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 11 **UNITED STATES BANKRUPTCY COURT**
 12 **FOR THE DISTRICT OF NEVADA**

<p>13 In re: 14 FRONT SIGHT MANAGEMENT LLC, 15 Debtor.</p>	<p>Case No.: 22-11824-ABL Chapter 11</p>
<p>16 FRONT SIGHT MANAGEMENT, LLC, A NEVADA LIMITED LIABILITY COMPANY 17 Plaintiff,</p>	<p>Adv. Case No. 22-01116-ABL</p>
<p>18 v. 19 LAS VEGAS DEVELOPMENT FUND LLC, A 20 NEVADA LIMITED LIABILITY COMPANY, et al., 21 Defendants.</p>	<p>Date: To be set Time: To be set</p>

22
 23 **MOTION FOR RECONSIDERATION PURSUANT TO FEDERAL RULE OF CIVIL**
 24 **PROCEDURE 54(B)**

25 Dr. Ignatius Piazza (“Dr. Piazza”), Jennifer Piazza (“Jennifer”), VNV Dynasty Trust I, and
 26 VNV Dynasty Trust II (collectively, the “Trusts”, and with Dr. and Jennifer Piazza, the
 27 “Movants”), by and through their counsel, the law firm of Garman Turner Gordon LLP, hereby
 28

1 submit their *Motion for Reconsideration Pursuant to Federal Rule of Civil Procedure 54(B)* (the
2 “Motion”).¹

3 To the extent not determined to be void as entered in violation of the automatic stay,² the
4 Movants request that the Court reconsider the Sanctions Order pursuant to FRCP 54 as made
5 applicable to these proceedings pursuant to FRBP 7054, in the above-referenced adversary
6 proceeding (the “Adversary Proceeding”). This Motion is made and based on the following
7 memorandum of points and authorities, the *Request for Judicial Notice* (the “RJN”) and the
8 declaration of Dr. Piazza (the “Piazza Decl.”), filed concurrently herewith, the papers and
9 pleadings on file herein, judicial notice of which is hereby respectfully requested, and the argument
10 of counsel entertained by the Court at the time of the hearing on the Motion.³

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22 ¹ Pursuant to Local Rule 9014.2, the Movants consent to entry of final order(s) or judgment(s) by the bankruptcy
23 judge if it is determined that the bankruptcy judge, absent consent of the parties, cannot enter final orders for judgment
consistent with Article III of the United States Constitution.

24 ² As set forth herein, the Movants join in the *Debtor’s Amended Motion for Entry of an Order Confirming Terminating*
25 *Sanctions Order is Void as a Violation of the Automatic Stay or, in the Alternative, Motion for Relief for Order*
26 *Pursuant to Federal Rule of Civil Procedure 60(b) and, in the Alternative* [ECF No. 51], and incorporates all
arguments as to the stay violation as if fully set forth herein. To the extent this Court determines the Sanctions Order
to be void, this Motion will be moot. However, in order to preserve their rights, the Movants file this Motion.

27 ³ The Adversary Proceeding is stayed. However, given the actions taken in violation of the stay by Las Vegas
28 Development Fund, LLC to date, in an abundance of caution, the Movants file this Motion. To the extent this Court
does properly determine that the stay is in effect, the Movants do not object to continuing the Motion to a time that
the bankruptcy stay is lifted, if at all.

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MEMORANDUM OF POINTS AND AUTHORITIES

I.
INTRODUCTION⁴

1
2
3 The Motion seeks reconsideration of the *Order Granting in Part Defendants and*
4 *Counterclaimant’s Motion for Case Dispositive Sanctions* (the “Sanctions Order”) entered by the
5 State Court after the Petition Date on June 22, 2022, wherein the State Court struck the answers
6 and entered liability against Movants on various claims. Aside from being a violation of the
7 automatic stay, the Sanctions Order is based on a singular act not worthy of such draconian
8 sanctions: Movants’ failure to appear at depositions just weeks before Front Sight Management
9 LLC, the chapter 11 debtor herein (the “Debtor”) filed bankruptcy.

10 Under FRCP 54(b), the Court possesses the inherent ability to reconsider any interlocutory
11 order for “cause seen by it to be sufficient.” Against the backdrop of the harshest sanction
12 available, the facts simply do not support the Sanctions Order. While Movants failed to appear at
13 their depositions, which is admittedly a lapse in judgment, the mere non-appearance for any or no
14 reason at all does not support terminating sanctions. Movants have been active participants in the
15 litigation and, at the time of the scheduled depositions, were attending to the existential threat to
16 the Debtor by the LVDF Parties. While perhaps Movants should have appeared or sought relief
17 from the State Court, those threats led to the filing of the bankruptcy case as the filing was the only
18 way to ensure the Debtor’s continuation as a going concern. This is simply not a case where
19 Movants have thwarted the State Court or hijacked the proceedings. At best, it is an aberrant event.

20 The Sanctions Order has the draconian result where findings therein bind not only Movants
21 but also the Debtor and property of the estate. Movants submit that this Court should now properly
22 evaluate the “prejudice” to Las Vegas Development Fund, LLC (“LVDF”) of Movants’ failure to
23 appear at the depositions and the availability of alternative sanctions. Here, there is no palpable
24 prejudice to LVDF. Evidence and testimony were not lost. The Movants can still be deposed. Thus,
25 there are sufficient alternative sanctions, including awarding LVDF fees and costs and compelling
26 Movants’ depositions, that remedies any potential prejudice, while avoiding draconian case

27
28 ⁴ Capitalized terms not otherwise defined in the Introduction shall have those meanings ascribed to them in the Motion.

1 dispositive sanctions that not only affect Movants but that also affect the Debtor and property of
2 the bankruptcy estate. Accordingly, the Court should reconsider and vacate the Sanctions Order.

3
4 **II.**
FACTUAL SUMMARY

5 **A. The Bankruptcy Case and Parties.**

6 1. On May 24, 2022 (the "Petition Date"), the Debtor filed its voluntary petition for
7 relief under Chapter 11 of the Bankruptcy Code, thereby commencing the above-captioned case
8 (the "Bankruptcy Case"). *See* Case No. BK-S-22-11824-ABL, ECF No. 1.

9 2. Dr. Piazza is Debtor's principal, and a named defendant in the above-caption action
10 (the "Adversary Proceeding"). Jennifer Piazza is his wife and, apparently on that basis alone, is
11 named as a defendant in the Adversary Proceeding. VNV Dynasty Trust I and VNV Dynasty Trust
12 II, along with Dr. Piazza, are Debtor's owners.

13 3. LVDF is a defendant and counter-claimant in the Adversary Proceeding. In sum,
14 LVDF and its affiliates (collectedly, the "LVDF Parties" or "Defendants") promised to, but failed
15 to, raise the funds they promised they would for Debtor to complete the cornerstone of its business,
16 the Front Sight Vacation Club & Resort (vacation residences, a RV park, a retail adjacent to the
17 vacation club, and a pavilion (the "Project"), ultimately forcing Debtor into this Bankruptcy Case.

