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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,

Adv. No. 22-01116-abl

v.

LAS VEGAS DEVELOPMENT FUND LLC, a  
Nevada limited liability company, et al.

And all related counterclaims.

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

**OFFICIAL COMMITTEE OF UNSECURED  
CREDITORS’ (1) OPPOSITION TO MOTION TO REMAND;  
AND (2) JOINDER TO DEBTOR’S OPPOSITION TO MOTION TO REMAND**

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 opposes (the “Opposition”) the *Motion to Remand* [AECF No. 4] (the “Motion to Remand”) filed by secured creditor Las Vegas Development Fund LLC (“LVDF”), for remand of this removed action to the Nevada state court pursuant to 28 U.S.C. § 1452(b). For the

1 reasons discussed herein, the Committee respectfully opposes any order remanding this matter to  
2 the Nevada state court and joins in the *Debtor's Opposition to Motion to Remand* [AECF No. 57]  
3 ("Opposition to Remand") and incorporates the Debtor's arguments in that opposition as  
4 though fully restated herein.

5 In addition, contemporaneously herewith, the Committee is filing its *Motion to Intervene*  
6 *Under Bankruptcy Rule 7024*<sup>1</sup> (the "Intervention Motion") and is filing an Application for an Order  
7 Shortening Time to have the Intervention Motion heard at the same hearing as LVDF's Motion to  
8 Remand.

9 This Opposition is filed contemporaneously with the Committee's (1) *Opposition to the*  
10 *Motion to Terminate Stay, and (2) Joinder to Debtor's Opposition to Motion to Terminate Stay*  
11 ("Opposition to Stay Motion"), and the Committee's *Opposition to Motion to Appoint Examiner*  
12 ("Opposition to Examiner"), both filed in the main bankruptcy case. Arguments and background  
13 set forth in the Committee's Intervention Motion, Opposition to Stay Motion and Opposition to  
14 Examiner are incorporated herein to the extent relevant to this instant Motion, rather than repeated.  
15 In addition, the Debtor has filed the *Motion for Entry of an Order Confirming Terminating*  
16 *Sanctions Order is Void as a Violation of the Automatic Stay or, in the Alternative, Motion for*  
17 *Relief from Order Pursuant to Federal Rule of Civil Procedure 60(b)*[AECF No. 43](the "Stay  
18 Violation Motion"), an *Opposition to Motion to Remand*, and an *Opposition to Motion to Appoint*  
19 *Examiner*. Arguments made by the Debtor in which the Committee has joined are also incorporated  
20 herein to the extent relevant to the Court's consideration of the instant Motion to Remand by LVDF.

21 This Opposition is made and based upon the following Memorandum of Points and  
22 Authorities, the papers and pleadings on file herein, judicial notice of which is respectfully  
23

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24 <sup>1</sup> Unless otherwise indicated, all references to a "Section" or a "Chapter" are to Title 11 of  
25 the United States Code, 11 U.S.C. §§ 101-1532 (as amended, the "Bankruptcy Code").  
26 "Bankruptcy Rule" references are to the Federal Rules of Bankruptcy Procedure Rules  
27 1001-9037. "Local Rule" references are to the Local Rules of Bankruptcy Practice for the  
28 United States District Court for the District of Nevada. All references to "ECF No." are to  
the number assigned to the documents filed in the above-captioned bankruptcy case as they  
appear on the docket maintained by the clerk of court. All references to "AECF No." are  
to the number assigned to the documents filed in this adversary case number 22-01116-abl.

1 requested pursuant to Federal Rule of Evidence 201, and any argument of counsel entertained by  
2 the Court at the time of the hearing on the Motion to Remand.

3 Respectfully submitted this 11th day of July 2022.

4 **CARLYON CICA, CHTD**

5 By: /s/ Dawn M. Cica, Esq.

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. Preliminary Statement**

3 The Committee opposes any order remanding this case based on fundamental bankruptcy  
4 principles, including the priority scheme set forth in the Bankruptcy Code and the Committee's  
5 role as "watch dog" for the Court. Critically, here the Debtor's claims against the Lender Parties  
6 (defined below) are property of the Debtor's estate under Section 541(a). Further, the  
7 Counterclaims asserted by LVDF against the Debtor and the non-debtor affiliates and related  
8 entities (the "Non-Debtor Affiliates") are property of the estate as they arise out of alter ego or  
9 fraudulent transfer claims as more specifically described in the Debtor's Opposition to Motion to  
10 Remand, and therefore should move forward in this Court.

