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21 **UNITED STATES BANKRUPTCY COURT**
22 **DISTRICT OF NEVADA**

<p>23 In re:</p> <p>24 FRONT SIGHT MANAGEMENT, LLC</p> <p>25 Debtor.</p>	<p>Case No. BK-S-22-11824-ABL Chapter 11</p> <p>Adversary Case No. 22-01116-ABL</p> <p><u>REPLY IN SUPPORT OF MOTION TO REMAND</u></p>
<p>26 FRONT SIGHT MANAGEMENT, 27 LLC, A NEVADA LIMITED 28 LIABILITY COMPANY</p> <p>v.</p> <p>LAS VEGAS DEVELOPMENT FUND LLC, A NEVADA LIMITED LIABILITY COMPANY, et al.</p>	

MEMORANDUM OF POINTS AND AUTHORITES

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2 The Debtor originally initiated the State Court action against LVDF within a specialty
3 court within the Eighth Judicial District of the State of Nevada (the Business Court). LVDF is
4 seeking to remand the case back to the very court that the Debtor originally brought the action.
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6 The Oppositions to the Motion to Remand are contingent on false assertions of fact and
7 twisting the record before the State Court beyond recognition. In essence (and as Debtor has a
8 history of doing in the litigation), Debtor, Mr. Piazza, Mrs. Piazza, and the VNV Dynasty Trusts¹
9 present false facts as though they are true in an effort to mislead the Court.² Because the Debtor's
10 and the Third-Party Defendants' Oppositions are premised on the Court accepting their
11 contentions that: (1) LVDF has no standing to prosecute its counterclaims and third-party claims
12 because they are core claims that are property of the estate alone, (2) the State Court entered a
13 sanctions order on claims that are property of the bankruptcy estate and (3) the State Court has
14 already made final findings on the merits of Front Sight's claims, their arguments fall apart once
15 the record is examined. The reality is that LVDF does have stand-alone claims against Mr. Piazza,
16 Mrs. Piazza, the VNV Trusts, Morales Construction, Inc., All American Concreate & Masonry,
17 Inc., Top Rank Builders, Inc. Efrain Rene Morales-Moreno, and Michael Gene Meacher which
18 are not property of the bankruptcy estate. The Third-Party Defendants along with Morales
19 Construction, Inc., All American Concreate & Masonry, Inc., Top Rank Builders, Inc. Efrain
20 Rene Morales-Moreno, and Michael Gene Meacher have hotly litigated this case and thus, know
21 they are not contingent on the fraudulent transfer claims which are property of the bankruptcy
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27 ¹ Ignatius Piazza, Jennifer Piazza, the VNV Dynasty Trust I, and the VNV Dynasty Trust II shall hereinafter be
referred to as the "Third-Party Defendants."

28 ² Debtor and the Third-Party Defendants' continued misrepresentation of the record in the State Court action is
evidence of their forum shopping. Put simply, Debtor and the Third-Party Defendants think that this Court, as a new
Court, can be misled to accepting arguments that have already been rejected and confirmed by Orders before the
State Court.

1 estate — and/or are premised on findings of alter ego. The State Court has only entered sanctions
2 against the Third-Party Defendants as to the claims which are not property of the bankruptcy
3 estate and has specifically carved out any claims that are subject to the automatic stay. And, the
4 State Court has consistently rejected Front Sight’s attempts to make the preliminary January 23,
5 2020 Order into a final order and have entered two subsequent orders rejecting the very arguments
6 the Debtor and the Third Party Defendants now advance in front of this Court. Put simply, as
7 will be discussed further below, the arguments made in Opposition to the Motion to Remand are
8 belied by the record and consequently, the Oppositions to the Motion to Remand filed by Debtor,
9 Mr. Piazza, Mrs. Piazza, and the VNV Dynasty Trusts hold no weight.³
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12 **A. The Debtor’s Claims Against LVDF Should be Remanded**

13 The most glaring omission from Debtor’s Opposition is the fact that Debtor was the party
14 that initiated the lawsuit against LVDF within the Eighth Judicial Court, State of Nevada,
15 Business Court. Debtor is the one who chose the forum and in doing so, believed the Business
16 Court (a specialty court) should hear the parties’ dispute. Now, Debtor attempts to disavow the
17 specialty court it originally chose to litigate these claims in by focusing on (and misrepresenting)
18 LVDF’s counterclaim and third-party claims. This Court should not forget that it was the Debtor
19 who voluntarily (1) chose the venue and (2) chose to proceed in the specialty court, the business
20 court, of the Eighth Judicial District.
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26 ³ The Official Committee of Unsecured Creditors also filed their own Opposition to the Motion to Remand which
27 accepted the representations about LVDF’s Counterclaims, and the record below, made by Debtor, Mr. Piazza, Mrs.
28 Piazza, and the VNV Dynasty Trusts at face value. That is not perhaps surprising given that Mr. Piazza admitted in
the creditors’ meeting that before Debtor filed voluntary Chapter 11 bankruptcy, he rescinded and therefore
excluded from his creditors list, hundreds of thousands of Front Sight members. By potentially skewing the
members listed as Debtor’s top 20 unsecured creditors, Debtor and Mr. Piazza have succeeded in having an Official
Committee that will follow Debtor’s lead.

1 The case filed by the Debtor has been pending for over 4 years with a jury trial that was
2 set for October 2022. As the jury trial became closer, LVDF filed a motion for terminating
3 sanctions against the Debtor seeking to strike its complaint, and against the Third-Party
4 Defendants for each party's failure to attend firm deposition dates after avoiding depositions for
5 over a year.⁴ Although LVDF contends that the State Court should have entertained the Motion
6 for Terminating Sanctions as to the Complaint filed by the Debtor, the State Court utilized its
7 concurrent jurisdiction with the bankruptcy court to determine applicability of the automatic stay
8 under 11 U.S.C. § 362, and chose to stay such action against the Debtor at that time. *In re Jeffries*,
9 191 B.R. 861, 863 (Bankr. D. OR 1995) citing to *In re Mann*, 88 B.R. 427, 430 (Bankr.S.D.Florida
10 1988), *Commonwealth of Pennsylvania v. Ingram, et al.*, 658 A.2d 435, 437 (Pa.Cmwlth. 1995).⁵
11
12 The Court was cognizant of claims that may be property of the bankruptcy estate and did not enter
13 an order that may affect such claims. Similarly, the Court was well aware of claims that were not
14 property of the Bankruptcy Estate and entered an appropriate order as to the terminating sanctions.
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17 Now, the Debtor is in bankruptcy and is forum shopping by seeking to remove the entire
18 matter which involves non-debtors and non-bankruptcy estate claims. The State Court is better
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21 ⁴ Is a separate filing, Debtor remarkably claims that it may be "irreparably harmed by the Terminating Sanctions
22 Order" entered against the Third-Party Defendants because "the Terminating Sanctions Order may have preclusive
23 effect as to Debtor." AECF No. 43 at 3:1-3, *id.* at 19:21-24. But LVDF's Motion for Terminating Sanctions as it
24 relates to Debtor relates solely as to Debtor's own failure to appear for depositions. In other words, Debtor's own
25 conduct has made it subject to potential sanctions. If Debtor did not want to face potential sanctions, it should have
26 appeared for its duly noticed (and "firm") deposition setting. To the extent that the Debtor is asserting that Mr.
27 Piazza's conduct has prejudiced the Debtor, then it is incumbent upon the Debtor and the Unsecured Creditor's
28 Committee to seek to replace Mr. Piazza from controlling the Debtor.

⁵ The bankruptcy court is the ultimate authority to determine the scope of the automatic stay imposed by 11 USC
362(a). However, in this case, the state court proceeded properly because the automatic stay does not apply to
causes of action which are not property of the bankruptcy estate. Notwithstanding, the Debtor did have a remedy
that it chose not to seek. That remedy was that the Debtor could have filed an adversary proceeding seeking an
injunction to stay the proceeding. *See, In re Gruntz*, 202 F. 3d 1074, 1087(9th Cir. 1999) ("There also is a
procedural avenue to forfend state actions that are not subject to the automatic stay but that threaten the bankruptcy
estate: a request for an injunction under 11 U.S.C. § 105. The bankruptcy court's injunctive power is not limited by
the delineated exceptions to the automatic stay, nor confined to civil proceedings.").

1 situated in handling this case in a prompt manner because it is a specialty court, has jurisdiction
2 over all parties, has had over 4 years of hands-on experience in this case, has reviewed hundreds
3 of pleadings and has heard over a hundred motions as it was prepared for a jury trial in October
4 2022. Remand is appropriate and should be granted.
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6 **B. LVDF's Counterclaims are Not Property of the Estate.**

7 Again, the Debtor's entire Opposition is premised on its contention that "most, if not all,
8 of LVDF's claims in this action are property of the estate as they are (a) either fraudulent transfer
9 / conversion / waste / conspiracy claims or otherwise allege injury to the Debtor, or (b) implicate
10 alter ego claims." AECF No. 57 at 2:5-8; *see also* AECF No. 64 at 9:3-5; AECF No. 63 at 4:5-
11 10. But Debtor is simply engaged in revisionist history.
12

13 It is true that a number of LVDF's initial counterclaims, as filed in 2019, against Debtor
14 related to Debtor's transfer of funds to the Piazzas and the VNV Trusts. However, during the
15 course of discovery, LVDF discovered something possibly even more ruinous to Debtor and the
16 Third-Party Defendants' case: that after Debtor had breached the CLA in October 2017, various
17 third parties concocted a scheme to further defraud LVDF and to convince LVDF to continue
18 working with Debtor to fund the Project (despite its failures under the CLA).⁶ Specifically, LVDF
19 obtained deposition testimony from a then non-party witness Efrain Morales-Moreno (who is now
20 a third-party defendant) that while his company and Debtor entered into a \$36,000,000.00
21 Construction Line of Credit, he and Mr. Piazza had entered into a secret "side-deal" whereby they
22 agreed that Debtor would never utilize the Construction Line of Credit to complete the Project as
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28 ⁶ *See Def. and Countercl. Las Vegas Develop. Fund LLC's Notice of Mot. and Mot. for Leave to Amend the Countercl.*, filed April 3, 2020; *see also Decl. of C. Keith Greer in Support of Las Vegas Develop. Fund LLC's Mot. for Leave to Amend the Countercl.*, filed April 3, 2020 at ¶¶ 3, 5-6; *see also Am. Countercl.*, filed March 30, 2021, at ¶¶ 58-65.