18 **B. Background of the Debtor.**

19 4. Debtor owns a firearms training facility in Pahrump. It operated its business by
20 selling lifetime memberships for the use of its facilities, courses, and ancillary productions. Debtor
21 had planned a major expansion of its facilities to build the Project. *See* RJN, Ex. "1."

22 5. In 2021, Debtor was approached by Robert Dziubla ("Dziubla") and John Fleming
23 ("Fleming"), doing business as LVDF, who represented to Debtor that they would be able to obtain
24 a financing package for Debtor to raise up to \$75 million to bring to market, among other things,
25 the Project. RJN, Ex. "2," ¶ 11. Dziubla, Fleming, and LVDF stated that all they needed from the
26 Debtor was \$300,000 in fees needed to secure approval from the United States Customs and
27 Immigration Service ("USCIS") and \$100,000 in marketing costs to solicit foreign investors to
28 participate in an EB-5 immigration investment plan. *Id.* at ¶ 12.

1 6. Dziubla and Fleming promised Debtor that due to their vast experience raising
2 foreign investments, their personal connections in China, and their desire to help Debtor complete
3 its development, that they could raise the necessary funds within a year. *Id.* at ¶ 15.

4 7. After months of solicitation and what later turned out to be misrepresentations,
5 Debtor accepted Dziubla’s and Fleming’s proposal. *Id.* at ¶ 22. Debtor paid the requested \$300,000
6 in fees to secure approval from the USCIS to market the EB-5 investment project. Instead of taking
7 a year as promised to secure the USCIS approval, it took over two years. *Id.* at ¶¶ 27 30.

8 8. Debtor paid the aforementioned \$100,000 in marketing fees, as well as another
9 \$120,000 in marketing fees, but the promised funding never materialized.

10 9. To sum up the history, Dziubla, Fleming, and LVDF defaulted on their obligation
11 and failed to raise even a fraction of the funds necessary to complete the Project.

12 **C. The State Court Action and Notice of Removal.**

13 10. In 2018, Debtor commenced case no. A-18-781084-B styled *Front Sight, LLC v.*
14 *LVDF, et al* (the “State Court Action”) against the LVDF Parties. *Id.*, Ex.1. The operative
15 pleadings in the State Court Action are (1) *Plaintiff’s Second Amended Complaint* (the
16 “Complaint”) filed by Debtor and (2) *Defendants’ Answer to Plaintiff’s Second Amended*
17 *Complaint; and First Amended Counterclaim* (the “Counterclaim”) filed by LVDF against Debtor,
18 the Piazzas, and Michael Meacher, Morales Construction, Inc., All American Concrete & Masonry
19 Inc., Top Rank Builders, Inc., and Efrain Rene Morales-Moreno (the “Third-Party Defendants”)

20 11. Until June 23, 2022, when Debtor filed its *Notice of Removal* (the “Removal
21 Notice”), the State Court Action was pending before the Eighth Judicial District Court in Clark
22 County, Nevada (the “State Court”).

23 12. In sum, at the time Debtor’s Bankruptcy Case was commenced, the State Court
24 Action consisted of the following claims:

- 25 a. Affirmative Claims by Debtor against the LVDF Parties: fraud in the inducement,
26 intentional misrepresentation, civil conspiracy, conversion, breach of contract, breach of
27 the implied covenant of good faith and fair dealing, intentional interference with
28 prospective economic advantage, unjust enrichment, negligent misrepresentation, and
negligence;

1 b. Claims by LVDF against Debtor: fraud, fraudulent transfers, conversion, civil
2 conspiracy, judicial foreclosure, and waste

3 c. Claims by LVDF against the Piazzas and Third Party Defendants: fraud, fraudulent
4 transfers, intentional interference with contractual relationship, conversion, civil
5 conspiracy, and waste. The Counterclaim also alleges that Debtor is the alter ego of Dr.
6 Piazza. (Counterclaim, ¶ 16.)

7 *See* RJN, Exs. “2” and “4.”

8 13. LVDF’s claims are based, in large part, on allegations that Debtor improperly used
9 funds and improperly transferred assets to its principals and Third-Party Defendants. *See id.* Thus,
10 while titled as different causes of action, LVDF’s claims are all based on a required finding that
11 funds have been fraudulently transferred by Debtor. *Id.*

12 **D. Movants Actively Defended Against the Claims in the State Court Action.**

13 14. The State Court Action commenced in 2018. Since then, Movants have been active
14 participants in the case.

15 15. Movants, together with Debtor, have completed no less than fourteen depositions.
16 They have propounded and responded to written discovery. They have retained and disclosed
17 experts. They have filed multiple motions including motions to dismiss and motions for summary
18 judgment, and defended against attempts to wrongfully appoint receivers or impose restraining
19 orders. The docket in the State Court Action demonstrates that far from thwarting completion of
20 the action, the Movants remained intensely involved up until the Petition Date. *See* RJN, Ex. “5”

21 16. Moreover, at the time the Bankruptcy Case was filed, Movants also had a pending
22 a motion for summary judgment as to the claims against Jennifer Piazza. *See* RJN, Ex. “6”

23 **E. Movants Missed Their Scheduled Depositions on the Eve of the Debtor’s Bankruptcy**
24 **Case While Debtor Was Focused on Saving Its Business.**

25 17. As is often the situation in contentious cases, the LVDF Parties previously
26 scheduled multiple depositions of the Movants that were moved or rescheduled for a myriad of
27 reasons, including often at the request of Defendants.

28 18. Thus, while Defendants have insinuated that the witnesses have been dodging
depositions, the facts do not support that assertion. Although the Movants did not appear for their

1 scheduled depositions, this was a first time non-appearance. Below are charts summarizing the
 2 facts related to the depositions at issue. Moreover, Dr. Piazza was the designee for each of the
 3 30(b)(6) witnesses.