11 As will be more fully discussed below, the claims asserted on either side of the State Court  
12 (as defined below) litigation belong to the estate, and therefore must proceed in the Bankruptcy  
13 Court for the reasons intended by Congress. Here, the Committee was appointed to represent the  
14 interests of the body of unsecured creditors of the estate and is charged with investigating the "acts,  
15 conduct, assets, liabilities, and financial condition of the Debtor, the operation of the Debtor's  
16 business and the desirability of the continuance of such business, and any other matter relevant to  
17 the case or to the formulation of a plan." 11 U.S.C. § 1103(c)(2). In that capacity, the Committee  
18 will be investigating the secured claim of LVDF, the Debtor's allegations and LVDF's  
19 counterclaims as well as the facts and circumstances which may give rise to equitable  
20 subordination.

21 If LVDF's damages against the estate are determined in a different forum, then the  
22 Committee's role as "watch dog" for the creditor body with respect to this claim and related  
23 allegations of misconduct will be eliminated. Additionally, as set forth in detail in the Debtor's  
24 Stay Violation Motion, the Debtor and the Committee have been harmed by LVDF's continuation  
25 of litigation pending in the Eighth Judicial District Court, Clark County, Nevada (the "State  
26 Court"), Case No. A-18-781084-B (the "State Court Action"), resulting in the *Order Granting in*  
27 *Part Defendants and Counterclaimant's Motion for Case Dispositive Sanctions* (the "Terminating  
28 Sanctions Order"), entered post-petition on June 22, 2022 by Judge Williams, which was not based

1 on the merits of any of the claims and can have preclusive effect against the Debtor and the  
2 Committee notwithstanding that it was obtained *after* the filing of the bankruptcy petition without  
3 the participation of the Debtor or the Committee and may negate prior conclusions of law  
4 applicable to the Debtor, which were determined on the merits.

5 Furthermore, given that the Committee was only just formed on June 9<sup>th</sup>, the Court should  
6 permit the Committee to perform its role in investigating and identifying potential fraudulent  
7 transfers rather than remanding this case so that those claims can improperly be asserted by one  
8 singular creditor in state court. LVDF is one of many creditors of the estate, and although a secured  
9 creditor, may not step outside the Bankruptcy Code and Bankruptcy Court and litigate claims that  
10 belong to the creditor body as a whole. That function lies with the Committee.

11 **II. Jurisdiction and Venue**

12 1. The Court has jurisdiction over the Motion to Remand pursuant to 28 U.S.C.  
13 §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b).

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

16 3. Pursuant to Local Rules 7008 and 7012 the Committee consents to entry of  
17 final order(s) or judgment(s) by the bankruptcy judge if it is determined that the bankruptcy judge,  
18 absent consent of the parties, cannot enter final judgments consistent with Article III of the United  
19 States Constitution.

20 **II. Factual Background**

21 4. On May 24, 2022 (the "Petition Date"), Debtor filed its voluntary petition  
22 for relief under Chapter 11 of the Bankruptcy Code, thereby commencing the above-captioned  
23 case (the "Chapter 11 Case" or the "Bankruptcy Case"). *See* ECF No. 1. The Debtor continues to  
24 operate its business and manage its property as debtor and debtor-in-possession pursuant to  
25 Sections 1107(a) and 1108 of the Bankruptcy Code.

