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8 **UNITED STATES BANKRUPTCY COURT**
 9 **DISTRICT OF NEVADA**

11
 12 In re
 13 Front Sight Management LLC,
 14 Debtor.

Case No. 22-11824-abl
 Chapter 11
 Adv. No. 22-01116-abl

16 Front Sight Management LLC, a Nevada Limited
 17 Liability Company,
 18 Plaintiff,

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

19 v.
 20 Las Vegas Development Fund LLC, a Nevada
 21 limited liability company, et al.,
 22 Defendants.

23 And all related counterclaims.
24

25 **DEBTOR’S OBJECTION TO AND REQUEST TO STRIKE LATE-FILED**
 26 **SUBSTANTIVE JOINDER TO MOTION TO REMAND AND**
 27 **ACCOMPANYING DECLARATION OF ROBERT DZIUBLA**
 28

1 Front Sight Management LLC, the chapter 11 debtor in possession and plaintiff herein (the
2 “Debtor”), hereby submits its objection to and request to strike (the “Objection”) the late-filed
3 substantive joinder [ECF No. 55] (the “Joinder”) and accompanying declaration [ECF No. 56]
4 (“Dziubla Decl.”) filed by EB5 Impact Capital Regional Center, LLC, EB5 Impact Advisors, LLC,
5 Robert W. Dziubla, Jon Fleming, and Linda Stanwood (collectively as “Joining Parties”) to the
6 motion for remand [Adv. ECF No. 4] (the “Remand Motion”) filed by Las Vegas Development
7 Fund, LLC (“LVDF”).

8 **I. THE JOINDER AND DECLARATION ARE NOT SIMPLE ‘ME TOO’**
9 **STATEMENTS BUT PROVIDE ARGUMENT AND PURPORTED EVIDENCE AND**
10 **ARE THEREFORE UNTIMELY AND SHOULD BE STRICKEN**

11 The Nevada Local Rules provide, unless a party requests a hearing on shortened notice, that
12 all motions be made on twenty-eight (28) days’ notice, that oppositions be filed on fourteen (14)
13 days’ notice, and replies on no less than seven (7) days’ notice. Neither the federal bankruptcy court
14 rules nor the Local Rules provide or forbid the filing of joinders. However, Rule 9014(c) provides
15 that “[t]he motion must state the facts on which it is based and must contain a legal memorandum.”
16 Nev. Local Rules 9014(c)(1). Further, the rule provides for the filing of declarations with the
17 motion. To the extent the declarations do not comply with the requirements of subsection (c)
(including the timeliness of the submission) they may be stricken in whole or in part.

18 Here, LVDF’s litigation counsel, Jones Lovelock, and bankruptcy counsel, the Law Offices
19 of Brian D. Shapiro, LLC, filed LVDF’s Remand Motion on June 28, 2022 to be heard on July 25,
20 2022. Based thereon, the Debtor’s opposition was due on July 11, 2022. Notwithstanding the Local
21 Rules, the Joining Parties filed a substantive joinder and declaration on July 8, 2022, a mere
22 seventeen (17) days before the hearing and nine days after such substantive material needed to be
23 filed to be considered at the July 25, 2022, hearing.

24 The Debtor hereby objects to the purported Joinder and Dziubla Decl., which are not merely
25 “me too” joinders, but contain substantive arguments and alleged facts, and requests that the Court
26 strike these two documents as untimely. As explained by one district court in the context of a
27 summary judgment motion, there is a fundamental difference between “me too” and substantive
28 joinders, the latter of which are subject to the time prescriptions provided by the governing rules:

1 In *In re Hujazi*, several creditors in a bankruptcy proceeding filed
2 joinders in a motion for summary judgment filed by another creditor.
3 All of the joinders had been filed after the debtor had opposed the
4 motion for summary judgment. *In re Hujazi*, 2017 WL 3007084 at *3.
5 The bankruptcy court permitted those which were “simple joinders,”
6 but struck one of the creditors’ joinders because it attempted to
7 substantively argue the motion. *Id.* On appeal to the Ninth Circuit
8 Bankruptcy Appellate Panel, the Court rejected the debtor's argument
9 that the joinders were improper, and affirmed the rejection of the
10 substantive joinder. The Court stated “[a]ll of the joinders except for
11 Mr. Hyman's were simple ‘me too’ statements that did not add any
12 argument or evidence to [the] initial motion; the bankruptcy court
13 properly excluded Mr. Hyman's supplemental argument and evidence
14 as untimely.” *Id.* at *7.

15 *Star Insurance Company v. Iron Horse Tools, Inc.*, 2018 WL 3079493, at *5 citing *In re Hujazi*,
16 2017 WL 3007084, *6 (9th Cir. BAP July 14, 2017).

17 By filing the substantive Joinder and Dziubla Decl. one business day before the Debtor’s
18 opposition to the Remand Motion was due, the Joining Parties gave the Debtor no opportunity to
19 oppose the new evidence and arguments, let alone the fourteen days mandated by the Local Rules.

20 The Court should not allow this type of sandbagging. The Debtor obviously has not been
21 provided adequate time to address the arguments and purported evidence raised in the Joinder and
22 Dziubla Decl. Further to the point, Dziubla is a principal of LVDF and the Joining Parties’ counsel,
23 Jones Lovelock, is also counsel for LVDF and filed the Remand. The filing of the Remand Motion
24 was done at Mr. Dziubla’s direction or, at the very least, with his knowledge. He could have
25 provided a timely declaration with the moving papers. He chose not to. Likewise, his counsel has
26 no excuse for filing a timely motion, on the one hand, and then nine days after the fact providing
27 additional argument and evidence in the guise of a purported joinder, on the other hand. Clearly,
28 counsel knew better. Neither Dziubla nor his counsel should be heard to complain when the Court
strikes the Joinder and Mr. Dziubla’s declaration as clearly untimely.

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II. CONCLUSION

Based on the foregoing, the Court should strike the Joinder [Doc. 55] and Dziubla Decl. [Doc. 56] as untimely.

Dated: July 11, 2022

Respectfully Submitted,

BG Law LLP

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

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