1 represented to LVDF.⁷ Importantly, Debtor and the other third parties made false
 2 misrepresentations to LVDF to adduce LVDF to release additional EB-5 funds to which Debtor
 3 was not otherwise entitled.⁸ LVDF alone was damaged by this fraudulent scheme; not Debtor.
 4 Based on that discovery, on April 3, 2020, LVDF moved to amend its counterclaim to add new
 5 parties to the lawsuit—Michael Meacher, Morales Construction Inc., All American Concrete &
 6 Masonry Inc., Top Rank Builders Inc., and Efrain Rene Morales-Moreno—and to substantially
 7 amend the Counterclaim to add allegations related to the scheme to defraud LVDF regarding the
 8 Morales Construction Line of Credit. The State Court granted LVDF’s request over Debtor’s
 9 objection.⁹

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 12 Debtor cherry-picks allegations from LVDF’s Amended Counterclaim while completely
 13 ignoring this entire section of the Amended Counterclaim:

14 **Material Misrepresentations Regarding the Morales Construction Line of**
 15 **Credit**

16 58. By October 2017, Front Sight was in breach of the CLA. Front Sight
 17 had failed to timely obtain Senior Debt and provide LVD Fund with the EB5
 18 documentation required under the CLA. Thereafter, Front Sight concocted a
 19 scheme to further defraud LVD Fund and to convince LVD Fund to continue
 20 working with Front Sight to fund the project.

21 59. Specifically, in or about October 2017, Counter Defendants Front
 22 Sight, Piazza, Meacher, Morales, and the Morales Entities (i.e., Morales
 23 Construction, All American Concrete and Top Rank Builders) entered into a
 24 comprehensive scheme to further defraud LVD Fund. The scheme involved
 25 Front Sight and the Morales Entities entering into a fictitious \$36 million loan
 26 agreement to give the false appearance that Front Sight had access to enough

27 ⁷ See *id.*

28 ⁸ Am. Countercl. at ¶ 65.

⁹ LVDF’s Amended Counterclaim was originally filed on June 4, 2020 with redactions (pursuant to the State Court’s request and in light of Debtor’s expressed intentions to file a writ petition with the Nevada Supreme Court regarding the amounts of money siphoned out of the Debtor by Mr. Piazza, Mrs. Piazza, and the VNV Dynasty Trusts). See *Defts.’ Answer to Pl.’s Second Am. Compl. And First Am. Countercl.*, filed June 4, 2020. LVDF’s Amended Counterclaim was subsequently filed unredacted on March 30, 2021 without redaction pursuant to Court approval. See *Defts.’ Answer to Pl.’s Second Am. Compl. And First Am. Countercl.*, filed March 30, 2021. Citations to LVDF’s Counterclaim are to the unredacted Counterclaim, as filed on March 30, 2021, a copy of which is attached as **Exhibit 1**.

1 credit to complete the Project.

2 60. Counter Defendants carried out the fraudulent scheme with the intent
3 that LVD Fund would rely on this false appearance of access to credit and
4 believe that the credit would in fact be utilized for construction of the Project.
5 Counter Defendants further intended that the fictitious loan agreement would
6 give LVD Fund a false sense of security so that it would release funds it was
7 withholding from Front Sight (pursuant to §3.1 of the CLA), and facilitate
8 continued solicitation of additional EB-5 investors by using the loan agreement
9 to give an appearance that Front Sight was putting more money into
10 construction than it really was.

11 61. In furtherance of the fraudulent scheme, on October 31, 2017, Front
12 Sight entered into the purported “Loan Agreement – Construction Line of
13 Credit” (“Loan Agreement”) with the Morales Entities. (See Exhibit 8). The
14 Loan Agreement was executed by Counter Defendant Morales. Per the terms
15 of the Loan Agreement, the Morales Entities were to provide Front Sight with
16 up to \$36,000,000 of credit to be applied towards completing the Project.

17 62. Counter Defendants Front Sight, Piazza, Meacher, Morales, and the
18 Morales Entities caused this “Loan Agreement” to be executed with no intent
19 to ever utilize the credit line, and with knowledge that the Morales Entities
20 were not capable of extending or carrying the amount of credit purportedly
21 available under the agreement’s terms.

22 63. On October 31, 2017, Meacher represented to LVD Fund that:

23 “Attached please find fully executed documents between Front Sight
24 Management and our three primary contractors. This Construction Line of
25 Credit and associated Promissory Note extends to Front Sight up to \$36,000,000
26 in construction credit pursuant to the terms of the agreements . . .

27 These documents and the attached construction line of credit along with the
28 upcoming Letter of Commitment from USCP **should jump start the marketing
in both China and India. Please release the funds for the investor you now
hold** and give me the vehicle by which we send the funds for Dr. Shah’s
marketing road show that we promised with his next closing. Also light a fire
under David and Kyle. Get them to put some serious effort to close the 26
investors in China who are currently looking for another project. **There are now
no excuse [sic] for not closing more of these EB-5 investors.**” (Emphasis
added)

64. Counter Claimant is informed and believes, and thereon alleges, that in
return for the Morales Entities entering into the fraudulent Loan Agreement,
Front Sight agreed to contract with the Morales Entities to perform
construction work on the Project. Morales, as the owner of the Morales
Entities, personally benefitted from the profit generated by the millions of

1 dollars received from Front Sight.

2 65. Rather than the construction funding coming from the Morales Entities
3 pursuant to the Loan Agreement, the Counter Defendants agreed that the funds
4 were to come solely from LVD Fund. The Loan Agreement was simply a ruse
5 to lull LVD Fund into soliciting more EB-5 funds, with the intent that the false
6 appearance of Front Sight having a \$36 million line of credit would result in a
7 greater number of EB-5 investors coming forward.

8 *See id.* at pg. 30-32. Debtor also ignores the fact that each of LVDF's counterclaims that are the
9 subject of Debtor's Opposition included the Morales Scheme through incorporation. See Am.
10 Countercl. at ¶¶ 67, 89, 101.

11 While Debtor now claims that LVDF's counterclaims only sound in harm to the
12 corporation and not to any single creditor, that is simply not true. The Counterdefendants and the
13 various third parties' conduct related to the Morales Construction Line of Credit harmed only
14 LVDF; not Debtor. If anything, Debtor benefitted from the scheme by receiving additional EB-5
15 distributions from LVDF and avoiding (at least for a period of time) its obligations and failures
16 under the CLA.

17 After State Court approval, LVDF substantially amended the Counterclaim to focus on
18 the Morales Construction Line of Credit scheme. Thereafter, Michael Meacher, the Morales
19 Partis (Morales Construction Inc., All American Concrete & Masonry Inc., Top Rank Builders
20 Inc., and Efrain Rene Morales-Moreno), Debtor, Mr. Piazza, and the VNV Dynasty Trusts, all
21 filed separate motions to dismiss, requesting that the State Court dismiss the new counterclaims
22 against them pursuant to NRC 12(b)(5). *See Counterdef. Michael Meacher's Mot. to Dismiss*
23 *First Am. Countercl.*, filed Aug. 3, 2020, a copy is attached hereto as **Exhibit 2**; *Counterdefs.*
24 *Efrain Rene Morales-Moreno, Morales Constr. Inc., Top Rank Builders Inc., and All American*
25 *Concrete & Masonry Inc.'s Mot. to Dismiss First Am. Countercl.*, filed Aug. 3, 2020, a copy is
26 attached hereto as **Exhibit 3**; *Counterdef. Front Sight Management LLC's Mot. to Dismiss Las*
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1 *Vegas Develop. Fund LLC's First Am. Countercl.*, filed Aug. 19, 2020 a copy is attached hereto
2 as **Exhibit 4**; *Counterdef. Igantius Piazza's Mot. to Dismiss Las Vegas Develop. Fund LLC's*
3 *First Am. Countercl.*, filed Aug. 19, 2020 a copy is attached hereto as **Exhibit 5**; *Counterdefs.*
4 *VNV Dynasty Trust I and VNV Dynasty Trust II's Mot. to Dismiss Las Vegas Develop. Fund*
5 *LLC's First Am. Countercl.*, filed Aug. 19, 2020 a copy is attached hereto as **Exhibit 6**. In doing
6 so, each party conceded that LVDF's Counterclaims (specifically, LVDF's first, third, and fifth
7 claims for relief) related to the Morales Construction Line of Credit scheme. *See id.*
8

9 Notably, both Meacher and the Morales Parties contended, in their motions to dismiss,
10 that LVDF's Fifth Claim for Relief, for civil conspiracy, relates solely to the fraudulent
11 transfers—the same argument Debtor and the Third-Party Defendants now advance before this
12 Court. *See generally* Exs. 2 and 3. In Opposition to both motions, LVDF reiterated that the Civil
13 Conspiracy claim was already amended to include all counter and third-party defendants and to
14 focus on their conspiracy to enter into the fictitious Line of Credit in order to defraud LVDF and
15 to convince LVDF to continue working with Debtor to fund the Project. *Las Vegas Develop. Fund*
16 *LLC's Opp'n to Counterdef. Michael Meacher's Mot. to Dismiss First Am. Countercl.*, filed Aug.
17 17, 2020 a copy is attached hereto as **Exhibit 7**; *Las Vegas Develop. Fund LLC's Opp'n to*
18 *Counterdefs. Efrain Rene Morales-Moreno, Morales Constr. Inc., Top Rank Builders Inc., and*
19 *All American Concrete & Masonry Inc.'s Mot. to Dismiss First Am. Countercl.*, filed Aug. 17,
20 2020 a copy is attached hereto as **Exhibit 8**.
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23 The State Court rightfully denied every motion to dismiss LVDF's Counterclaims,
24 including but not limited to motions filed by Meacher and the Morales Parties. *See Order Denying*
25 *Counterdef. Michael Meacher's Mot. To Dismiss First Am. Countercl.*, filed Sept. 18, 2020 a
26 copy is attached hereto as **Exhibit 9**; *Order Denying Counterdefs. Efrain Rene Morales-Moreno,*
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1 *Morales Constr. Inc., Top Rank Builders Inc., and All American Concrete & Masonry Inc. 's Mot.*
2 *To Dismiss First Am. Countercl.*, filed Sept. 28, 2020 a copy is attached hereto as **Exhibit 10**;
3 *Order Denying Counterdef. Front Sight Management LLC's Mot. To Dismiss First Am.*
4 *Countercl.*, filed Sept. 29, 2020 a copy is attached hereto as **Exhibit 11**; *Order Denying*
5 *Counterdef. Ignatius Piazza's Mot. To Dismiss First Am. Countercl.*, filed Sept. 29, 2020 a copy
6 is attached hereto as **Exhibit 12**; *Order Denying Counterdefs. VNV Dynasty Trust I and VNV*
7 *Dynasty Trust II's Mot. To Dismiss First Am. Countercl.*, filed Sept. 28, 2020 a copy is attached
8 hereto as **Exhibit 13**. In doing so, the State Court necessarily concluded that both the fraud and
9 the civil conspiracy claim (LVDF's first and fifth claims for relief) incorporated and included the
10 Morales Construction Line of Credit scheme. If the State Court had concluded otherwise, it would
11 have dismissed Meacher and Morales from each of LVDF's counterclaims. It did not.