26 5. The factual background relating to the Debtor's commencement of the  
27 Chapter 11 Case is set forth in detail in the *Omnibus Declaration of Ignatius Piazza in Support of*  
28 *First Day Motions* [ECF No. 14] (the "First Day Declaration") filed on May 24, 2022 and

1 incorporated herein by reference. The factual background may also be found in this Court’s June  
2 28, 2022 Transcript of Oral Ruling [ECF No. 229](“Oral Ruling Transcript”) on *Debtor’s*  
3 *Emergency Motion for Entry of Interim and Final Orders: (i) Authorizing Debtor to Obtain Post-*  
4 *Petition Financing, (ii) Granting Priming Liens and Administrative Expense Claims, and*  
5 *(iii) Authorizing the Debtor’s Use of Cash Collateral, (iv) Modifying the Automatic stay and*  
6 *(v) Granting Related Relief*[ECF No. 4] (the “Financing Motion”).

7           6. As referenced by the Bankruptcy Court in the Oral Ruling Transcript, in  
8 1998 Debtor acquired a 550-acre tract of land in Nye County, Nevada commonly known as 1 Front  
9 Sight Road, Pahrump, Nevada 89061 (the “Front Sight Property”). See Oral Ruling Transcript, p.  
10 26:13-17. To finance its plan to develop the Front Sight Property, in 2012 the Debtor negotiated  
11 and obtained a financing package from LVDF for the maximum loan amount of \$150,000,000 (the  
12 “LVDF Loan”). See ECF No. 36, p. 2:4-8. Ultimately, LVDF only advanced \$6,735,000 to Debtor  
13 under the LVDF Loan, approximately 5% of the original commitment. Declaration of Robert  
14 Dziubla [ECF No. 37] (the “Dziubla Declaration”) at ¶11. LVDF claims it is owed \$11,233,878.47  
15 by the Debtor as of May 25, 2022. See Dziubla Declaration at ¶22. In connection with this Court’s  
16 approval of the Financing Motion, this Court further found the value of the Front Sight Property  
17 to be \$18,000,000 for the purpose of the ruling on the Financing Motion only. See Oral Ruling  
18 Transcript at p. 37:2-4.

19           7. On September 14, 2018, Debtor filed the State Court Action in the State  
20 Court against LVDF, EB5 Impact Capital Regional Center LLC, EB Impact Advisors LLC, Robert  
21 Dziubla, and Jon Fleming (collectively the “Lender Parties”). See ECF No. 4, p. 9-10, l. 24-14.  
22 11. On January 4, 2019, Debtor filed its Second Amended Complaint against the Lender Parties.

23           8. On March 30, 2021, the Lender Parties, with permission of the State Court,  
24 filed an amended counterclaim against Debtor, VNV Dynasty Trust I, VNV Dynasty Trust II,  
25 Ignatius A. Piazza, II, Jennifer Piazza (collectively the “Piazza Entities”), Morales Construction,  
26 Inc., All American Concrete & Masonry, Inc., Top Rank Builders, Inc., Efrain Rene Morales-  
27 Moreno, and Michael Gene Meacher.

28

1           9.       On May 12, 2022, LVDF filed its Terminating Sanction Motion in the State  
2 Court Action, which was set for hearing on May 25, 2022. The Debtor filed for bankruptcy  
3 protection on May 24, 2022 and notified counsel for LVDF of its filing. Debtor filed its Suggestion  
4 of Bankruptcy in the State Court Action, and on May 25, 2022, filed its Notice of Bankruptcy  
5 Filing and Notice of Bankruptcy Stay in the State Court Action.

6           10.       On May 25, 2022, notwithstanding the filing of the bankruptcy case and the  
7 existence of the automatic stay, the hearing on the Terminating Sanctions Motion went forward in  
8 the State Court Action. At the May 25, 2022 hearing, LVDF argued that the automatic stay did  
9 not operate as a stay of the entire State Court Action and the State Court proceeded with its ruling  
10 on the Terminating Sanctions Motion, which resulted in the post-petition June 22, 2022  
11 Terminating Sanctions Order. As a result of the violation of the automatic stay via the Terminating  
12 Sanctions Order, On July 6, 2022, the Debtor filed its Stay Violation Motion, which is set to be  
13 heard on September 1, 2022.

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

20           12.       On June 27, 2022, LVDF filed a *Motion to Appoint Examiner* [ECF No.  
21 211] in the main Bankruptcy Case. The Committee is filing an opposition to that motion  
22 contemporaneously herewith.