JENNIFER PIAZZA

<u>Notice #</u>	<u>Deposition Date</u>	<u>Proposed Date Requested/ Given?</u>	<u>Proposed Date Used?</u>	<u>Reason Moved/New Proposed Date</u>
Original (served 5/11/2021)	6/4/2021	No	No	Not available 6/4/2021; available after 7/10/2021
1 st Amended (served 6/2/2021)	6/21/2021	Yes	No	Previously told not available until after 7/10/2021
2 nd Amended	NOT SERVED			
3 rd Amended (served 8/3/2021)	8/20/2021	No	No	Not available in August; 9/27-10/1/2021; Unopposed Motion for Protective Order filed
4 th Amended (served 9/15/2021)	9/30/2021	Yes	Yes	Defendants requested new dates; available 10/18, 10/19, 11/15-11/19/2021; Unopposed Motion for Protective Order filed
5 th Amended (served 10/8/2021)	11/15/2021	Yes	Yes	Discovery deadlines extended; available 1/17-1/21/2022
6 th Amended (served 12/27/2021)	2/9/2022	Yes	No	Discovery deadlines extended; available 3/14-3/18/2022
7 th Amended ⁵ (served 2/2/2022)	3/14/2022	Yes	Yes	Change of location only
8 th Amended (served 3/10/2022)	3/14/2022	Yes	Yes	Moved pursuant to settlement discussions
9 th Amended (served 3/18/2022)	3/21/2022	No	No	Defendants moved to exert pressure in settlement discussions
10 th Amended (served 3/25/2022)	4/4/2022	No	No	Discovery deadlines extended; available 04/25-04/29/2022
11 th Amended (served 4/1/2022)	4/25/2022	Yes	Yes	Non-appearance

IGNATIUS PIAZZA

<u>Notice #</u>	<u>Deposition Date</u>	<u>Proposed Date Requested/ Given?</u>	<u>Proposed Date Used?</u>	<u>Reason Moved/New Proposed Date</u>
Original	6/8/2021	No	No	Not available 6/4/2021;

⁵ See Exhibit 61 to Motion.

1	(served 5/11/2021)				available after 7/10/2021
2	1 st Amended (served 6/2/2021)	6/22/2021	Yes	No	Previously told not available until after 7/10/2021
3	2 nd Amended	NOT SERVED			
4	3 rd Amended (served 8/3/2021)	8/25/2021	No	No	Not available in August; 9/27- 10/1/2021; Unopposed Motion for Protective Order filed
5	4 th Amended (served 9/15/2021)	10/1/2021	Yes	Yes	Defendants requested new dates; available 10/18- 10/19/2021; 11/15-11/19/2021; Unopposed Motion for Protective Order filed
6	5 th Amended (served 10/8/2021)	11/16/2021	Yes	Yes	Discovery deadlines extended; available 1/17-1/21/2022
7	6 th Amended (served 12/27/2021)	1/17/2022	Yes	Yes	Discovery deadlines extended; available 3/14-3/18/2022
8	7 th Amended (served 2/2/2022)	3/15/2022	Yes	Yes	Change of location Only
9	8 th Amended (served 3/10/2022)	3/15/2022	Yes	Yes	Moved pursuant to settlement discussions
10	9 th Amended (served 3/25/2022)	4/5/2022	No	No	Discovery deadlines extended; available 04/25-04/29/2022
11	10 th Amended (served 4/1/2022)	4/26/2022	Yes	Yes	Non-appearance

30(B)(6) OF FRONT SIGHT MANAGEMENT LLC

<u>Notice #</u>	<u>Deposition Date</u>	<u>Proposed Date Requested/ Given?</u>	<u>Proposed Date Used?</u>	<u>Reason Moved/New Proposed Date</u>	
12	Original (served 5/24/2021)	6/10/2021	No	No	Not available 6/4/2021; available after 7/10/2021
13	1 st Amended (served 6/2/2021)	6/23/2021	Yes	No	Previously told not available until after 7/10/2021
14	2 nd Amended	NOT SERVED			
15	3 rd Amended (served 8/3/2021)	9/1/2021	No	No	Not available in August; 9/27- 10/1/2021; Unopposed Motion for Protective Order filed
16	4 th Amended (served 10/8/2021)	11/17/2021	Yes	Yes	Discovery deadlines extended twice; available 1/17-1/21/2022
17	5 th Amended (served 12/27/2021)	1/19/2022	Yes	Yes	Discovery deadlines extended; available 3/14/2022-3/18/2022
18	6 th Amended (served 2/2/2022)	3/16/2022	Yes	Yes	Change of location
19	7 th Amended (served 3/10/2022)	3/16/2022	Yes	Yes	Moved pursuant to settlement discussions
20	8 th Amended	4/6/2022	No	No	Discovery deadlines extended;

(served 3/25/2022)				available 04/25-04/29/2022
9 th Amended (served 4/1/2022)	4/27/2022	Yes	Yes	Non-appearance

30(B)(6) OF VNV DYNASTY TRUST I

<u>Notice #</u>	<u>Deposition Date</u>	<u>Proposed Date Requested/ Given?</u>	<u>Proposed Date Used?</u>	<u>Reason Moved/New Proposed Date</u>
Original (served 10/8/2021)	11/18/2021	Yes	Yes	Discovery deadlines extended; available 1/17-1/21/2022
1 st Amended (served 12/27/2021)	1/20/2022	Yes	Yes	Discovery deadlines extended; available 3/14-3/18/2022
2 nd Amended (served 2/2/2022)	3/17/2022	Yes	Yes	Change of location
3 rd Amended (served 3/10/2022)	3/17/2022	Yes	Yes	Moved pursuant to settlement discussions
4 th Amended (served 3/25/2022)	4/7/2022	No	No	Discovery deadlines extended; available 04/25-04/29/2022
5 th Amended (served 4/1/2022)	4/28/2022	Yes	Yes	Non-appearance

30(B)(6) OF VNV DYNASTY TRUST II

<u>Notice #</u>	<u>Deposition Date</u>	<u>Proposed Date Requested/ Given?</u>	<u>Proposed Date Used?</u>	<u>Reason Moved/New Proposed Date</u>
Original (served 10/8/2021)	11/19/2021	Yes	Yes	Discovery deadlines extended; available 1/17-1/21/2022
1 st Amended (served 12/27/2021)	1/20/2022	Yes	Yes	Discovery deadlines extended; available 3/14-3/18/2022
2 nd Amended (served 2/2/2022)	3/18/2022	Yes	Yes	Change of location
3 rd Amended (served 3/10/2022)	3/18/2022	Yes	Yes	Moved pursuant to settlement discussions
4 th Amended (served 3/25/2022)	4/8/2022	No	No	Discovery deadlines extended; available 04/25-04/29/2022
5 th Amended (served 4/6/2022)	5/16/2022	Yes	Yes	Non-appearance

See RJN, Ex. "8," pp. 6-12.

19. There can also be no dispute that Movants were actively involved in the discovery process for years but, at the time of the last scheduled depositions, Debtor (by and through Dr. Piazza) was frantically attempting to either prevent the foreclosure of the real property (which

1 would have resulted in the immediate cessation of the Debtor’s operations and termination of all
2 employees) or obtain financing for a potential chapter 11. *See* Piazza Decl. ¶ 3.

3 20. Furthermore, shortly after the non-appearance, Debtor filed the Bankruptcy Case,
4 the automatic stay went into effect, and this matter was removed from the State Court. To say that
5 the month preceding the filing was frantic is an understatement. And while work product and
6 privilege prevent a complete disclosure of facts and circumstances leading up to the non-
7 appearance, Movants have always stood prepared to defend against LVDF’s claims, having
8 successfully done so for years, defeating numerous motions for receiver and injunctions.