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14 Nothing has changed since then. Rather, the parties have all been litigating the case before
15 the State Court understanding that LVDF's First, Third and Fifth claims for relief all relied, in
16 substantial part, on the Morales Construction Line of Credit scheme.¹⁰ Put another way, LVDF
17 does *not* have to prove up a fraudulent transfer claim to prevail on its First, Third, and Fifth Causes
18 of Action. LVDF may, instead, only prove that the Counterdefendants and Third-Party
19 Defendants entered into an agreement to defraud, and in fact, did defraud, LVDF in making
20 misrepresentations about the Morales Construction Line of Credit. It is only the Second and
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25 ¹⁰ To be clear, LVDF's Third counterclaim is for intentional interference. While it does include reference to the
26 transfer of funds from Debtor to Mr. Piazza, Mrs. Piazza, and the VNV Dynasty Trusts for their own personal benefit,
27 it also incorporates and realleges the Morales Construction Line of Credit scheme as if fully set forth therein. Am.
28 Countercl. at ¶ 89. Thus, LVDF does not need to prove fraudulent transfer to prevail on that claim. If LVDF
demonstrates that Mr. Piazza, Mrs. Piazza, and the VNV Dynasty Trusts interfered with the Construction Loan
Agreement by making misrepresentations to LVDF about the Morales Construction Line of Credit, and that those
misrepresentations interfered with LVDF's rights under the CLA (i.e., LVDF was adduced to provide additional EB-
5 funds to Debtor to which it was not otherwise entitled), LVDF can prevail on this claim without addressing the
fraudulent transfers whatsoever.

1 Fourth Claims for relief (for fraudulent transfer and conversion) that focus solely on the transfers
 2 from Debtor to the Third-Party Defendants and thus, are property of the bankruptcy estate.

3 Debtors' contention that LVDF's claims against the Third-Party Defendants relate solely
 4 to LVDF's alter ego claim is also belied by the Amended Counterclaim.¹¹ The Counterclaim
 5 specifically alleges that Mr. Piazza, Mrs. Piazza, and the VNV Dynasty Trusts took actions "in
 6 their individual capacities" to conspire with Debtor to the detriment of LVDF. *See* Am. Countercl.
 7 at ¶¶ 102-103. In addition, based on Mr. Morales' testimony that he and Mr. Piazza struck up a
 8 separate "side deal," separate and apart from the Construction Line of Credit entered into by
 9 Debtor, Mr. Piazza is individually named due to his personal involvement in the Morales
 10 Construction Line of Credit scheme. *See id.* at ¶¶ 59, 62.

13 Put simply, Debtor and the Third-Party Defendants' contention that all of LVDF's
 14 counterclaims (save one) are core claims that are property of the bankruptcy estate fall apart in
 15 light of the record.

17 **C. LVDF Did Not Obtain an Order in Violation of the Automatic Stay.**

18 Debtor and the Third-Party Defendants also wrongfully contend that the June 22, 2022
 19 *Order Granting in Part Defendants' and Counterclaimant's Motion for Case Dispositive*
 20 *Sanctions* ("Sanctions Order"), a copy is attached hereto as **Exhibit 14**, is void and therefore, of
 21 no consequence, because the State Court improperly heard argument and decided to grant
 22 sanctions on claims that are property of the bankruptcy estate. The State Court did no such thing.
 23 Rather, the Sanctions Order expressly states: "Because Front Sight Management LLC ('Front
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28 ¹¹ Debtor relies on the *Trustees of the Const. Indus. & Laborers Health & Welfare Tr. v. Vasquez*, 2011 WL 4549228, at *2-3 (D. Nev. Sept. 29, 2011) case for the proposition that the implications of the allegations of alter ego make LVDF's counterclaims an asset of the estate. But that case very clearly analyzed claims that were "based solely on an alter ego theory" unlike LVDF's counterclaims as addressed *supra*. 2011 WL 4549228, at *2.

1 Sight') filed a petition for bankruptcy on May 24, 2022, the Court did not hear argument on, or
2 consider, that portion of the Motion that relates to Front Sight or that is otherwise stayed based
3 on Front Sight's bankruptcy petition." Sanctions Order at 5:4-7. The Court went on to state:
4 "The Court's ruling does not apply to LVDF's second cause of action for fraudulent transfers
5 because such action is property of the bankruptcy estate of Front Sight Management, LLC. While
6 the parties disagree as to whether the Court's ruling applies to LVDF's fourth cause of action for
7 conversion and seventh cause of action for waste, LVDF has agreed not to take any action on
8 those claims pending clarification from the bankruptcy court." *Id.* at pg. 2, n. 1.
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11 Furthermore, despite the fact that the analysis was the same as to each claim, the State
12 Court in entering its order clarified that it was only entering liability against the non-bankrupt
13 parties Third-Party Defendants—i.e., Ignatius Piazza, Jennifer Piazza, VNV Dynasty Trust I and
14 VNV Dynasty Trust II—for those counterclaims that were not contingent on proving fraudulent
15 transfer—i.e., only the first, third, and fifth causes of action (as discussed *supra*). Had the State
16 Court entered its written order on all of the counterclaims, including but not limited to the
17 fraudulent transfer action, then Debtor and the Third-Party Defendants may have a cogent
18 argument that the stay was violated by the entry of liability on claims of the bankruptcy estate.
19 But that is simply not what happened.
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22 **D. Debtor Has Never Prevailed on the Merits of Any Claims.**

23 Finally, in perhaps the most egregious misrepresentation of the record, Debtor and the
24 Third-Party Defendants represent, in their Oppositions, that "[t]he state court has already found
25 that the Debtor did not improperly use funds and that the Debtor was not in breach of the CLA as
26 late as January 2020." AECF No. 57 at 9:25-28. Debtor provides the Court with a copy of the
27 January 23, 2020 Findings of Fact, Conclusions of Law, and Order Denying Defendant Las Vegas
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1 Development Fund LLC’s Motion to Dissolve Temporary Restraining Order and to Appoint a
2 Receiver (the “January 23, 2020 Order”) trying to pass it off as a decision on the merits of LVDF’s
3 Counterclaims¹² but conspicuously fails to provide the Court with a copy of the State Court’s
4 *Order Denying Counterdefendant Jennifer Piazza Motion for Summary Judgment*, entered June
5 8, 2020, a copy is attached hereto as **Exhibit 15**, or the State Court’s *Order Denying*
6 *Counterdefendants VNV Dynasty Trust I and VNV Dynasty Trust II’s Motion for Summary*
7 *Judgment*, entered June 8, 2020 a copy is attached hereto as **Exhibit 16**. The reason Debtor failed
8 to do so is because in both orders, the State Court explicitly made clear that its January 23, 2020
9 Order was purely “preliminary findings *related to the temporary restraining order*”—an
10 incomplete record—and “were not intended to be and cannot be the basis of any final judgment
11 in this case.” Exs. 15 and 16 (emphasis added).

14 The reason the State Court had to file the subsequent orders was three-fold. First, the
15 January 23, 2020 Order was only intended to be a preliminary order because the parties had yet
16 to disclose experts (including but not limited to, experts on the transfers from Debtor to the Third-
17 Party Defendants and the actual cost of construction) or to complete discovery on LVDF’s claims
18 for relief.¹³ Second, the January 23, 2020 Order was only intended to address the motion
19 presented at the time—LVDF’s Motion to Dissolve the Temporary Restraining Order and to
20 Appoint a Receiver, which required that LVDF prove, as a matter of law, that Debtor was in
21 breach of the CLA. And third, because in Jennifer Piazza and the VNV Dynasty Trusts’ Motions
22 for Summary Judgment, those Third-Party Defendants made the same arguments Debtor now
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27 ¹² See also AECF No. 43 at 6:12-16 (“None of the counterclaims are or could be based on harm suffered by LVDF
28 individually as the State Court already found that Debtor did not misappropriate any of the loan proceeds under the
CLA.”); 19:28-20:2 (arguing that the Sanctions Order “is particularly harmful to the Debtor’s estate because it
directly contradicts and negates the January 23, 2020 Order, which was based on the merits . . .”).

¹³ LVDF subsequently disclosed an expert who opined that Debtor did not spend all of the EB-5 money disbursed to
Debtor on construction cost for the Project.

1 advances before this Court: that the District Court “already found that [Front Sight] did not
2 improperly use funds and . . . was not in breach of the CLA.” *Compare* AECF No. 57 at 9:25-27
3 with *Mot. for Summary Judgment as to the Countercls. Against Jennifer Piazza*, filed Jan. 23,
4 2020 (“The Court has already found that Front Sight ‘supplied exhibits to establish project costs
5 and expenditures . . . exceeded the loan amounts advanced by LV Development . . .’” and *Mot.*
6 *for Summary Judgment as to Countercls. Against VNV Dynasty Trust I and VNV Dynasty Trust*
7 *II*, filed Jan. 23, 2020 (stating the same). The Court’s subsequent two orders confirmed that the
8 State Court made no such findings and that the January 23, 2020 Order could not be cited to as
9 final order on the merits of the claims presented.¹⁴

12 Debtor and the Third-Party Defendants attempt to pass off the January 23, 2020 Order as
13 a final order on the merits of LVDF’s Counterclaims is not only disingenuous but it exemplifies
14 how Debtor is forum shopping and attempting to mislead this Court. Debtor (unfortunately) has
15 a long history of twisting the record and making misrepresentations to the State Court. When the
16 State Court finally tired of Debtor’s games, Debtor then voluntarily filed its bankruptcy petition
17 on the eve of a hearing where the State Court would consider entering case terminating sanctions
18 against Debtor due to Debtor’s misconduct.¹⁵ Debtor did so in hopes to get in front of a new forum
19 that is new to the case, the facts of the case, and Debtor’s games. Debtor, in filing its Opposition,
20 apparently thought it could yet again pull one over the Court by failing to provide a complete
21
22

24 ¹⁴ Debtor and the Third-Party Defendants’ arguments are also belied by the written decision that was issued by the
25 State Court on November 27, 2019, wherein the State Court repeatedly recognized that there were “material issues
26 of fact” to be resolved and that ultimately concluded that the Court could not rule, “as a matter of law, that Plaintiff
27 is in breach of the CLA.” *Nov. 27, 2019 Min. Order*, a copy is attached hereto as **Exhibit 17**. Concluding that
28 LVDF has not yet carried its burden of establishing Debtor was in breach—before discovery is completed and
before experts are disclosed—is not the same as affirmatively concluding that “Debtor was not in breach of the
CLA.” *Compare id.* with AECF No. 57 at 9:25-28.

¹⁵ It bears reiterating that Debtor retained bankruptcy counsel weeks earlier. However, Debtor conveniently decided
to wait until less than 24-hours before the State Court’s hearing on the Motion for Case Terminating Sanctions to
file its bankruptcy petition.

1 record and citing an Order that does not purport to be what Debtor claims it is. This is precisely
2 why this case should be remanded: so that the State Court who is familiar with the facts and the
3 history of this case can hear the case through final adjudication and so Debtor cannot try to further
4 take advantage of this Court.
5

6 **E. CONCLUSION**

7 Remand of the adversary case is required because:

8 • Prior to filing of the motion to remove, the case was set for a jury trial in October
9 2022 and there would have been a complete adjudication of all claims.
10

11 • All of the claims asserted are state law claims.