23           13.       On June 23, 2022, the Debtor filed a notice of removal of the State Court  
24 Action as this adversary case number 22-01116-abl. *See* ECF No. 176 and AECF No. 1. LVDF's  
25 Motion to Remand followed on June 27, 2022.

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<sup>2</sup> ECF 116.



1 **IV. Legal Analysis**

2 A. Equitable Remand of the Removed Action is not Supported.

3 14. Pursuant to 28 U.S.C. § 1452:

4 (a) A party may remove any claim or cause of action in a civil action other  
5 than a proceeding before the United States Tax Court or a civil action  
6 by a governmental unit . . . , to the district court for the district where  
such civil action is pending, if such district court has jurisdiction of  
such claim or cause of action under section 1334 of this title.

7 (b) The court to which such claim or cause of action is removed may  
8 remand such claim or cause of action on any equitable ground. An  
9 order entered under this subsection remanding a claim or cause of  
10 action, or a decision to not remand, is not reviewable by appeal or  
otherwise by the court of appeals under section 158(d), 1291, or 1292  
of this title or by the Supreme Court of the United States under section  
1254 of this title.

11 Bankruptcy courts may remand a claim or cause of action to the court from which it was removed  
12 “on any equitable ground.” 28 U.S.C. § 1452(b). “This ‘any equitable ground’ remand standard is  
13 an unusually broad grant of authority.” *McCarthy v. Prince (In re McCarthy)*, 230 B.R. 414, 417  
14 (9th Cir. BAP 1999). “It subsumes and reaches beyond all of the reasons for remand under non-  
15 bankruptcy removal statutes.” *Id.* However, the “any equitable ground” standard is not statutorily  
16 defined. Accordingly, case law has imported the “factors” governing discretionary abstention to  
17 assist with the remand decision. *See In re Enron Corp.*, 296 B.R. 505, 508–9 (C.D. Cal. 2003)  
18 (importing the discretionary abstention factors into the remand analysis and affirming the  
19 bankruptcy court's remand to state court of two of the over 100 securities actions filed nationwide  
20 instead of transferring venue to the New York bankruptcy court). The imported factors are:

- 21 (1) the effect or lack thereof on the efficient administration of the estate if the  
22 Court recommends [remand or] abstention;
- 23 (2) extent to which state law issues predominate over bankruptcy issues;
- 24 (3) difficult or unsettled nature of applicable law;
- 25 (4) presence of related proceeding commenced in state court or other non-  
26 bankruptcy proceeding;
- 27 (5) jurisdictional basis, if any, other than § 1334;
- 28 (6) degree of relatedness or remoteness of proceeding to main bankruptcy case;



- 1 (7) the substance rather than the form of an asserted core proceeding;
- 2 (8) the feasibility of severing state law claims from core bankruptcy matters to
- 3 allow judgments to be entered in state court with enforcement left to the
- 4 bankruptcy court;
- 5 (9) the burden on the bankruptcy court's docket;
- 6 (10) the likelihood that the commencement of the proceeding in bankruptcy court
- 7 involves forum shopping by one of the parties;
- 8 (11) the existence of a right to a jury trial;
- 9 (12) the presence in the proceeding of non-debtor parties;
- 10 (13) comity; and
- 11 (14) the possibility of prejudice to other parties in the action.

12 *Enron*, 296 B.R. at 508, n. 2; see also *In re Tucson Estates, Inc.*, 912 F.2d 1162, 1167 (9th Cir.

13 1990) (citing to a Texas bankruptcy case which articulates a similar list). “While these factors assist

14 a court’s remand decision, they do not control it. The standard remains “any equitable ground.” *In*

15 *re Roman Cath. Bishop of San Diego*, 374 B.R. 756, 761–62 (Bankr. S.D. Cal. 2007).

16 15. LVDF contends that these factors weigh in favor of remanding the Removed

17 Action to the Nevada State Court. However, due to LVDF’s flawed legal analysis as to what is

18 meant by “property of the estate” under 11 U.S.C. §541(a), none of the above factors support the

19 relief requested by the Motion to Remand. The Committee addresses each of the factors below.