9 **F. The State Court Improperly Enters the Sanctions Order In Violation of the**
10 **Automatic Stay.**

11 21. On May 12, 2022, the LVDF Parties filed *Defendant/Counterclaimant’s Motion for*
12 *Case Dispositive Sanctions On Order Shortening Time* (the “Sanctions Motion”). *See* RJN, Ex.
13 “7.” The LVDF Parties requested an order shortening time, which was granted for May 25, 2022.
14 Debtor and Movants were given until May 20, 2022 to oppose the Sanctions Motion, which they
15 did. *See* RJN, Ex. “8.”

16 22. Despite that the Sanctions Motion was premised on one set of missed depositions,
17 that no prior order compelling attendance had been entered, and that lesser available sanctions
18 were available and appropriate, following the Petition Date, notwithstanding the automatic stay
19 and that the claims in the State Court Action are claims owned by the estate, LVDF caused the
20 State Court to enter the Sanctions Order on June 22, 2022.

21 23. The Sanctions Order specifically struck Movants’ answers and affirmative
22 defenses, and purported to establish liability on LVDF’s counterclaim, as follows:

- 23 a. Against Dr. Piazza on LVDF’s first cause of action for fraud, third cause of action for
24 intentional interference with contractual relationships, and fifth cause of action for civil
25 conspiracy.
- 26 b. Against Jennifer on LVDF’s third cause of action for intentional interference with
27 contractual relationships and fifth cause of action for civil conspiracy.
- 28 c. Against VNV Dynasty Trust I on LVDF’s third cause of action for intentional interference
with contractual relationships and fifth cause of action for civil conspiracy.

- 1 d. Against VNV Dynasty Trust II on LVDF’s third cause of action for intentional interference
2 with contractual relationships and fifth cause of action for civil conspiracy

3 See RJN, Ex. “9” (Sanctions Order, p. 8).

4 **III.**
5 **LEGAL ARGUMENT AND ANALYSIS**

6 **A. The Sanctions Order Is Interlocutory and Is Properly Reconsidered Under FRCP 54.**

7 The standard for reviewing motions to reconsider interlocutory orders is different than for
8 final orders. See, e.g., *Estate of Jacoby v. Nancy Akbari-Shahmirzadi (In re Akbari-*
9 *Shahmirzadi)*, 2013 WL 1099794, *3 (Bankr. D.N.M. 2013) (discussing the different standards
10 and citing cases). Reconsideration of final orders is governed by FRCP 59 and 60. *Id.* at *4–5.
11 Whereas, “Rule 54(b) provides the mechanism for reconsidering interlocutory orders.” *In re*
12 *Winkle*, 13-11743 T7, 2016 WL 920393, at *1–2 (Bankr. D.N.M. Mar. 10, 2016). FRCP 54(b),
13 incorporated through Rule 7054, “applies in adversary proceedings, contested matters, and
14 contested involuntary petitions.” *In re Linton*, 631 B.R. 882, 896 (B.A.P. 9th Cir. 2021).

15 Expressly, under FRCP 54, an interlocutory order “may be revised at any time before the
16 entry of a judgment adjudicating all the claims and all the parties’ rights and liabilities.” FRCP
17 54(b); *In re Sangha*, 2022 WL 987421, at *5 (Bankr. C.D. Cal. Mar. 31, 2022); *In re Linton*, 631
18 B.R. at 896 (citing *Hyan v. Hummer*, 825 F.3d 1043, 1046-47 (9th Cir. 2016))(stating that “[t]he
19 trial court may revise non-final orders “at any time” before entry of final judgment either sua
20 sponte or on a party's motion to reconsider.”). An order is interlocutory when it “adjudicates fewer
21 than all of the claims or the rights and liabilities of fewer than all the parties in a relevant discrete
22 proceeding.” *In re Linton*, 631 B.R. at 896, 897 (holding an order is not final unless it is “a
23 “judgment” for purposes of Rule 9001(7)”; FRCP 54(B); *In re Neff*, 505 B.R. 255, 261, fn. 6
24 (B.A.P. 9th Cir. 2014), aff'd, 824 F.3d 1181 (9th Cir. 2016)(recognizing partial summary judgment
25 orders as interlocutory). Furthermore, when an action is removed from state court, a bankruptcy
26 court should treat all pre-removal decisions of the state court as if they were its own, which
27 authorizes the bankruptcy court to reconsider the decisions, including dissolving or modifying
28 such orders. See *In re Cattell*, 19-33823-DWH13, 2021 WL 1100068, at *5 (Bankr. D. Or. Mar.

1 22, 2021), see *also* FRBP 9027.

2 Here, the Sanctions Order is indisputably interlocutory and not a final appealable judgment.
3 The Sanctions Order purports to apply only to the Movants and therefore, does not adjudicate the
4 rights of all parties. The Sanctions Order also does not purport to apply to all of LVDF’s claims
5 against the Movants (as LVDF appears to concede that at least certain of the claims addressed in
6 the stricken answers are subject to the automatic stay). In fact, the Sanctions Order does not resolve
7 any one claim, as it only purports to establish liability, leaving damages to be established at a later
8 time. Furthermore, it is not certified as final pursuant to NRCP 54(b). Thus, the Sanctions Order
9 is interlocutory and is properly reconsidered under FRCP 54(b).

10 **B. The Sanctions Order May Be Reconsidered for Any Cause this Court Deems**
11 **Sufficient.**

12 “Reconsideration in such pre-judgment scenarios is not constrained by the standards
13 governing post-judgment motions”—FRCP 59 and 60. *In re Linton*, 631 B.R. at 895. FRCP 59
14 and 60, incorporated by Rules 9023 and 9024, apply only after entry of judgment. *In re Linton*,
15 631 B.R. at 895. *see also* See Hon. Michael B. Kaplan & Rebecca A. Earl, Reconsidering
16 Reconsideration, 38 Am. Bankr. Inst. J. 22 (Apr. 2019)(recognizing widespread confusion).