12 • The claims are of a nature that involve complex business transactions and factual
13 heavy issues arising under the EB-5 program and construction loan agreements.

14 • Having handled the case for 4 years, the State Court is keenly aware of the complex
15 issues and the facts of this case, repeatedly stating on the record that of all the cases on its docket,
16 this case is one of the ones it is the most familiar with.
17

18 • But for the Bankruptcy Case, the case would not have been removed.

19 • Although the case initially revolves around the Debtor and LVDF, there are other
20 non-debtor third party defendants, including Morales Construction, Inc., All American Concreate
21 & Masonry, Inc., Top Rank Builders, Inc. Efrain Rene Morales-Moreno, and Michael Gene
22 Meacher, to whom this Court does not have jurisdiction.
23

24 • After the filing of the Remand, the Debtor has filed 30 docket entries consisting
25 of thousands of pages of pleadings spanning four years of litigation, which will undoubtedly
26 burden this Court.
27
28

1 • The Debtor filed bankruptcy less than 24-hours prior to a hearing on a motion for
2 terminating sanctions for the Debtor and the Third-Party Defendants for each party's failure to
3 appear for duly noticed depositions. In an attempt to avoid such potential sanction, the Debtor is
4 hoping for a different result or a second chance by seeking a new judge and forum.
5

- 6 • LVDF and others have asserted a right to a jury trial.
7 • There would be no prejudice to the Debtor because it was the Debtor who filed the
8 state court case and chose the specialty court to hear this matter.
9

10 For these reasons, LVDF requests this Court to grant the motion to remand.

11 Dated 7-18-2022

/s/ Brian D. Shapiro, Esq.
Brian D. Shapiro, Esq.
Attorney for LVDF

CERTIFICATE OF SERVICE

On July 18, 2022, this pleading was served upon all registered user in accordance with the Court’s CM/ECF service. Such registered users for this case included the parties listed below.

Dated 7-18-2022

/s/ Brian D. Shapiro, Esq.
Brian D. Shapiro, Esq.
Attorney for LVDF

Served Upon the Following Registered Users

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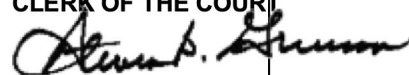
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EXHIBIT 1

EXHIBIT 2

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CLERK OF THE COURT



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8 **EIGHTH JUDICIAL DISTRICT COURT**
CLARK COUNTY, NEVADA

9
10 FRONT SIGHT MANAGEMENT LLC, a
Nevada Limited Liability Company,

11 Plaintiff,

12 vs.

13 LAS VEGAS DEVELOPMENT FUND LLC, a
14 Nevada Limited Liability Company; et al.,

15 Defendants.

16 AND ALL RELATED COUNTERCLAIMS.

CASE NO.: A-18-781084-B
DEPT NO.: 16

COUNTERDEFENDANT
MICHAEL MEACHER'S
MOTION TO DISMISS FIRST
AMENDED COUNTERCLAIM

HEARING REQUESTED

17 COMES NOW Counterdefendant MICHAEL MEACHER (“Meacher”), by and through
18 his attorneys, John P. Aldrich, Esq., Catherine Hernandez, Esq., and Jamie S. Hendrickson, Esq.
19 of the Aldrich Law Firm, Ltd., and hereby moves the Court for an order dismissing
20 Counterclaimant LAS VEGAS DEVELOPMENT FUND LLC’s (“LVDF”) First Amended
21 Counterclaim.

22 ///

23 ///

24 ///

1 This Motion to Dismiss LVDF's First Amended Counterclaim is made and based on the
2 attached memorandum of points and authorities and supporting documentation, the papers and
3 pleadings on file in this action, and any oral argument this Court may allow.

4 DATED this 3rd day of August, 2020.

5 **ALDRICH LAW FIRM, LTD.**

6 /s/ John P. Aldrich
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9 Catherine Hernandez, Esq.
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17 *Attorneys for Plaintiff/Counterdefendants*

18 **MEMORANDUM OF POINTS AND AUTHORITIES**

19 **I.**

20 **INTRODUCTION**

21 Counterdefendant Meacher seeks dismissal of the First Amended Counterclaim. As
22 shown below, LVDF's fraud claim fails to allege facts sufficient to show that, even if taken as
23 true for purposes of this Motion, LVDF is entitled to relief. To the contrary, LVDF is not
24 entitled to relief and this Motion should be granted.

Although Nevada is a notice-pleading state, Counterclaimant LVDF still has to assert a
viable claim and give the defending party adequate notice of the nature of the claims being
asserted. A pleading party cannot simply parrot the elements of a claim and expect to survive a
Rule 12(b)(5) motion to dismiss. LVDF's fraud counterclaim consists primarily of conclusory

1 factual allegations that are simple recitations of the elements of the asserted cause of action.
2 LVDF’s fraud counterclaim further fails for the following reasons: (1) it was not plead with
3 sufficient particularity as required by NRCP 9(b); (2) it fails to show that any of Meacher’s
4 statements were false; and (3) it fails for lack of damages.

5 **II.**

6 **ALLEGATIONS OF LVDF’S COUNTERCLAIM**

7 On June 4, 2020, LVDF filed its Answer and First Amended Counterclaim, asserting
8 claims against for (1) fraud (against Front Sight, Meacher, Ignatius Piazza, Rene Morales, and
9 the Morales Entities¹); (2) fraudulent transfers (against Front Sight and the VNV Trusts); (3)
10 intentional interference with contractual relations (against Ignatius Piazza, Jennifer Piazza, and
11 the VNV Trusts); (4) conversion (against Front Sight, Ignatius Piazza, and Jennifer Piazza); (5)
12 civil conspiracy (against Counterdefendants); (6) judicial foreclosure (against Front Sight); and
13 (7) waste (against Front Sight, Ignatius Piazza, and the VNV Trusts). Counterdefendant
14 Meacher now brings this motion to dismiss LVDF’s Counterclaim of fraud against Meacher.

15 LVDF asserts that Meacher committed fraud by sending an email to Jon Fleming on
16 October 31, 2017, wherein Meacher stated that Front Sight obtained a construction line of credit
17 (“Morales LOC”) with the Morales Entities in the amount of \$36,000,000.00. *See* Counterclaim,
18 ¶ 63. Meacher further requested that LVDF release investor funds that it had withheld to date.
19 *Id.* LVDF’s fraud claim further rests on the following assertions: (1) Front Sight entered into the
20 Morales LOC knowing that Morales could not fund the entire \$36 million loan amount; (2) Front
21 Sight coaxed Morales to offer the Morales LOC in exchange for engaging the Morales Entities to
22 perform construction services on the Front Sight project; and (3) neither Morales nor Front Sight
23

24 ¹ The Morales Entities consist of three companies owned by Rene Morales: (1) Morales Construction, Inc., (2) Top Rank Builders, Inc., and (3) All American Concrete and Masonry, Inc.

1 had any intent to actually use the Morales LOC to fund construction. Embedded within LVDF's
2 allegations are some unstated assumptions: (1) that Meacher was privy to any alleged fraudulent
3 scheme between Front Sight and Morales; (2) that Meacher knew that Front Sight or Ignatius
4 Piazza allegedly had no intention of utilizing the Morales LOC when he made is statement to
5 Dziubla on October 31, 2017; (3) that Meacher knew that Morales allegedly had no intention of
6 allowing Front Sight to carry a balance of \$36 million on the Morales LOC on October 31, 2017;
7 and (4) that Meacher knew that Morales allegedly could not fund the Morales LOC.

8 **III.**

9 **PROCEDURAL HISTORY**

10 On April 3, 2020, Counterclaimant LVDF filed its Motion for Leave to Amend the
11 Counter-complaint. The Court granted LVDF's Motion for Leave to Amend on May 13, 2020.
12 On June 4, 2020, LVDF filed its Answer to Front Sight's Complaint and First Amended
13 Counterclaim.

14 **IV.**

15 **THE COURT SHOULD DISMISS COUNTERCLAIMANT LVDF'S FRAUD**
16 **COUNTERCLAIM AGAINST MEACHER**

17 **A. LEGAL STANDARD FOR NRCP 12(b)(5) MOTION TO DISMISS**

18 NRCP Rule 12(b)(5) allows a party to move for dismissal of a counterclaim for "failure
19 to state a claim upon which relief can be granted." If the Court assumes the veracity of the
20 factual allegations pleaded, for the purposes of a 12(b)(5) motion to dismiss, taking them at "face
21 value" and construing them "favorably" for the pleading party, dismissal is required where it
22 appears that the facts alleged "fail to state a cognizable claim for relief." *Morris v. Bank of Amer.*
23 *Nev.*, 110 Nev. 1274, 1276, 886 P.2d 454, 456 (1994) (internal quotation marks omitted)
24 (quoting *Edgar v. Wagner*, 101 Nev. 226, 227-28, 699 P.2d 110, 111-12 (1985)). Where the

1 party seeking dismissal proves that the counterclaimant “could prove no set of facts which, if
2 accepted by the trier of fact, would entitle him [or her] to relief,” dismissal of the counterclaim is
3 appropriate. *Id.* (alteration supplied in *Morris*) (internal quotation marks omitted) (quoting
4 *Edgar*, at 228, 699 P.2d at 112).

5 Counterclaimant must do more than simply parrot the legal elements of its claims and
6 still hope to survive dismissal pursuant to NRCP 12(b)(5). Nevada law requires Counterclaimant
7 to demonstrate its claims in a way that provides adequate notice of the nature of those claims, not
8 just notice of the simple existence of those claims. *Western States Constr. v. Michoff*, 108 Nev.
9 931, 936, 840 P.2d 1220, 1223 (1992) (citing *Hay v. Hay*, 100 Nev. 196, 198, 678 P.2d 672, 674
10 (1984).

11 In *Taylor v. State*, 73 Nev. 151, 152-53, 311 P.2d 733, 734 (1957), the Supreme Court of
12 Nevada found the complaint’s conclusory factual allegation of waiver to be “insufficient,” even
13 after acknowledging that “[i]t is true that the pleading of conclusions, either of fact or of law, is
14 sufficient under NRCP, provided the allegation is sufficiently definite to give fair notice of the
15 nature and basis or grounds of the claim” 73 Nev. 151, 152-53, 311 P.2d 733, 734 (1957)
16 (emphasis added). The allegation at issue in the *Taylor* opinion was plainly conclusory, and the
17 Supreme Court of Nevada upheld, on appeal, the district court’s order dismissing the claim:

18 The complaint alleged “That the defendants, the State of Nevada and University
19 of Nevada, have waived their immunity from suit for the cause herein set forth.”
20 The trial court held this allegation insufficient, relying upon the general rule that
waiver is a conclusion of law and that the facts from which the conclusion flows
must be pleaded.

21 *Id.* at 152, 311 P.2d at 734. And, in doing so, the *Taylor* opinion upheld the trial court’s finding
22 that the fact of waiver was insufficiently pled. LVDF’s Counterclaim against Meacher consists
23 of repeated plainly conclusory allegations and little-to-nothing more.