20 (1) ***The effect or lack thereof on the efficient administration of the estate if the***

21 ***Court recommends [remand or] abstention.***

22 16. LVDF argues that if this matter is not remanded, “this Court will have to

23 review, study, and analyze four (4) years of scorched earth litigation in order to address the motions

24 that remain pending in the [State Court Action]. Doing so will take a great deal of time and

25 resources and thus, will likely impact the efficient administration of the estate.” See Motion to

26 Remand at p. 9:1-5. Although the Bankruptcy Court will indeed be tasked with a review of

27 complex litigation involving the Debtor, that factor still weighs in favor of denying remand. Here,

28 the Debtor’s claims against defendants, and the counterclaims against the Debtor *are property of*

*the estate*. Property of the bankruptcy estate includes not only all legal or equitable interests of

1 the debtor in property, but also any interest in property that the estate *may recover* for the benefit  
2 of all creditors under Section 550. *See* 11 U.S.C. §§ 541(a)(1) and (a)(3). Under Section 541(a)(1),  
3 property of the bankruptcy estate includes a cause of action in which the debtor has an interest as  
4 of the petition date. *Smith v. Arthur Andersen LLP*, 421 F.3d 989, 1002 (9th Cir. 2005); *Sierra*  
5 *Switchboard Co. v. Westinghouse Elec. Corp.*, 789 F.2d 705, 707 (9th Cir. 1986); *In re*  
6 *AgriBioTech, Inc.*, 319 B.R. 216, 219 (D. Nev. 2004).

7 17. Permitting a trustee or debtor in possession, rather than individual creditors,  
8 to pursue general creditor claims on behalf of the estate as a whole, as opposed to piecemeal  
9 creditor actions, serves the orderly and equitable distribution of the bankruptcy estate's assets.  
10 *AgriBioTech, Inc.*, 319 B.R. at 222; *see also* 11 U.S.C. §§ 704(a)(1), 1106 & 1107. Moreover,  
11 bankruptcy courts guard the bankruptcy estate and/or claims that the bankruptcy trustee holds or  
12 controls against "creative" attempts to argue that such claims are held by individual creditors. *See*  
13 *Nat'l Am. Ins. Co. v. Ruppert Landscaping Co.*, 187 F.3d 439 (4th Cir. 1999) (rejecting an attempt  
14 by sureties of a debtor to pursue a fraudulent transfer alter ego claim relabeled as a tort action  
15 unique to the creditor as barred by the automatic stay); *In re Shubh Hotels Pittsburgh, LLC*, 2011  
16 WL 7109364, at \*4 (Bankr. W.D. Pa. May 16, 2011) ("To allow selected creditors to artfully plead  
17 their way out of bankruptcy court would unravel the bankruptcy process and undermine an ordered  
18 distribution of the bankruptcy estate.").

19 18. Here, the Counterclaims for alter ego, fraudulent transfer, intentional  
20 interference with contractual relationships, conversion, civil conspiracy, and waste all became  
21 property of the estate on the Petition Date because they all relate back to the Debtor,  
22 notwithstanding the creative pleading titles. It is a fundamental principle of bankruptcy law that  
23 such claims may not be pursued by any individual creditor of the estate absent the abandonment  
24 of such claims by the estate. *See Estate of Spirtos v. One San Bernardino Cnty. Super. Ct.*, 443  
25 F.3d 1172, 1175 (9th Cir. 2006) ("The trustee's standing to sue on behalf of the estate is exclusive;  
26 a debtor's creditors cannot prosecute such claims belonging to the estate absent abandonment.").

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1           19.     Additionally, LVDF has already demonstrated its litigation goal of using  
2 the State Court to obtain benefits in terms of rulings that have a direct effect on the administration  
3 of this case. *See, e.g.*, Terminating Sanctions Order. Because the resolution of the claims and  
4 counterclaims and the LVDF Loan and the determination of the scope of LVDF’s purported  
5 security interests are crucial to the Debtor’s ability to reorganize, it is critical that they be  
6 administered as part of this case. Furthermore, the Bankruptcy Court is better equipped to deal  
7 efficiently not just with adversary litigation but also with the property issues and claim  
8 relationships that the estate may confront following decisions made in the State Court Action. The  
9 Committee submits that this factor weighs heavily against remand to the State Court.