17 Unlike FRCP 59 and 60, where relief is generally limited to extraordinary circumstances
18 (*In re Belcastro*, 2:17-AP-01197-ABL, 2019 WL 5208838, at *6 (B.A.P. 9th Cir. Oct. 15,
19 2019)(restricting FRCP 59 relief to motions to amend judgments)), “[n]o particular procedure is
20 prescribed for acting under the “at any time” clause of Civil Rule 54(b) to revise a ruling” (*In re*
21 *Linton*, 631 B.R. at 897). Under Ninth Circuit law, “as long as a district court has jurisdiction over
22 the case, then it possesses the inherent procedural power to reconsider, *rescind*, or modify an
23 interlocutory order *for cause seen by it to be sufficient.*” *City of Los Angeles, Harbor Div. v. Santa*
24 *Monica Baykeeper*, 254 F.3d 882, 885 (9th Cir. 2001)(internal citations omitted)(emphasis added);
25 *see also Kawamura v. Boyd Gaming Corp.*, No. 2:13-CV-203 JCM (GWF), 2014 WL 584760, at
26 *4 (D. Nev. Feb. 12, 2014); *In re Moore*, 10-37374-D-7, 2012 WL 8249606, at *1 (Bankr. E.D.
27 Cal. Jan. 3, 2012)(applying “for cause seen by [the Court] to be sufficient” standard). Under this
28 standard, the court “is free to reconsider and reverse its decision for any reason it deems sufficient,

1 even in the absence of new evidence or an intervening change in or clarification of the substantive
 2 law.” *Estate of Henson v. Wichita Cty.*, 988 F. Supp. 2d 726, 730 (N.D. Tex. 2013) (quoting
 3 *Lavespere v. Niagara Mach. & Tool Works, Inc.*, 910 F.2d 167, 185 (5th Cir. 1990)), *Washington*
 4 *v. Garcia*, 977 F. Supp. 1067, 1068–69 (S.D. Cal. 1997); *Sport Squeeze Inc. v. Pro-Innovative*
 5 *Concepts Inc.*, No. 97-CV-115 TW (JFS), 1999 WL 696009, at *9 (S.D. Cal. June 24, 1999).

6 Here, the State Court issued extraordinary, and frankly unheard of, case terminating
 7 sanctions based on Movants’ non-appearance at a single deposition before an order compelling
 8 attendance was sought or obtained, before lesser sanctions were imposed, and without considering
 9 prejudice to LVDF. The decision, while itself an aberration, ignored the facts and circumstances
 10 of this matter, including the fact that Movants had been actively defending against the case for
 11 years, Debtor had commenced a Bankruptcy Case, and that all claims brought against Movants are
 12 derivative and/or related to claims against Debtor and therefore estate property. Under the
 13 circumstances, cause exists to set aside the Sanctions Order.

14 **C. When Evaluating the Relevant Factors, Case Terminating Sanctions Are Not**
 15 **Supportable.**

16 Federal courts apply federal law when addressing sanctions. *Troyer v. Liberty Mut. Ins.*
 17 *Co.*, 219CV01056APGDJA, 2021 WL 4978430, at *4 (D. Nev. Oct. 25, 2021)(citing *Glover v.*
 18 *BIC Corp.*, 6 F.3d 1318, 1329 (9th Cir. 1993)). Under federal law, “a terminating sanction, whether
 19 default judgment against a defendant or dismissal of a plaintiff’s action, is very severe.” *Conn.*
 20 *Gen. Life Ins. Co. v. New Images of Beverly Hills*, 482 F.3d 1091, 1096 (9th Cir. 2007). In the
 21 Ninth Circuit, courts employ a five-part test, with three subparts to the fifth part, to determine
 22 whether a case-dispositive sanction under FRCP 37(b)(2) is just:

23 [a] court must consider the following five factors before striking a pleading or
 24 declaring default: (1) the public's interest in expeditious resolution of litigation; (2)
 25 the court's need to manage its docket; (3) the risk of prejudice to the other party;
 (4) the public policy favoring the disposition of cases on their merits; and (5) the
 availability of less drastic sanctions.

26 *Hester v. Vision Airlines*, 687 F.3d 1162, 1169 (9th Cir. 2012). The availability of less drastic
 27 sanctions, has three sub parts, “[1] whether the court has considered lesser sanctions, [2] whether
 28 it tried them, [3] and whether it warned the recalcitrant party about the possibility of case-

1 dispositive sanctions.” *Connecticut Gen. Life Ins. Co. v. New Images of Beverly Hills*, 482 F.3d
2 1091, 1096 (9th Cir. 2007).

3 “[T]he key factors are prejudice and availability of lesser sanctions.” *Hester*, 687 F.3d at
4 1169. As the first and second factor will generally favor sanctions, and the fourth factor will weigh
5 against them, it is the third and fifth factors in the federal rule that are decisive. *Adriana Int’l Corp.*
6 *v. Lewis & Co.*, 913 F.2d 1406, 1412 (9th Cir. 1990); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th
7 Cir. 1991); *Sec. & Exch. Comm’n v. Hemp, Inc.*, 216CV01413JADPAL, 2019 WL 1957954, at
8 *24–25 (D. Nev. May 2, 2019), *modified*, 216CV01413JADBNW, 2020 WL 9160824 (D. Nev.
9 Mar. 31, 2020).⁶

10 Predominantly, under both tests, “the most critical factor to be considered in case-
11 dispositive sanctions is whether a party’s discovery violations make it impossible for a court to be
12 confident that the parties will ever have access to the true facts.” *Connecticut Gen. Life Ins. Co.*,
13 482 F.3d at 1097; *O’Neal v. Las Vegas Metro. Police Dep’t*, 2020 WL 8614249, at *3 (D. Nev.
14 Nov. 3, 2020), *report and recommendation adopted*, 217CV02765APGEJY, 2021 WL 666959 (D.
15 Nev. Feb. 19, 2021). The imposition of case terminating sanctions “violate due process when they
16 are imposed ‘merely for punishment of an infraction that does not threaten to interfere with the
17 rightful decision of the case.’” *Wanderer v. Johnston*, 910 F.2d 652, 656 (9th Cir. 1990).
18 When considering the relevant factors, candidly, aside from being a violation of the stay, the
19 Sanctions Order is simply wrong. Specifically, among other things, the State Court failed to
20 properly weigh prejudice and the availability of alternative sanctions, both of which strongly
21 disfavor terminating sanctions here. In fact, aside from punishing Movants—a denial of due
22

23 ⁶ In comparison, when determining whether terminating sanctions are appropriate under NRCP 37(b), Nevada State
24 Courts consider: [1] the degree of willfulness of the offending party, [2] the extent to which the non-offending party
25 would be prejudiced by a lesser sanction, [3] the severity of the sanction of dismissal relative to the severity of the
26 discovery abuse, [4] whether any evidence has been irreparably lost, [5] the feasibility and fairness of alternative, less
27 severe sanctions . . . [6] the policy favoring adjudication on the merits, [7] whether sanctions unfairly operate to
28 penalize a party for the misconduct of his or her attorney, and [8] the need to deter both the parties and future litigants
from similar abuses. *Young v. Johnny Ribeiro Bldg., Inc.*, 106 Nev. 88, 93, 787 P.2d 777, 780 (1990); *see also*
McDonald v. Shamrock Investments, LLC, 127 Nev. 1158, 373 P.3d 941 (2011). Accordingly, the factors in both state
court and federal court are substantial the same. However, as the matter now is before the Bankruptcy Court, the Court
must apply the federal standard.