24 ///

1 **B. THE AMENDED COUNTERCLAIM FAILS TO STATE A CLAIM FOR FRAUD**
2 **AGAINST MEACHER AND SHOULD THEREFORE BE DISMISSED**

3 As its “First Cause of Action,” LVDF alleges fraud against Front Sight, Morales, Ignatius
4 Piazza, Meacher, and the Morales Entities. To prevail on a claim for fraud, also known as
5 intentional misrepresentation, plaintiff must prove the following elements by clear and
6 convincing evidence: (a) that the defendant made a false representation; (b) with knowledge or
7 belief that the representation was false or without a sufficient basis for making the
8 representation; (c) that the defendant intended to induce the plaintiff to act or refrain from acting
9 on the representation; (d) the plaintiff justifiably relied on the representation; and (e) the plaintiff
10 was damaged as a result of his reliance. *J.A. Jones Const. Co. v. Lehrer McGovern Bovis, Inc.*,
11 120 Nev. 277, 290–91, 89 P.3d 1009 (2004); *Albert H. Wohlers & Co. v. Bartgis*, 114 Nev. 1249,
12 1260, 969 P.2d 949 (1998) (plaintiff has burden of proving each element of fraud claim by clear
13 and convincing evidence). As required by NRC 9(b), fraud must be alleged with particularity
14 in order to afford adequate notice to the opposing party. *Ivory Ranch, Inc. v. Quinn River Ranch,*
15 *Inc.*, 101 Nev. 471, 73, 705 P.2d 673 (1985). This means that the circumstances attendant to the
16 alleged fraud must be detailed and include averments to the time, the place, the identity of the
17 parties involved, and the nature of the fraud or mistake.” *Brown v. Kellar*, 97 Nev. 582, 583-84,
18 636 P.2d 874 (1981).

19 Here, the Amended Counterclaim’s allegations fall far short of threshold pleading
20 requirements to state a claim for fraud.

21 1. LVDF’s fraud counterclaim is not plead with particularity

22 To plead fraud with particularity, LVDF must include detailed allegations regarding the
23 time, place, and identities of the parties involved in the fraud scheme, including all attendant
24 circumstances pertaining to the fraud. NRC 9(b). The only particulars pertaining to the alleged

1 fraud that LVDF offers is an email between Meacher and Jon Fleming on October 31, 2017,
2 wherein Meacher tells Fleming about the existence of the Morales LOC. (See email between
3 Michael Meacher and Jon Fleming, dated October 31, 2017, attached hereto as **Exhibit 1**.)
4 LVDF offers no other specifics regarding when Meacher learned about the Morales LOC,
5 whether or when Meacher participated in the allegedly fraudulent scheme to negotiate the
6 Morales LOC, and whether or when Meacher received orders from Ignatius Piazza to notify
7 Fleming of the Morales LOC. LVDF never actually claims that Meacher even knew that any
8 statement made in his email to Fleming was somehow false. LVDF does not state how Meacher
9 would have or could have known that his statements to Fleming were false. Without any facts to
10 demonstrate where Meacher received his information about the Morales LOC or how he could
11 have known or actually knew the alleged fraudulent nature of the loan, LVDF has failed to plead
12 fraud with particularity as to Meacher. Therefore, LVDF's fraud claim as to Meacher must be
13 dismissed.

14 2. LVDF's fraud counterclaim fails because Meacher's statement was true in every
15 respect

16 An essential element of a fraud claim is that the defendant made a knowingly false
17 statement. *Jordan v. State ex rel. Dep't of Motor Vehicles & Pub. Safety*, 121 Nev. 44, 75, 110
18 P.3d 30, 51 (2005); *J.A. Jones Constr. Co. v. Lehrer McGovern Bovis, Inc.*, 120 Nev. 277, 89
19 P.3d 1009 (2004); *Barmettler v. Reno Air, Inc.*, 14 Nev. 441, 956 P.2d 1382 (1998); *Blanchard v.*
20 *Blanchard*, 108 Nev. 908 (1992); *Bulbman, Inc. v. Nev. Bell*, 108 Nev. 105, 111, 825 P.2d 588,
21 592 (1992); *Albert H. Wohlers & Co. v. Bartgis*, 114 Nev. 1249, 1260, 969 P.2d 949, 957 (1998);
22 *Sanguinetti v. Strecker*, 94 Nev. 200, 206, 577 P.2d 404, 408 (1978); *Lubbe v. Barba*, 91 Nev.
23 596, 541 P.2d 115 (1975).

24 Meacher's October 31, 2017 email to Fleming states in its entirety:

1 Attached please find fully executed documents between Front Sight Management
2 and our three primary contractors. This Construction Line of Credit and
associated Promissory Note extends to Front Sight up to \$36,000,000 in
3 construction credit pursuant to the terms of the agreements.

4 Naish will be at U.S. Capital Partners later this week to execute the Commitment
Letter to provide an additional \$15,000,00 to Front Sight for any business purpose
we elect. As I told you, the lender will want to see an updated appraisal from
5 Mark Lukens or another MAI appraisal firm of their election. This loan is being
funded all at once and is scheduled to close at the end of November.

6 I also sent you by overnight delivery the three revised documents between Front
7 Sight Management and Las Vegas Development Fund. They are:

- 8 • First Amendment to the Loan Agreement executed by Naish
- 9 • Amended and Restated Promissory Note executed by Naish
- 10 • First Amendment to Construction Deed of Trust, Security Agreement and
Fixture Filing executed by Naish

11 Please counter sign these three and return a fully executed copy to me.

12 These documents and the attached construction line of credit along with the
upcoming Letter of Commitment from USCP should jump start the marking in
13 both China and India. Please release the funds for the investor you now hold and
give me the vehicle by which we send the fund for Dr. Shah's marketing road
14 show that we promised with his next closing. Also light a fire under David and
Kyle. Get them to put some serious effort to close the 26 investors in China who
15 are currently looking for another project. There are now no excuse for not closing
more of these EB-5 investors.

16 (*See Exhibit 1.*)

17 Meacher only made true statements to Fleming. Meacher stated that Front Sight entered
18 into a \$36 million line of credit with the Morales Entities. The Morales LOC is a construction
19 line of credit that authorizes Front Sight to engage the Morales Entities. *See* Answer and
20 Amended Counterclaim, Exhibit 8, pp. 6-7. The Morales LOC is evidenced by a promissory
21 note executed by Ignatius Piazza on behalf of Front Sight. *Id.* at p. 7. These statements are
22 objectively true. LVDF attached a copy of the Morales LOC to its counterclaim. There is no
23 doubt about the existence of the line of credit or its balance. Meacher made no further
24 representations regarding the Morales LOC other than that it existed, that it was between Front

1 Sight and the Morales Entities, and that it had a maximum balance of \$36 million. Because all of
2 these statements are objectively and unequivocally true, Meacher cannot have committed fraud
3 as a matter of law.

4 LVDF did not plead that Meacher knew that his statement was false. LVDF did not
5 plead that Meacher was privy to any negotiations of the Morales LOC. LVDF did not plead that
6 Meacher had even spoken to Morales about the Morales LOC. Meacher's email does not state
7 how, when or to what extend that Front Sight intends to use the Morales LOC. Meacher does not
8 even offer an opinion on whether the Morales LOC meets the definition of senior debt under the
9 Construction Loan Agreement. Meacher's email only includes true statements regarding the
10 Morales LOC. Accordingly, LVDF's fraud claim against Meacher fails as a matter of law and
11 must be dismissed.

12 3. LVDF's fraud counterclaims fails for lack of damages

13 LVDF claims that it was damaged by Meacher's alleged fraudulent statement because it
14 loaned Front Sight money that it would have otherwise never loaned. Even if this allegation is
15 true, LVDF is not damaged by the alleged false statements for three reasons: (1) LVDF is
16 entitled to repayment of any funds loaned; (2) LVDF has collected interest on the funds loaned;
17 and (3) LVDF has a security interest in land that is worth far more than the total amount of the
18 funds LVDF loaned Front Sight. Moreover, LVDF is currently seeking to foreclose on its
19 security interest in that land. Hence, even if Meacher made false statements (he did not), LVDF
20 has suffered no damages therefrom. Damages are an essential element to a fraud claim and
21 where an essential element of a claim fails, the claims fails. *See Bulbman, Inc. v. Nev. Bell*, 108
22 Nev. 105, 111, 825 P.2d 588, 592 (1992). Therefore, LVDF cannot show that it was damaged in
23 any way by Meacher's statements, even if those statements were false. Accordingly, LVDF's
24 fraud claim against Meacher fails as a matter of law for lack of damages.

1 **C. THE AMENDED COUNTERCLAIM FAILS TO STATE A CLAIM FOR CIVIL**
2 **CONSPIRACY AGAINST MEACHER AND SHOULD THEREFORE BE**
3 **DISMISSED**

4 As its “Fifth Cause of Action,” LVDF alleges “Civil Conspiracy” against “all
5 counterdefendants.” LVDF alleges the following:

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

13 (Counterclaim, ¶ 103.)

14 To state a claim for conspiracy, LVDF must demonstrate a combination of two or more
15 persons who, by some concerted action, intend to accomplish an unlawful objective for the
16 purpose of harming another, and that damage has resulted from said act or acts. *See Hilton*
17 *Hotels Corp. v. Butch Lewis Prods., Inc.*, 109 Nev. 1043, 862 P.2d 1207, 1210 (1993). To
18 properly plead a claim for civil conspiracy, a plaintiff must set forth facts showing: (1) the
19 commission of an underlying tort; and (2) an agreement between the defendants to commit that
20 tort. *GES, Inc. v. Corbitt*, 117 Nev. 265, 21 P.3d 11, 15 (Nev.2001). Further, the cause of action
21 must be pled with **particular specificity** as to “the manner in which a defendant joined in the
22 conspiracy and how he participated in it.” *Arroyo v. Wheat*, 591 F.Supp. 141, 144 (D. Nev.
23 1984).

24 In the instant matter, as set forth herein, LVDF has failed to set forth a cause of action for
an underlying tort. LVDF does not even mention Meacher in paragraphs 101-107 of the
Counterclaim. Even if Front Sight assumes that the underlying predicate tort claim is the alleged
fraud claim against Meacher, as discussed in Section A *supra*, the alleged fraud claim fails as a
matter of law.

Even if the Court does not dismiss the underlying fraud claim, LVDF’s claim for civil
conspiracy still fails as it is insufficiently particular. Here, Counterclaimant has failed to plead

1 with the requisite particularity how Front Sight and/or the other “counterdefendants” joined and
2 participated in the alleged conspiracy. (Counterclaim, ¶¶ 101-107.) Instead, Counterclaimant’s
3 civil conspiracy claim only states that Dr. Piazza, Mrs. Piazza, the VNV Trust Defendants, and
4 Front Sight “conspired . . . to achieve their unlawful objective of diverting monies from Front
5 Sight that were needed to maintain Front Sight’s solvency. . . .” (Counterclaim, ¶ 103.) The
6 Counterclaim fails to allege the manner in which Front and the other Counterdefendants joined in
7 the conspiracy. The Counterclaim is completely devoid of any allegations as to Meacher or his
8 alleged role in the conspiracy as differentiated from Dr. Piazza, Mrs. Piazza, or the VNV Trust
9 Counterdefendants (the only Counterdefendants mentioned in the fifth cause of action). There is
10 no specificity whatsoever regarding the alleged misconduct.