10                   **(2) *Extent to Which State Law Issue Predominate over Bankruptcy Issues.***

11           20.     LVDF contends that all of the claims in this Removed Action are state law  
12 claims. Motion to Remand at p. 9:7. LVDF also argues that “determination of state law claims in  
13 a different forum will not interfere with the bankruptcy case.” *Id.* at p. 9:9-10. However, LVDF  
14 fails to address that it is seeking to resolve claims and counterclaims belonging to the estate. The  
15 fact that the Debtor is now a debtor-in-possession in a chapter 11 case changes the character of  
16 claims asserted by and against the Debtor and in effect turns the State Court Action into a claim  
17 objection. The amount of LVDF’s secured claim, and unsecured claim if any, whether the claim  
18 is allowed or disallowed, whether Section 510(c) allows equitable subordination, and whether the  
19 collateral may be surcharged under Section 506(c) are now core issues that can only be determined  
20 by this Court. This matter will be decided by turning to bankruptcy law regarding what constitutes  
21 property of the estate under 11 U.S.C. § 541(a) and through the claims objection process.

22           21.     Specifically, the counterclaims are core proceedings appropriately retained  
23 by this Court. *See, e.g., In re Manton*, 585 B.R. 630, 642 (Bankr. N.D. Ga. 2018) (“Finally, and  
24 arguably most importantly, the Fraudulent Conveyance Action is a core proceeding, arising under  
25 Title 11, and directly affects property of the estate, which weighs heavily against abstention”).  
26 While the Bankruptcy Court is well able to litigate bankruptcy and state court fraudulent  
27 conveyance claims, the State Court is not charged with application of bankruptcy fraudulent  
28 conveyance claims, the State Court is not charged with application of bankruptcy fraudulent

1 conveyance law, nor would it be appropriate for the State Court to do so in an action brought by a  
2 single creditor. Such claims belong exclusively to the estate, and should be litigated exclusively  
3 in the Bankruptcy Court. The Committee asserts that this factor weighs heavily against remand.

4 **(3) *Difficult or Unsettled Nature of Applicable Law.***

5 22. The fact that provisions of the Bankruptcy Code must be applied in order to  
6 liquidate claims, and the fact that the counterclaims cannot be asserted by any individual creditor  
7 unless abandoned by the estate, both weigh in favor of denying remand as such determinations  
8 remain within the exclusive jurisdiction of this Court. This Court is best situated to adjudicate  
9 issues relating to secured claims and fraudulent conveyances, so this factor does not weigh in favor  
10 of remand.  
11

12 **(4) *Presence of Related Proceeding Commenced in State Court or Other***  
13 ***Nonbankruptcy Proceeding.***

14 23. The State Court Action was a non-bankruptcy proceeding but it has now  
15 been removed. The filing of the petition changed who can assert the claims pending in the State  
16 Court Action. These are now simply claims belonging to the Debtor's estate that must be  
17 determined by this Court, with the assistance of the Committee as "watch dog" for the Court, this  
18 case, and the unsecured creditor body at large. Therefore, this factor weighs in favor of denial of  
19 the Motion to Remand.  
20

21 **(5) *Jurisdictional Basis, if any, Other Than § 1334.***

22 24. This Court has jurisdiction over this matter as it involves estate claims under  
23 11 U.S.C. § 541(a). Furthermore, since the Debtor's claims and counterclaims against the Debtor  
24 are property of the estate, 28 U.S.C. § 157(b)(2)(A)-(C), (H), and (K) all provide this Court with  
25 the ability to hear and determine all of the core proceedings the State Court Action implicates. In  
26 short, this dispute involves core issues, which are within the exclusive jurisdiction of this Court.  
27  
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1 This factor weighs heavily in favor of denying remand.