1 process—there is no basis to issue terminating sanctions.

2 While not a factor, the reason for the non-appearance bears consideration as to whether
3 sanctions should attach at all. Undoubtedly, the Court wants to know what occurred, and in fact
4 the State Court in its Sanctions Order specifically identified that Movants did not provide “a
5 justification for their failure to appear.” However, the reason for a first non-appearance is largely
6 irrelevant. Here, Movants, without waiving privilege and work product, were frantically
7 attempting to either prevent the foreclosure of the real property (to ensure the Debtor continued as
8 a going concern) or obtain financing for a potential chapter 11. *See* Piazza Decl., ¶ 3. Whether
9 having a believed justification or not, Movants recognize that not attending the deposition may
10 have been a mistake. *See* Piazza Decl., ¶ 4. That error in judgment, however, does not warrant
11 harsh sanctions under the circumstances here, let alone the harshest sanction available. Under the
12 applicable test, the Sanctions Order should be reconsidered and revised to reach an appropriate
13 sanction.

14 **1. The public's interest in expeditious resolution of litigation is neutral here.**

15 As recognized by courts, non-appearance at a deposition delays resolution of litigation, and
16 therefore the factor ordinarily weighs in favor of sanctions. However, here, the factor is largely
17 irrelevant or neutral. Given the Debtor’s Bankruptcy Case and the fact that the claims in the
18 Adversary Proceeding are core, the non-appearance practically and actually did not impact the
19 resolution of the litigation. The entirety, or near entirety, of the Adversary Proceeding is subject
20 to the automatic stay. Thus, whether Movants appeared at their depositions on the eve of the
21 Petition Date will not impact the resolution of the State Court Action. Moreover, Movants remain
22 subject to discovery in the Bankruptcy Case itself. LVDF has already availed themselves of this
23 process by obtaining 2004 examination orders at the outset of the Bankruptcy Case. Of course, as
24 Defendants have done so many times before, after seeking availability and obtaining dates from
25 Movants, LVDF scheduled one exam of Dr. Piazza, which LVDF then cancelled, and failed to set
26 any other exams. Furthermore, the State Court Action has now been removed and is pending
27 before this Court, the proper Court to adjudicate the entirety of the action given Debtor’s
28 involvement the core nature of the claims, and that the claims are estate property. The non-

1 appearance has not impacted the expeditious resolution of the litigation.

2 **2. The Court's need to manage its docket is neutral.**

3 Again, this factor looks to orderly administration of a case and always weighs in favor of
4 sanctions. Yet, under the facts and circumstances, and given the automatic stay, the non-
5 appearance has not practically or actually impacted the management of the court's docket. As the
6 Sanctions Order is not a final order, this Court will necessarily still adjudicate the claims in the
7 context of the Bankruptcy Case.

8 **3. There is minimal risk of prejudice to LVDF.**

9 Actions that impair an opposing party's ability to go to trial or interfere with the rightful
10 decision of the case are prejudicial. *See Adriana*, 913 F.2d at 1412. "Prejudice normally consists
11 of loss of evidence and memory, [] it may also consist of costs or burdens of litigation, although it
12 may not consist of the mere pendency of the lawsuit itself." *Id.* at 1228. "Delay alone, without a
13 focus on its effects, will not justify dismissal or default." *Wanderer v. Johnston*, 88-15759, 1990
14 WL 112423 (9th Cir. 1990). "If there is a showing that no actual prejudice occurred, that fact
15 should be considered when determining whether the district court exercised sound discretion. *In*
16 *re Phenylpropanolamine (PPA) Products Liab. Litig.*, 460 F.3d 1217, 1228 (9th Cir. 2006).

17 Here, LVDF cannot demonstrate actual legal prejudice. This is not a situation where
18 evidence is lost. Moreover, there is no suggestion that memories will be lost. In fact, it is rather
19 unexplainable that over the past two years LVDF has continued the depositions for one reason or
20 another, including to have settlement discussions, but now contends that the depositions should
21 have proceeded immediately without consideration to the practical implications. Furthermore,
22 LVDF sought 2004 exams for the depositions of movants, but after seeking and obtaining available
23 dates, chose not to conduct the examinations. LVDF is not seeking to actually preserve testimony
24 and discover the truth, but to continue their scorched earth litigation tactics. The request for
25 sanctions *on order shortening time*, with an order entered after the Petition Date and in violation
26 of the stay, is a litigation strategy⁷ that is not designed to address legal prejudice, at all.

27 _____
28 ⁷ On May 24, 2022, LVDF's counsel filed another such motion before the Honorable Judge Kishner in the Eighth

1 Moreover, given the automatic stay, as an operation of law, the State Court Action was
2 going to be delayed. While Movants’ nonappearance is regrettable, it did not result in any palpable
3 prejudice. When and if it is determined that the automatic stay does not apply and/or is lifted, the
4 Court can and should simply order Movants to appear—curing any prejudice.

5 **4. The public policy favoring disposition of cases on the merits is especially**
6 **important here where the counterclaims are meritless.**

7 In contrast to the first two factors, “the public policy favoring disposition of cases on their
8 merits strongly counsels against case-dispositive sanctions. *In re Phenylpropanolamine (PPA)*
9 *Products Liab. Litig.*, 460 F.3d at 1228. LVDF’s claims are dubious. Thus, entering default on
10 meritless claims when Movants have been actively defending for years completely violates the
11 public policy on disposition of cases on the merits.

12 LVDF contends that the State Court has “established liability” in LVDF’s favor for claims
13 against the Piazzas and the State Court will “enter liability in favor of LVDF and the other
14 Defendants on all claims.” *See* ECF No. 4, pp. 6-7. In doing so, LVDF would have this Court
15 believe that the State Court has made extensive factual findings after robust hearings that this Court
16 cannot disturb. The reality is starkly different. The Sanctions Order provides for the Movants’
17 Answers⁸ to be stricken and purports to establish liability as to (1) Dr. Piazza for fraud and (2) all
18 of the Movants on the counts of intentional interference with contractual relationships and civil
19 conspiracy. The State Court made no finding of the sufficiency of the claims or of the evidence.
20 And in fact, the Movants have an overwhelming likelihood of succeeding on the merits of the
21 claims, such that case terminating sanctions are the only way LVDF could succeed in this action.

22 As it relates to those claims for which LVDF contends that the Sanctions Order established

23 _____
24 Judicial District Court. Under different and seemingly more extreme circumstances, including the failure to respond
25 to discovery and supplement discovery responses as ordered by the State Court, failure to properly verify
26 interrogatories, multiple failures to appear at an evidentiary hearing without cause, and general disobedience to court
directives, Judge Kishner declined to strike the pleadings, and instead compelled the offending party to pay monetary
sanctions and imposed exclusionary sanctions. Case No. A-19-796919-B

27 ⁸ Even assuming the Sanctions Order could have proceeded as to various claims (it could not because of the stay), the
28 striking of the Answers in their entirety that relate to all claims, including claims that even LVDF appears to concede
are property of the estate is a violation of the stay.