11 Even the alleged fraud claim fails to articulate a motive for the alleged civil conspiracy,
12 as the fraud claim alleges that Front Sight sought funding from the Morales Entities for
13 construction services. LVDF does not articulate how Meacher stood to benefit in this alleged
14 conspiracy. Moreover, Meacher cannot be liable for civil conspiracy apart from Front Sight
15 where Meacher acted in his capacity as the Chief Operations Officer of Front Sight. LVDF’s
16 Counterclaim does not state how Meacher acted in his individual capacity or for his individual
17 benefit. Accordingly, the civil conspiracy claim must be dismissed.

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V.

CONCLUSION

Based on the foregoing, Counter-defendant Meacher respectfully requests that the Court grant this motion to dismiss LVDF's Fraud Counterclaim.

DATED this 3rd day of August, 2020.

ALDRICH LAW FIRM, LTD.

/s/ John P. Aldrich

John P. Aldrich, Esq.

Nevada Bar No. 6877

Catherine Hernandez, Esq.

Nevada Bar No. 8410

Jamie S. Hendrickson, Esq.

Nevada Bar No. 12770

7866 West Sahara Avenue

Las Vegas, NV 89117

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Attorneys for Plaintiff/Counterdefendants

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 3rd day of August, 2020, I caused the foregoing
**COUNTERDEFENDANT MICHAEL MEACHER'S MOTION TO DISMISS
DEFENDANTS' FIRST AMENDED COUNTERCLAIM** to be electronically filed and served
with the Clerk of the Court using Wiznet which will send notification of such filing to the email
addresses denoted on the Electronic Mail Notice List, or by U.S. mail, postage prepaid, if not
included on the Electronic Mail Notice List, to the following parties:

John R. Bailey, Esq.
Joshua M. Dickey, Esq.
Andrea M. Champion
BAILEY KENNEDY
8984 Spanish Ridge Avenue
Las Vegas, NV 89148
Attorneys for Defendants

/s/ T. Bixenmann
An employee of ALDRICH LAW FIRM, LTD.

EXHIBIT 1

EXHIBIT 1

From: Jon Fleming <jfleming@EB5impactcapital.com>
Sent: Tue, 31 Oct 2017 17:02:10 -0700
To: Mike Meacher <meacher@frontsight.com>
CC: Ignatius Piazza <ignatius@frontsight.com>, Bob Dziubla <rdziubla@eb5impactcapital.com>
Subject: RE: Executed documents from Front Sight

Mike,

Thank you for sending the attached documents. I will confirm with you when I get the overnight package with the loan amendment documents and return the copies of the signed documents.

We will update the agents on the financing progress and do all we can to close new investors. I will also call you to update you on some other progress.

Thanks,

Jon

From: Mike Meacher [mailto:meacher@frontsight.com]
Sent: Tuesday, October 31, 2017 11:51 AM
To: Jon Fleming <jfleming@EB5impactcapital.com>
Cc: Ignatius Piazza <ignatius@frontsight.com>
Subject: Executed documents from Front Sight

Jon,

Attached please find fully executed documents between Front Sight Management and our three primary contractors. This Construction Line of Credit and associated Promissory Note extends to Front Sight up to \$36,000,000 in construction credit pursuant to the terms of the agreements.

Naish will be at U.S. Capital Partners later this week to execute the Commitment Letter to provide an additional \$15,000,000 to Front Sight for any business purpose we elect. As I told you, the lender will want to see an updated appraisal from Mark Lukens or another MAI appraisal firm of their election. This loan is being funded all at once and is scheduled to close at the end of November.

I also sent you by overnight delivery the three revised documents between Front Sight Management and Las Vegas Development Fund. They are:

- First Amendment to the Loan Agreement executed by Naish
- Amended and Restated Promissory Note executed by Naish
- First Amendment to Construction Deed of Trust, Security Agreement and Fixture Filing executed by Naish

Please counter sign these three and return a fully executed copy to me.

These documents and the attached construction line of credit along with the upcoming Letter of Commitment from USCP should jump start the marketing in both China and India. Please release the funds for the investor you now hold and give me the vehicle by which we send the funds for Dr. Shah's marketing road show that we promised with his next closing. Also light a fire under David and Kyle. Get them to put some serious effort to close the 26 investors in China who are currently looking for another project. There are now no excuse for not closing more of these EB-5 investors.

Thanks,

Mike

Meacher@frontsight.com

702-425-6550

Reception

From: efilngmail@tylerhost.net
Sent: Monday, August 3, 2020 4:45 PM
To: BKfederaldownloads
Subject: Notification of Service for Case: A-18-781084-B, Front Sight Management LLC, Plaintiff(s)vs.Las Vegas Development Fund LLC, Defendant(s) for filing Motion to Dismiss - MDSM (CIV), Envelope Number: 6413796

Notification of Service

Case Number: A-18-781084-B
 Case Style: Front Sight Management LLC,
 Plaintiff(s)vs.Las Vegas Development Fund LLC,
 Defendant(s)
 Envelope Number: 6413796



This is a notification of service for the filing listed. Please click the link below to retrieve the submitted document.

Filing Details	
Case Number	A-18-781084-B
Case Style	Front Sight Management LLC, Plaintiff(s)vs.Las Vegas Development Fund LLC, Defendant(s)
Date/Time Submitted	8/3/2020 4:43 PM PST
Filing Type	Motion to Dismiss - MDSM (CIV)
Filing Description	Counterdefendant Michael Meacher's Motion to Dismiss First Amended Counterclaim
Filed By	Traci Bixenmann
Service Contacts	Front Sight Management LLC: John Aldrich (jaldrich@johnaldrichlawfirm.com) Traci Bixenmann (traci@johnaldrichlawfirm.com) Las Vegas Development Fund LLC: Joshua Dickey (jdickey@baileykennedy.com) John Bailey (jbailey@baileykennedy.com) Bailey Kennedy, LLP (bkfederaldownloads@baileykennedy.com)

	Andrea Champion (achampion@baileykennedy.com)
--	--------------------------------------------------------------------------------------------------

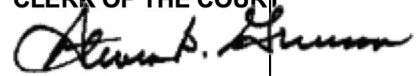
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EXHIBIT 3

Electronically Filed
8/3/2020 4:43 PM
Steven D. Grierson
CLERK OF THE COURT



1 **MOT**
John P. Aldrich, Esq.
2 Nevada Bar No. 6877
Catherine Hernandez, Esq.
3 Nevada Bar No. 8410
Jamie S. Hendrickson, Esq.
4 Nevada Bar No. 12770
ALDRICH LAW FIRM, LTD.
5 7866 West Sahara Avenue
Las Vegas, Nevada 89117
6 Telephone: (702) 853-5490
Facsimile: (702) 227-1975
7 *Attorneys for Plaintiff/Counterdefendants*

8 **EIGHTH JUDICIAL DISTRICT COURT**
9 **CLARK COUNTY, NEVADA**

10 FRONT SIGHT MANAGEMENT LLC, a
Nevada Limited Liability Company,

11 Plaintiff,

12 vs.

13 LAS VEGAS DEVELOPMENT FUND LLC, a
14 Nevada Limited Liability Company; et al.,

15 Defendants.

16 _____
17 AND ALL RELATED COUNTERCLAIMS.

CASE NO.: A-18-781084-B
DEPT NO.: 16

COUNTERDEFENDANTS
EFRAIN RENE MORALES-
MORENO, MORALES
CONSTRUCTION, INC., TOP
RANK BUILDERS, INC., AND
ALL AMERICAN CONCRETE, &
MASONRY INC.'S MOTION TO
DISMISS FIRST AMENDED
COUNTERCLAIM

HEARING REQUESTED

18 COME NOW Counterdefendants EFRAIN RENE MORALES-MORENO (“Morales”),
19 MORALES CONSTRUCTION, INC. (“Morales Construction”), TOP RANK BUILDERS, INC.
20 (“Top Rank”), and ALL AMERICAN CONCRETE & MASONRY, INC. (“All American”)
21 (collectively referred to as the “Morales Entities”), by and through their attorneys, John P.
22 Aldrich, Esq., Catherine Hernandez, Esq., and Jamie S. Hendrickson, Esq. of the Aldrich Law
23 Firm, Ltd., and hereby moves the Court for an order dismissing Defendant/Counterclaimant LAS
24 VEGAS DEVELOPMENT FUND LLC’s (“LVDF”) First Amended Counterclaim.

1 This Motion to Dismiss LVDF's First Amended Counterclaim is made and based on the
2 attached memorandum of points and authorities and supporting documentation, the papers and
3 pleadings on file in this action, and any oral argument this Court may allow.

4 DATED this 3rd day of August, 2020.

5 **ALDRICH LAW FIRM, LTD.**

6 /s/ John P. Aldrich
7 John P. Aldrich, Esq.
8 Nevada Bar No. 6877
9 Catherine Hernandez, Esq.
10 Nevada Bar No. 8410
11 Jamie S. Hendrickson, Esq.
12 Nevada Bar No. 12770
13 7866 West Sahara Avenue
14 Las Vegas, Nevada 89117
15 Telephone: (702) 853-5490
16 Facsimile: (702) 227-1975
17 *Attorneys for Plaintiff/Counterdefendants*

18 **MEMORANDUM OF POINTS AND AUTHORITIES**

19 **I.**

20 **INTRODUCTION**

21 Counterdefendants Morales and the Morales Entities seek dismissal of the First Amended
22 Counterclaim. As shown below, LVDF's fraud claim fails to allege facts sufficient to show that,
23 even if taken as true for purposes of this Motion, LVDF is entitled to relief. To the contrary,
24 LVDF is not entitled to relief and this Motion should be granted.

Although Nevada is a notice-pleading state, Counterclaimants still must assert viable
claims and give the defending party adequate notice of the nature of the claims being asserted. A
pleading party cannot simply parrot the elements of a claim and expect to survive a Rule 12(b)(5)
motion to dismiss. Defendant's fraud counterclaim consists primarily of conclusory factual

1 allegations that simple recitations of the elements of the asserted cause of action. Defendant's
2 fraud counterclaim further fails for the following reasons: (1) it was not plead with sufficient
3 particularity as required by NRCP 9(b); (2) it fails to demonstrate that Mr. Meacher's
4 representations to Fleming were untrue; (3) it fails to demonstrate that Mr. Morales made any
5 false statements to Defendants; (4) it fails because the Morales Entities performed under the
6 Morales line of credit; (5) it fails for lack of damages attributable to the Morales Entities; and,
7 (6) it fails to demonstrate that the Morales Entities and LVDF had any sufficient contact or duties
8 to one another for LVDF to have standing to assert fraud against Mr. Morales or the Morales
9 Entities.