2 **(6) Degree of Relatedness of Proceeding to Main Bankruptcy Case.**

3 25. This factor does not support remand as LVDF argues, but instead weighs  
4 heavily against remand. The State Court Action involves one the Debtor's largest assets, the Front  
5 Sight Property, as well as potential significant fraudulent conveyance claims and will involve  
6 liquidation of claims against the estate and by the estate. The State Court Action simply cannot  
7 be adjudicated outside of the Debtor's chapter 11 case. That would rob the Committee of its basic  
8 functions with respect to LVDF's claim in contravention of fundamental bankruptcy law.  
9 Furthermore, the Debtor's reorganization plan may depend upon resolution of certain of these  
10 matters, thus providing the closest possible connection to this Bankruptcy Case. *See In re Neel*,  
11 554 B.R. at 249 (finding that nothing further could happen in the main bankruptcy cases until  
12 recoveries for the estates in the adversary cases occurred and noting that "a closer connection is  
13 virtually unimaginable").  
14

15  
16 **(7) The Substance Rather than the Form of an Asserted Core Proceeding.**

17 26. LVDF does not address this factor in its Motion to Remand. However, since  
18 the claims and the counterclaims are property of the estate, the validity and amount of LVDF's  
19 claim is a substantive core matter that goes to the very heart of what this Court, not the State Court,  
20 is tasked with resolving. The Committee submits that this factor also weighs heavily in favor of  
21 denying the Motion to Remand.  
22

23 **(8) The Feasibility of Severing State Law Claims from Core Bankruptcy  
24 Matters to Allow Judgments to be Entered in State Court with Enforcement  
Left to the Bankruptcy Court.**

25 27. It is the Committee's position that there are no state law claims that can be  
26 severed to allow judgment to be entered in the State Court as discussed herein. The claims and  
27  
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1 Counterclaims are all estate property and cannot be asserted by any individual creditor or resolved  
2 by any other court.

3 **(9) *The Burden on the Bankruptcy Court's Docket.***

4 28. LVDF's actions since the Petition Date have certainly placed an  
5 unnecessary burden on the Bankruptcy Court's docket with respect to the Motion to Remand, the  
6 Motion to Terminate Stay [ECF No. 206], and the Debtor's Stay Violation Motion. Additionally,  
7 the Sanctions Order and the potential preclusive effect of certain findings therein have already  
8 burdened the Bankruptcy Court's docket because the Debtor necessarily had to challenge it.  
9 Having the State Court Action move forward in this Court will not further burden the Court and,  
10 in fact, would result in the efficient administration of this dispute. For example, this Court would  
11 not have to determine what aspects of the litigation to carve out verses what issues must be dealt  
12 with in this case. This factor also weighs heavily against remand.  
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15 **(10) *The Likelihood that the Commencement of the Proceeding in Bankruptcy  
16 Court Involves Forum Shopping by One of the Parties.***

17 29. LVDF contends that Debtor filed for bankruptcy protection to avoid an  
18 unfavorable ruling on the Terminating Sanctions Motion, and then removed this case soon after,  
19 which amounts to forum shopping. Rather, LVDF's prosecution of the Terminating Sanctions  
20 Order subsequent to the filing of the Petition and its position in the correspondence with the Debtor  
21 clearly indicates that LVDF is attempting to forum shop now that the Debtor has filed for  
22 bankruptcy protection. *See* correspondence at Exhibits 7, 8, 9, and 10 to the *Declaration of Steven*  
23 *T. Gubner in support of Debtor's Motion for Entry of an Order Confirming Terminating Sanctions*  
24 *Order is Void as a Violation of the Automatic Stay or, in the Alternative, Motion for Relief from*  
25 *Order Pursuant to Federal Rule of Civil Procedure 60(b)* [AECF No. 44]. Fundamentally, claims  
26 that are property of the estate should not be foreclosed due to the Debtor's prepetition discovery  
27 conduct. In attempting to utilize remand to avoid a hearing on the merits, it is LVDF that is forum  
28