1 liability, to prevail on a claim for fraud, LVDF must prove the elements of fraud by clear and
 2 convincing evidence against Dr. Piazza.⁹ The entirety of the fraud claim is contained in paragraphs
 3 58-74 of the Counterclaim and is based on alleged material misrepresentation made regarding what
 4 is referred to as the “Morales LOC.” See RJN, Ex. “4” (Counterclaim, ¶¶ 58-74). The
 5 Counterclaim contains no allegations that Dr. Piazza made any representation at all, but instead
 6 representations by Michael Meacher. See *id.* Thus, an alleged fraud scheme is merely presumed
 7 without more, as Dr. Piazza’s role is not specified or detailed in any way. Moreover, the Morales
 8 LOC was a legitimate line of credit, was used to fund construction and, when LVDF failed to raise
 9 the promised funds, Debtor utilized its own assets or pay down the Morales LOC. See Piazza Decl.
 10 ¶ 7. As such, Dr. Piazza is likely to succeed on the allegations of fraud against him.

11 To support its claim for intentional interference with contractual relationships, LVDF must
 12 show an actual breach of a contract or a significant disruption of a contract rather than a simple
 13 impairment of contractual duties. *Treasury Sols. Holding Inc. v. Upromise, Inc.*, 2010 WL
 14 5390134, at *5 (D. Nev. 2010). As set forth in the Counterclaim, LVDF’s claim for intentional
 15 interference with contractual relationship is summed up by the following allegation:

16 [The Piazzas] committed intentional acts intended or designed to disrupt the
 17 contractual relationship or to cause the contracting party to breach the contract,
 18 including but not limited to, inducing Front Sight to improperly use funds for the
 19 personal benefit of [The Piazzas]

20 Counterclaim, ¶ 92. LVDF further alleges that “[Debtor] did in fact breach the contract as stated
 21 specifically above.” *Id.* at ¶ 93. LVDF’s claim is problematic for two separate and distinct reasons.
 22 First, LVDF withdrew its claim for breach on the construction loan agreement against Debtor in
 23 its Counterclaim. The withdrawal was made after the State Court “conclude[d] that LVDF has not
 24 established that Plaintiff is in breach of the Construction Loan Agreement, and consequently,
 25

26 ⁹ The elements of fraud are: (a) that the defendant made a false representation; (b) with knowledge or belief that the
 27 representation was false or without a sufficient basis for making the representation; (c) that the defendant intended to
 28 induce the plaintiff to act or refrain from acting on the representation; (d) the plaintiff justifiably relied on the
 representation; and (e) the plaintiff was damaged as a result of his reliance. *J.A. Jones Const. Co. v. Lehrer McGovern
 Bovis, Inc.*, 120 Nev. 277, 290–91, 89 P.3d 1009 (2004); *Albert H. Wohlers & Co. v. Bartgis*, 114 Nev. 1249, 1260,
 969 P.2d 949 (1998) (plaintiff has burden of proving each element of fraud claim by clear and convincing evidence).

1 LVDF is not entitled to the relief it seeks ...” See RJN Ex. “3,” ¶¶ 2, 4.¹⁰ Without an actionable
 2 claim for breach of contract, it is unclear how LVDF could possibly show that there was “an actual
 3 disruption of the contract.” Furthermore, at least certain of the Movants (excluding Jennifer)
 4 cannot interfere with Debtor’s contract, because they are not strangers to the agreement, as
 5 purported agents of Debtor. *From the Future, LLC v. Flowers*, 2009 WL 10709083, at *3 (D. Nev.
 6 Apr. 20, 2009)(applying manager privilege)

7 That no breach can be shown is further evidenced from the second problem with LVDF’s
 8 claim: the State Court has already dismissed the required premise for LVDF’s assertion that funds
 9 were improperly used. Specifically, more than two years before striking the Answer which LVDF
 10 contends now warrants liability, the State Court expressly held that “LVDF’s assertion that Front
 11 Sight improperly used loan proceeds is without merit.” See January 23, 2020 Order, ¶ 2

12 Moreover, the State Court found that Debtor has “supplied exhibits to establish project cost
 13 and expenditures...exceed the loan amounts advanced by LV Development...” and then held that
 14 “Front Sight’s expenses on the Project far exceed the amount of the loan from Defendant LVDF.”
 15 January 23,2020 Order, ¶¶, 1. Far from supporting an allegation that the Movants wrongfully
 16 used loan proceeds, the State Court’s prior findings demonstrates the exact opposite.

17 On LVDF’s claim for civil conspiracy, it is necessary for the act in furtherance of the
 18 conspiracy to constitute an actionable tort. *Eikelberger v. Tolotti*, 96 Nev. 525, 528, 611 P.2d 1086,
 19 1088 (1980). As set forth in the Counterclaim, the claim for civil conspiracy is summed up by the
 20 following allegation:

21 While acting in their individual capacities and in their capacity as Trustees and/or
 22 beneficiaries of the VNV Trust Defendants, Ignatius Piazza and Jennifer Piazza
 23 conspired with Front Sight and the VNV Trust Defendants, using Front Sight and
 24 VNV Trust Defendants to achieve their unlawful objective of diverting monies
 25 from Front Sight that were needed to maintain Front Sight’s solvency and its ability
 26 to meet its obligations under the CLA regarding timely completion of the Project
 27 and repayment of the loan, for their own individual advantage and benefit.

28 See Counterclaim, ¶ 103.

¹⁰ *Findings of Fact, Conclusions of Law, and Order Denying Defendant Las Vegas Development Fund LLC’s Motion to Dissolve Temporary Restraining Order and to Appoint a Receiver* (the “January 23, 2020 Order”), ¶¶ 2, 4.

1 As is made clear in the Counterclaim, the claim for civil conspiracy is premised on the
2 underlying tort of fraudulent transfer (an estate claim). As set forth above, the findings of the State
3 Court already made clear that LVDF was not likely to succeed on such claims. Furthermore,
4 Movants and Debtor cannot conspire with each other under the intra-corporate conspiracy doctrine.
5 *Armstrong v. Reynolds*, 22 F.4th 1058, 1085 (9th Cir. 2022)(applying Nevada law). Thus, the claim
6 will fail.