10 **II.**

11 **ALLEGATIONS OF LVDF'S COUNTERCLAIM**

12 On June 4, 2020, LVDF filed its Answer and First Amended Counterclaim, asserting
13 claims against for (1) fraud (against Front Sight, Meacher, Ignatius Piazza, Rene Morales, and
14 the Morales Entities); (2) fraudulent transfers (against Front Sight and the VNV Trusts); (3)
15 intentional interference with contractual relations (against Ignatius Piazza, Jennifer Piazza, and
16 the VNV Trusts); (4) conversion (against Front Sight, Ignatius Piazza, and Jennifer Piazza); (5)
17 civil conspiracy (against all counterdefendants); (6) judicial foreclosure (against Front Sight);
18 and, (7) waste (against Front Sight, Ignatius Piazza, and the VNV Trusts). Counterdefendants
19 Morales and the Morales Entities now bring this Motion to dismiss LVDF's First Amended
20 Counterclaim of fraud and civil conspiracy against Morales and the Morales Entities.

21 LVDF asserts that Morales and the Morales Entities committed fraud by extending a
22 sham line of credit to Front Sight that Morales never intended to fund and Front Sight never
23 intended to use. (Counterclaim, ¶¶ 2, 62.) However, the majority of LVDF's allegations
24 concern a representation allegedly made by Michael Meacher. Accordingly, LVDF asserts that

1 the fraud culminated when Meacher sent an email to Fleming on October 31, 2017, wherein
2 Meacher stated that Front Sight obtained a construction line of credit (“Morales LOC”) with the
3 Morales Entities in the amount of \$36,000,000.00. (*Id.* at ¶ 63.) Meacher further requested that
4 LVDF release investors funds that it had withheld to date. (*Id.*) LVDF’s fraud claim further
5 rests on the following assertions: (1) Front Sight entered into the Morales LOC knowing that
6 Morales could not fund the entire \$36 million loan amount; (2) Front Sight coaxed Morales to
7 offer the Morales LOC in exchange for engaging the Morales Entities to perform construction
8 services on the Front Sight project; and (3) neither Morales nor Front Sight had any intent to
9 actually use the Morales LOC to fund construction.

10 The Morales Entities’ role in this alleged fraud scheme is limited to providing a “sham”
11 line of credit that Front Sight allegedly never intended to use. *See* Counterclaim, ¶ 62. The
12 allegation that neither Front Sight nor the Morales Entities never intended to utilize the Morales
13 LOC is demonstrably false, as both Dr. Piazza and Mr. Morales have offered testimony under
14 oath that the Morales LOC was used to fund the grading for the Front Sight Project. Notably,
15 Meacher never made any representations to Defendants that Front Sight intended to fund the
16 entire project with the Morales LOC. Similarly, Mr. Morales made no representations to
17 Defendants whatsoever. Defendants offer no facts whatsoever to demonstrate that Mr. Morales
18 or his entities colluded with Front Sight in any way to offer credit that he could not honor.
19 Accordingly, LVDF’s entire fraud claim against the Morales Entities rests upon nothing but
20 pure, unadulterated conjecture and whimsy pulled wholly from thin air.

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1 **III.**

2 **PROCEDURAL HISTORY**

3 On April 3, 2020, Defendants filed their Motion for Leave to Amend their Answer and
4 Counter-complaint. The Court granted Defendants Motion for Leave to Amend on May 13,
5 2020. On June 4, 2020, Defendants filed their Answer to Front Sight’s Complaint and First
6 Amended Counterclaim.

7 **IV.**

8 **THE COURT SHOULD DISMISS COUNTERCLAIMANT LVDF’S FRAUD**
9 **COUNTERCLAIM AGAINST MORALES AND THE MORALES ENTITIES**

10 **A. LEGAL STANDARD FOR NRCP 12(b)(5) MOTION TO DISMISS**

11 NRCP Rule 12(b)(5) allows a party to move for dismissal of a counterclaim for “failure
12 to state a claim upon which relief can be granted.” If the Court assumes the veracity of the
13 factual allegations pleaded, for the purposes of a 12(b)(5) motion to dismiss, taking them at “face
14 value” and construing them “favorably” for the pleading party, dismissal is required where it
15 appears that the facts alleged “fail to state a cognizable claim for relief.” *Morris v. Bank of Amer.*
16 *Nev.*, 110 Nev. 1274, 1276, 886 P.2d 454, 456 (1994) (internal quotation marks omitted)
17 (quoting *Edgar v. Wagner*, 101 Nev. 226, 227-28, 699 P.2d 110, 111-12 (1985)). Where the
18 party seeking dismissal proves that the counterclaimant “could prove no set of facts which, if
19 accepted by the trier of fact, would entitle him [or her] to relief,” dismissal of the counterclaim is
20 appropriate. *Id.* (alteration supplied in *Morris*) (internal quotation marks omitted) (quoting
21 *Edgar*, at 228, 699 P.2d at 112).

22 Counterclaimant must do more than simply parrot the legal elements of its claims and
23 still hope to survive dismissal pursuant to NRCP 12(b)(5). Nevada law requires Counterclaimant
24 to demonstrate its claims in a way that provides adequate notice of the nature of those claims, not

1 just notice of the simple existence of those claims. *Western States Constr. v. Michoff*, 108 Nev.
2 931, 936, 840 P.2d 1220, 1223 (1992) (citing *Hay v. Hay*, 100 Nev. 196, 198, 678 P.2d 672, 674
3 (1984).

4 In *Taylor v. State*, 73 Nev. 151, 152-53, 311 P.2d 733, 734 (1957), the Supreme Court of
5 Nevada found the complaint's conclusory factual allegation of waiver to be "insufficient," even
6 after acknowledging that "[i]t is true that the pleading of conclusions, either of fact or of law, is
7 sufficient under NRCP, provided the allegation is sufficiently definite to give fair notice of the
8 nature and basis or grounds of the claim" 73 Nev. 151, 152-53, 311 P.2d 733, 734 (1957)
9 (emphasis added). The allegation at issue in the *Taylor* opinion was plainly conclusory, and the
10 Supreme Court of Nevada upheld, on appeal, the district court's order dismissing the claim:

11 The complaint alleged "That the defendants, the State of Nevada and University
12 of Nevada, have waived their immunity from suit for the cause herein set forth."
13 The trial court held this allegation insufficient, relying upon the general rule that
waiver is a conclusion of law and that the facts from which the conclusion flows
must be pleaded.

14 *Id.* at 152, 311 P.2d at 734. And, in doing so, the *Taylor* opinion upheld the trial court's finding
15 that the fact of waiver was insufficiently pled. LVDF's Counterclaim against Morales and the
16 Morales Entities consists of repeated plainly conclusory allegations and little-to-nothing more.

17 **B. THE AMENDED COUNTERCLAIM FAILS TO STATE A CLAIM FOR FRAUD
18 AGAINST MORALES AND THE MORALES ENTITIES AND SHOULD
THEREFORE BE DISMISSED**

19 As its "First Cause of Action," LVDF alleges fraud against Front Sight, Morales, Ignatius
20 Piazza, Meacher, and the Morales Entities. To prevail on a claim for fraud, also known as
21 intentional misrepresentation, plaintiff must prove the following elements by clear and
22 convincing evidence: (a) that the defendant made a false representation; (b) with knowledge or
23 belief that the representation was false or without a sufficient basis for making the
24 representation; (c) that the defendant intended to induce the plaintiff to act or refrain from acting

1 on the representation; (d) the plaintiff justifiably relied on the representation; and (e) the plaintiff
2 was damaged as a result of his reliance. *J.A. Jones Const. Co. v. Lehrer McGovern Bovis, Inc.*,
3 120 Nev. 277, 290–91, 89 P.3d 1009 (2004); *Albert H. Wohlers & Co. v. Bartgis*, 114 Nev. 1249,
4 1260, 969 P.2d 949 (1998) (plaintiff has burden of proving each element of fraud claim by clear
5 and convincing evidence). As required by NRC 9(b), fraud must be alleged with particularity
6 in order to afford adequate notice to the opposing party. *Ivory Ranch, Inc. v. Quinn River Ranch,*
7 *Inc.*, 101 Nev. 471, 73, 705 P.2d 673 (1985). This means that the circumstances attendant to the
8 alleged fraud must be detailed and include averments to the time, the place, the identity of the
9 parties involved, and the nature of the fraud or mistake.” *Brown v. Kellar*, 97 Nev. 582, 583-84,
10 636 P.2d 874 (1981).

11 Here, the Amended Counterclaim’s allegations fall far short of threshold pleading
12 requirements to state a claim for fraud.

13 1. Defendant’s fraud counterclaim is not plead with particularity

14 To plead fraud with particularity, Defendant must include detailed allegations regarding
15 the time, place, and identities of the parties involved in the fraudulent scheme, including all
16 attendant circumstances pertaining to the fraud. *See Brown* at 583-84.

17 Here, Defendants’ fraud claim does not state with particularity how, when, or where Mr.
18 Morales or the Morales Entities made false statements to LVDF. The only allegations in the
19 Amended Counterclaim against Mr. Morales or the Morales Entities involve an extension of the
20 Morales LOC to Front Sight. There is no mention of any contact whatsoever between Mr.
21 Morales or the Morales Entities and LVDF, or any other Defendant for that matter.

22 The extent of the allegations as to the Morales Entities is that sometime in October 2017,
23 Mr. Morales and Front Sight conspired to defraud LVDF by entering into the Morales LOC.
24 There is no mention of how or even whether Mr. Morales knew of Front Sight’s dealings with

1 LVDF. There are no allegations of false statements made by Mr. Morales to LVDF. There is no
2 allegation that Morales intended to finance the entire Front Sight project. LVDF merely asserts
3 in conclusory fashion that Mr. Morales offered credit to Front Sight in hopes that LVDF would
4 release EB-5 funds to Front Sight. LVDF does not assert how Morales knew that offering credit
5 to Front Sight would persuade LVDF to release funds. LVDF does not articulate how Mr.
6 Morales could possibly benefit from this alleged scheme other than to secure construction
7 contracts from Front Sight. This allegation, however, is hollow and implausible because Mr.
8 Morales did not need LVDF to release funds to Front Sight to obtain construction business from
9 Front Sight. The very act of extending credit to Front Sight would guarantee Front Sight's
10 business. Therefore, LVDF's alleged motive attributed to Mr. Morales is hollow. The Morales
11 Entities benefitted by extending credit to Front Sight independent of whether LVDF releases EB-
12 5 funds to Front Sight or not. Because LVDF's fraud claim cannot establish with particularity
13 that Mr. Morales how and when Morales knew that his extension of credit to Front Sight would
14 persuade LVDF to release funds to Front Sight and/or persuade Front Sight to utilize the Morales
15 Entities exclusively for construction on the Project, LVDF's fraud counterclaim fails for lack of
16 facts to demonstrate fraud with particularity.