1 shopping

2 **(11) *The Existence of the Right to a Jury Trial.***

3 30. LVDF states that it has filed a jury demand and that other third-party non-  
4 creditor parties have also sought to have their claims heard by a jury. However, the fact that a jury  
5 trial has been requested on claims that may only be brought by the estate for the benefit of all  
6 creditors or are claims asserted by the Debtor and involve the validity and amount of LVDF's  
7 secured claim cannot support a decision to remand the State Court Action. Whether there is a right  
8 to a jury trial on all claims is a question to be decided pursuant to applicable bankruptcy law. To  
9 the extent there are non-estate claims against any third-party non-creditor defendants in this case,  
10 then this Court should preside over a civil jury trial. Pursuant to Local Rule 9015(a),  
11

12 The bankruptcy judges of this district are designated to exercise all  
13 jurisdiction in civil jury cases under 28 U.S.C. § 157(e). Consent of the  
14 parties may be made in writing or orally on the record and, unless the court  
orders otherwise, must be given at least thirty (30) days before the date first  
set for trial.”

15 31. Furthermore, even if third parties withhold their consent to have this Court  
16 conduct the civil jury trial, to the extent that there are claims against other third parties once all  
17 estate claims have been decided by this Court, remaining claims that may be left against third  
18 parties can be adjudicated at that time. *See, e.g., In re Neel*, 554 B.R.241, 249 (Bankr. D. Or.  
19 2016) (“Mr. Arnot has demanded a jury trial in each of the Adversaries, and, while under 28 U.S.C.  
20 § 157(e), a bankruptcy court ‘may conduct a jury trial . . . with the express consent of all the parties,  
21 Mr. Arnot is not granting such consent. However, as discussed above, there are issues within the  
22 core jurisdiction of this court implicated in the Adversaries that I have authority to decide without  
23 a jury, and depending on how those issues are resolved, Mr. Arnot may or may not have the  
24 opportunity to present his tort claims before a jury.”).



1                   **(12) *The Presence in the Proceeding of Non-Debtor Parties.***

2                   32.       The Committee concedes that there are third parties named in the Removed  
3 Action that may not be creditors of the Debtor; however, this singular factor does not support  
4 remand of this case.

5                   **(13) *Comity.***

6                   33.       The Committee submits that this factor also favors denial of remand. It is  
7 this Court, not the State Court, which is well experienced in determining what is property of the  
8 estate, and such determinations are expressly within the core jurisdiction of this court. Liquidating  
9 a claim against the estate, application of Section 506(c), equitable subordination under Section  
10 510(c), allowing or disallowing a secured or unsecured claim, and fraudulent conveyances are all  
11 within the exclusive purview of this Court. State court judges do not have the experience or the  
12 jurisdiction necessary to applying and interpret provisions of the Bankruptcy Code. Furthermore,  
13 LVDF cannot assert claims that now belong to the estate. As such, this factor also supports denial  
14 of remand.  
15  
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17                   **(14) *The Possibility of Prejudice to Other Parties to this Proceeding.***

18                   34.       LVDF contends that if remand is denied, LVDF, Robert Dziubla, Linda  
19 Stanwood, Jon Fleming, EB51A and EB51C would be prejudiced by effectively waiving their jury  
20 demands. *See* Motion to Remand at p. 13:2-5. However, the Bankruptcy Court can conduct civil  
21 jury trials pursuant to Local Rule 9015. Even absent consent to a jury trial in this forum, to the  
22 extent that there are claims against other third parties once all Estate claims have been decided by  
23 the Bankruptcy Court, remaining claims that may be left against third parties can be adjudicated  
24 at that time. *See, e.g., In re Neel*, 554 B.R. at 249. Furthermore, there is absolutely no prejudice  
25 to LVDF, the Non-Debtor Affiliates, or any other third parties involved in the State Court Action  
26 as there is no reason that this Court cannot render fair and reasoned decisions on the merits of the  
27  
28

1 parties claims and counterclaims. However, in contrast, the Debtor's entire creditor body (and the  
2 Committee) would be significantly prejudiced if the Motion to Remand is granted.

3 **V. Joinder**

4 The Committee joins in the Debtor's Opposition to Remand and incorporates the Debtor's  
5 arguments in that opposition as though fully restated herein.

6 **VI. Conclusion**

7 For the reasons discussed above, the Committee respectfully requests that the Motion to  
8 Remand be denied.

9 Respectfully submitted this 11th day of July 2022.

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