7 In addition to the grounds for likelihood of success set forth above, Jennifer has a separate
8 and independent basis for likelihood of success. Specifically, she has no involvement with Debtor,
9 whatsoever. She has no access to Debtor’s finances or books and records, and no funds have ever
10 been transferred and no disbursements have ever been made to Jennifer. *See Piazza Decl.*¶ 6.
11 Jennifer is not even involved with Debtor’s operations. *Id.* LVDF has no evidence to contradict or
12 rebut these facts and, to date, has offered nothing more than speculation that Jennifer must have
13 received funds from Debtor because she is married to Dr. Piazza. Of note, as of the Petition Date,
14 Jennifer had pending a *Renewed Motion for Summary Judgment Against Jennifer Piazza on Order*
15 *Shortening Time.*

16 Accordingly, given the insurmountable shortcomings of LVDF’s claims, the public policy
17 of resolving cases on the merits is a substantial and predominant factor weighing in favor of
18 reconsidering the sanctions.

19 **5. The availability of less drastic sanctions.**

20 Finally, and in counterbalance to any prejudice, the Court looks to the availability of less
21 drastic sanctions.” *Hester*, 687 F.3d at 1169. This includes “[1] whether the court has considered
22 lesser sanctions, [2] whether it tried them, [3] and whether it warned the recalcitrant party about
23 the possibility of case-dispositive sanctions.” *Id.*

24 Almost universally and in much more dire circumstances, courts do not impose case
25 terminating sanctions: (1) for missing a deposition once; (2) without warning a party about case
26 terminating sanctions; and (3) without their being other extenuating circumstances. *Green v.*
27 *Samples*, 219CV02006CDSVCF, 2022 WL 2068822, at *2 (D. Nev. May 27, 2022)(finding that
28 less drastic sanctions in the form of an admonishment and compelling deposition appropriate when

1 plaintiff failed to appear for a deposition, and warning plaintiff of further sanctions for
2 noncompliance); *Troyer v. Liberty Mut. Ins. Co.*, 219CV01056APGDJA, 2021 WL 4978430, at
3 *7 (D. Nev. Oct. 25, 2021)(ordering payment of attorneys' fees and compelling deposition after
4 failure to attend deposition); *Mott v. Trinity Fin. Services, LLC*, 217CV01754RFBGWF, 2019 WL
5 1300071, at *5 (D. Nev. Mar. 21, 2019)(imposing monetary sanctions and warning defendants of
6 further sanctions if they fail to appear for deposition); *In re Halper*, 1:09-BK-23807-GM, 2018
7 WL 1354431, at *7 (B.A.P. 9th Cir. Mar. 13, 2018), aff'd, 1:11-AP-01317-GM, 2019 WL 2762340
8 (B.A.P. 9th Cir. June 28, 2019), and aff'd, 784 Fed. Appx. 480 (9th Cir. 2019), and aff'd, 784 Fed.
9 Appx. 528 (9th Cir. 2019)(finding a lesser sanction was considered when the Court ordered a
10 debtor to appear for her deposition and to pay her lenders fees); *cf Seiko Epson Corp. v. Koshkalda*,
11 799 Fed. Appx. 463, 465 (9th Cir. 2019)(finding case terminating sanctions appropriate when
12 parties failed to produce discovery, violated various court orders and failed to appear for two
13 depositions, failed to appear in court, and failed to pay sanctions.); *Walters v. Icicle Seafoods, Inc.*,
14 179 Fed. Appx. 996, 996–97 (9th Cir. 2006)(affirming default after party failed to appear for
15 multiple depositions, despite court orders); *Halverson v. Spoor*, 128 Nev. 900, 381 P.3d 618
16 (2012)(striking pleadings after party failed to appear at a court ordered deposition three times).
17 There is no reason to depart from universal reasoning here, where the facts are not extraordinary
18 and there is no extreme conduct to address.

19 These same considerations apply in the State Court. In the seminal *Foster* case, the Nevada
20 Supreme Court affirmed case terminating sanctions only after multiple non-appearances and other
21 perfidious conduct. *Foster v. Dingwall*, 126 Nev. 56, 62, 227 P.3d 1042, 1046 (2010). There,
22 Dingwall sought to strike the opposing parties' pleadings after they failed to appear for a noticed
23 deposition, and other alleged discovery violations. *Id.* The offending parties then failed to oppose
24 the motion for case terminating sanctions. *Id.* Even though the non-opposition was consent, the
25 Court entered lesser sanctions, ordering that they appear a deposition within 30 days and
26 supplement their written discovery within 10 days. *Id.* The court expressly warned the parties that
27 further noncompliance would result in a striking of pleadings and entry of judgment against them.
28 It was only after the parties again failed to appear for their depositions and supplement discovery

1 that the court struck their pleadings. *Id.* at 63, 227 P.3d at 1047.

2 Here, the State Court never earnestly considered or resorted to alternative sanctions.
3 Instead, it entered the Sanctions Order, in violation of the stay, merely citing to the fact that the
4 parties agreed to re-notice the depositions numerous times as evidence that alternative sanctions
5 would be ineffective. Yet, the Court never compelled Movants to attend a deposition. It never
6 issued a warning. It never assessed fees against Movants for the time and expense of LVDF in
7 preparing for depositions. Universally, courts find that these sanctions should be resorted to prior
8 to striking pleadings in a case that has been ongoing for years. Furthermore, there are no other
9 extenuating circumstances. Absent in this matter is evidence or suggestion of Movants' repeatedly
10 recalcitrance or violations of court orders. Furthermore, while not a sufficient excuse, the
11 depositions were scheduled on the eve of the Debtor's bankruptcy filing, providing valuable
12 insight into Movants' actions.

13 In consideration of alternative sanctions, this Court should reconsider the Sanctions Order.
14 Any doubt regarding Movants' motives or obstinacy can be remedied by an admonishment that
15 further nonappearance will be met with a striking of the pleadings. This both assures LVDF obtains
16 the deposition testimony it seeks, while preserving the integrity of the proceedings, and ensuring
17 that the matter is decided on the merits.

18 **IV.**
19 **JOINDER**

20 The Piazzas further join in *Debtor's Amended Motion for Entry of an Order Confirming*
21 *Terminating Sanctions Order is Void as a Violation of the Automatic Stay or, in the Alternative,*
22 *Motion for Relief for Order Pursuant to Federal Rule of Civil Procedure 60(b) and, in the*
23 *Alternative* [ECF No. 51]. The Movants join in Debtor's request to determine that the Sanctions
24 Order is void as a violation of the stay or, in the alternative, for relief from the Sanctions Order.

25 **V.**
26 **CONCLUSION**

27 In deciding that Movants' Answers should be stricken and liability be entered against them,
28 the State Court plainly and simply erred. While some sanction was likely warranted, perhaps an
award of fees and costs and an admonishment, draconian sanctions were not. Under FRCP 54(b),

1 this Court has the ability to reconsider that Sanctions Order, strike an appropriate balance with
2 remedial sanctions, and permit the entire Adversary Proceeding to be resolved on the merits.

3 DATED this 18th day of July, 2022.

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