3d 161, 175–76 (2d Cir. 2002) (same); *Official Unsecured Creditors’ Comm. v. Michaels (In re Marin Motor Oil, Inc.)*, 689 F.2d 445, 453–56 (3d Cir. 1982) (same).

13. As a party in interest, the Committee has an unconditional right to intervene in the Adversary Proceeding, the outcome of which will directly impact the Debtor’s asset pool and the recoveries that will be realized by the Debtor’s unsecured creditors. In particular, the amount of LVDF’s allowed secured claim and whether the Counterclaims are property of the Debtor’s estate directly affect the recoveries of the general unsecured creditors. The letter writing campaign attached to the Gubner Declaration highlights the need for the Committee to intervene. The issue of whether some or all of the Counterclaims are property of the Debtor’s estate is hotly contested, and since general unsecured creditors (and not LVDF) would be the beneficiaries of any

1 estate causes of action, it is appropriate for the Committee to intervene in this Adversary
2 Proceeding.

3 14. The Motion is also timely. The Committee is requesting leave to intervene
4 just 18 days after the Debtor removed this action. The Committee’s intervention will not prejudice
5 the existing parties as the action is currently stayed, and to the extent LVDF’s claims are property
6 of the estate, they are also core proceedings that involve property of the estate, 28 U.S.C. § 157
7 (b)(2)(A), (B), (C), (H), (K) and (O). Resolution of LVDF’s claim in this case and resolution of
8 any fraudulent transfer claims also directly affect the Debtor’s chapter 11 plan of reorganization.
9 The matters at issue herein are the types of matters that 11 U.S.C. § 1109 (b) was intended to
10 address. *See, e.g., Assured Guaranty Corp., supra*, 872 F.3d at 62-64; *Caldor, supra*, 303 F. 3d at
11 175-76.
12

13
14 **II. Permissive Intervention Would be Warranted Even if the Committee
15 Were Not Entitled to Intervene as of Statutory Right**

16 15. If the Court finds that section 1109(b) does not confer the Committee with
17 an unconditional right to intervene, the Committee should nevertheless be granted leave to
18 permissively intervene under Federal Rule 24(b). Federal Rule 24(b) provides that the Court may,
19 on timely motion, permit anyone to intervene who “is given a conditional right to intervene by a
20 federal statute,” or “has a claim or defense that shares with the main action a common question of
21 law or fact.” Fed. R. Civ. P. 24(b)(1)(A)–(B). The Ninth Circuit has stated that permissive
22 intervention “requires (1) an independent ground for jurisdiction; (2) a timely motion; and (3) a
23 common question of law and fact between the movant’s claim or defense and the main action.”
24 *Freedom from Religion Found., Inc. v. Geithner*, 644 F.3d 836, 843 (9th Cir. 2011).

25 16. Accordingly, the threshold for permissive intervention is “lower.” *Bolbol*
26 *v. Feld Entm’t, Inc.*, 2012 WL 5828608 at *9 (N.D. Cal. Nov. 15, 2012). Once the threshold
27 requirements are met, courts enjoy very “broad discretion” to grant permissive intervention under
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1 Rule 24(b). *Tonkawa Tribe of Indians of Okla. v. Scientific Games Corp.*, 2021 WL 3847802 at *8
2 (D. Nev. Aug. 27, 2021).

3 17. As to the first showing, the Committee need not demonstrate an independent
4 basis for jurisdiction here as the Committee is not seeking to enlarge the Court’s jurisdiction by
5 raising any new claims, nor does the Committee’s participation require the Court to assert
6 jurisdiction different from the jurisdiction over core proceedings granted to it under 28 U.S.C.
7 § 157(b). *See Freedom from Religion*, 644 F.3d at 843–44 (“We therefore clarify that the
8 independent jurisdictional grounds requirement does not apply to proposed intervenors in federal-
9 question cases when the proposed intervenor is not raising new claims.”).

10
11 18. As to the second showing, the Committee has previously demonstrated that
12 its Motion is timely (*see supra* ¶ 13).

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14 19. As to the third showing, the Committee has also previously demonstrated
15 questions of law and fact in common between the interests the Committee is tasked with
16 representing and the Adversary Proceeding (*see supra* ¶ 12). Permissive intervention is
17 particularly appropriate here given what is at stake in this Adversary Proceeding. At stake in this
18 Adversary Proceeding is the extent and validity of the largest claim against this estate and the
19 precise scope of claims owned by the Debtor’s estate, some or all of which may be unencumbered
20 by prepetition liens. This determination will directly affect the resources available to satisfy the
21 claims of general unsecured creditors.
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CONCLUSION

WHEREFORE, the Committee respectfully requests that the Court enter the Proposed Order, granting the relief requested in this Motion and granting such other relief as the Court deems just and proper.

Respectfully submitted this 11th day of July 2022.

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/s/ Dawn M. Cica, Esq.

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