17 2. Defendant's fraud counterclaim fails because Meacher's statement was true in
18 every respect

19 An essential element of a fraud claim is that the defendant made a knowingly false
20 statement. *Jordan v. State ex rel. Dep't of Motor Vehicles & Pub. Safety*, 121 Nev. 44, 75, 110
21 P.3d 30, 51 (2005); *J.A. Jones Constr. Co. v. Lehrer McGovern Bovis, Inc.*, 120 Nev. 277, 89
22 P.3d 1009 (2004); *Barmettler v. Reno Air, Inc.*, 14 Nev. 441, 956 P.2d 1382 (1998); *Blanchard v.*
23 *Blanchard*, 108 Nev. 908 (1992); *Bulbman, Inc. v. Nev. Bell*, 108 Nev. 105, 111, 825 P.2d 588,
24 592 (1992); *Albert H. Wohlers & Co. v. Bartgis*, 114 Nev. 1249, 1260, 969 P.2d 949, 957 (1998);

1 *Sanguinetti v. Strecker*, 94 Nev. 200, 206, 577 P.2d 404, 408 (1978); *Lubbe v. Barba*, 91 Nev.
2 596, 541 P.2d 115 (1975).

3 Meacher's October 31, 2017 email to Fleming states in its entirety:

4 Attached please find fully executed documents between Front Sight Management
5 and our three primary contractors. This Construction Line of Credit and
6 associated Promissory Note extends to Front Sight up to \$36,000,000 in
7 construction credit pursuant to the terms of the agreements.

8 Naish will be at U.S. Capital Partners later this week to execute the Commitment
9 Letter to provide an additional \$15,000,00 to Front Sight for any business purpose
10 we elect. As I told you, the lender will want to see an updated appraisal from
11 Mark Lukens or another MAI appraisal firm of their election. This loan is being
12 funded all at once and is scheduled to close at the end of November.

13 I also sent you by overnight delivery the three revised documents between Front
14 Sight Management and Las Vegas Development Fund. They are:

- 15 • First Amendment to the Loan Agreement executed by Naish
- 16 • Amended and Restated Promissory Note executed by Naish
- 17 • First Amendment to Construction Deed of Trust, Security Agreement and
18 Fixture Filing executed by Naish

19 Please counter sign these three and return a fully executed copy to me.

20 These documents and the attached construction line of credit along with the
21 upcoming Letter of Commitment from USCP should jump start the marking in
22 both China and India. Please release the funds for the investor you now hold and
23 give me the vehicle by which we send the fund for Dr. Shah's marketing road
24 show that we promised with his next closing. Also light a fire under David and
25 Kyle. Get them to put some serious effort to close the 26 investors in China who
26 are currently looking for another project. There are now no excuse for not closing
27 more of these EB-5 investors.

28 (See email from Mike Meacher to Jon Fleming dated October 31, 2017, attached hereto as
29 **Exhibit 1.**)

30 The Court will note that Meacher made these statements, not Morales. Morales did not
31 make statements to LVDF. But even so, Meacher only made true statements to Fleming.
32 Meacher stated that Front Sight entered into a \$36 million line of credit with the Morales
33 Entities. The Morales LOC is a construction line of credit that authorizes Front Sight to engage

1 the Morales Entities. *See Answer and Amended Counterclaims, Exhibit 8, pp. 6-7.* The Morales
2 LOC is evidenced by a promissory note executed by Ignatius Piazza on behalf of Front Sight. *Id.*
3 at p. 7. These statements are objectively true. LVDF attached a copy of the Morales LOC to its
4 counterclaim.

5 There is no doubt about the existence of the line of credit or its balance. Meacher made
6 no further representations regarding the Morales LOC other than that it existed, that it was
7 between Front Sight and the Morales Entities, and that it had a maximum balance of \$36 million.
8 Because all of these statements are objectively and unequivocally true, Meacher cannot have
9 committed fraud as a matter of law. Where Meacher's statements were true, then neither
10 Morales nor the Morales Entities could have committed fraud, as Meacher relayed only truthful
11 information about the Morales LOC.

12 Defendants did not plead that Meacher knew that his statement was false. Defendants
13 further did not plead that Meacher was privy to any negotiations of the Morales LOC.
14 Defendants did not plead that Meacher had even spoken to Morales about the Morales LOC.
15 Meacher's email does not state how, when or to what extend that Front Sight intends to use the
16 Morales LOC. Meacher does not even offer an opinion on whether the Morales LOC meets the
17 definition of senior debt under the Construction Loan Agreement. Meacher's email only
18 includes true statements regarding the Morales LOC. There is no connection between anything
19 that Morales mentioned to Meacher and what Meacher told Fleming. Accordingly, Defendants'
20 fraud claim against Morales and the Morales Entities fails as a matter of law and must be
21 dismissed.

22 3. Defendant's fraud counterclaim fails as to Morales and the Morales Entities
23 because Morales never made any statements to LVDF, let alone fraudulent
24 statements, upon which it could have relied

Defendants have not alleged that Mr. Morales or anyone on behalf of the Morales Entities

1 made any false statements to LVDF or any other Defendant in this matter. In fact, Mr. Morales
2 had never communicated with Defendants. His only business dealings were with Front Sight. In
3 the absence of a false statement by Mr. Morales or an officer or director of the Morales Entities,
4 LVDF has no basis for its fraud claim as to Mr. Morales or the Morales Entities. Simply put,
5 Morales made no representations or promises in any way to LVDF.

6 To assert a fraud claim against Mr. Morales or the Morales Entities, LVDF must first
7 demonstrate that Mr. Morales or a director or officer of the Morales Entities made a knowingly
8 false statement to LVDF. All LVDF has demonstrated is that Mr. Meacher made a
9 representation to Mr. Fleming. LVDF has not demonstrated that Mr. Morales or any director of
10 or officer of his companies had any knowledge of Meacher's statement to Fleming. Without that
11 link, LVDF's fraud claim as to Mr. Morales fails.

12 Currently, the only fact that LVDF can truly assert against Mr. Morales is that he offered
13 Front Sight a construction line of credit. How Front Sight chose to utilize that line of credit and
14 what representations that Front Sight later chose to make regarding that line of credit are Front
15 Sight's responsibility. Because neither Mr. Morales nor the Morales Entities communicated with
16 LVDF or had any knowledge of Front Sight's communications with LVDF, LVDF's fraud claim
17 against Morales necessarily fails.

18 4. Defendant's fraud counterclaim fails because Morales performed on his Line of
19 Credit

20 Defendants' fraud claim against Morales and the Morales Entities absolutely depends on
21 Front Sight never actually utilizing the Morales LOC. If Front Sight utilized the Morales LOC,
22 then LVDF's fraud claim necessarily fails because LVDF unequivocally asserted that neither
23 Front Sight nor the Morales Entities intended to utilize the Morales LOC. LVDF also called the
24 Morales LOC a "sham" loan. If the Morales LOC was used by Front Sight, even once, it was not

1 a “sham” loan and neither Front Sight nor Mr. Morales made any false statements to Front Sight.

2 Dr. Piazza sent an email correspondence to Mr. Dziubla on February 28 2018, wherein he
3 stated:

4 Don't let the senior loan issue get in the way or be an excuse for failing to source
5 more investors. The fact that we are building the facility with cash flow and the
6 few investors you bring every couple months is what you should press to your
7 investors. We are strong, profitable, building the resort and it is a great
8 investment for them. As we complete more construction using the Morales
9 Construction line of credit, *which we pay down each month*, and need less in the
10 way of a senior loan, the better the senior loan terms are becoming. I have
hesitated signing any senior loan because we have two other lenders now offering
better terms Be patient, keep delivering investors, hopefully at the rate you
did this month and the senior loan will fall into place when it is needed. Right
now, even if we closed a loan, *we do not have a use for the funds* and it would be
foolish to take it and pay interest on money we couldn't use in the construction of
the resort for at least another 3 to 4 months. . . .

11 (See email from Ignatius Piazza to Robert Dziubla dated February 28, 2018, attached hereto as
12 **Exhibit 2** (emphasis added).) Dr. Piazza explicitly told Mr. Dziubla that Front Sight utilized the
13 Morales LOC and paid it down each month. On January 31, 2018, Mr. Meacher sent an email to
14 Mr. Dziubla, “The \$36 million construction line of credit [Morales LOC] remains in place and is
15 being used to mitigate cash flows for construction.” (See email from Mike Meacher to Robert
16 Dziubla dated January 31, 2018, attached hereto as **Exhibit 3**.)

17 Dr. Piazza testified that Front Sight paid the Morales LOC down when LVDF failed
18 deliver further EB-5 funds. See September 20, 2019 Evid. Hrg. Transcript, at pp. 132-133,
19 attached hereto as **Exhibit 4**. Mr. Morales also testified at his March 16, 2020 deposition that
20 Front Sight had to pay down the Morales LOC with its own operating capital because LVDF
21 failed to provide sufficient EB-5 funds to complete the project. See March 16, 2020 Deposition
22 Transcript of Rene Morales, at p. 10:10-17, attached hereto as **Exhibit 5**. Both Mr. Meacher and
23 Dr. Piazza put LVDF on notice in early 2018 that Front Sight had utilized the Morales LOC. Dr.
24 Piazza testified that Front Sight utilized and paid down the Morales LOC. Mr. Morales

1 corroborated the testimony of Dr. Piazza.

2 Additionally, Front Sight’s accounting records show numerous payments to the Morales
3 Entities from January 2017 to December 2017. *See* Evid. Hrg. Exhibit 47, pp. 0407-0431. The
4 objective evidence demonstrates that Front Sight actually utilized the Morales LOC; therefore,
5 Morales and the Morales Entities could not have committed fraud by extending a “sham” line of
6 credit to Front Sight.

7 5. Defendant’s fraud counterclaims fails for lack of damages

8 Defendant’s claim that they were damaged by Meacher’s alleged fraudulent statement
9 because it loaned Front Sight money that it would have otherwise never loaned. Even if this
10 allegation is true, LVDF is not damaged by the alleged false statements for three reasons: (1)
11 LVDF is entitled to repayment of any funds loaned; (2) LVDF has collected interest on the funds
12 loaned; and (3) LVDF has a security interest in land that is worth far more than the total amount
13 of the funds LVDF loaned Front Sight. Moreover, LVDF is currently seeking to foreclose on its
14 security interest in that land. Hence, even if Meacher made false statements, LVDF has only
15 profited from those statements to date.

16 Mr. Morales and his companies have no connection whatsoever to any harm allegedly
17 suffered by LVDF. Neither Mr. Morales nor the Morales Entities are parties to the CLA.
18 Neither Mr. Morales nor anyone in a management capacity with the Morales Entities made any
19 representations to LVDF. Therefore, Mr. Morales and the Morales Entities could not have
20 caused any alleged damages incurred by LVDF. Accordingly, Defendants’ fraud claim as to
21 Mr. Morales and the Morales Entities necessarily fails.

22 6. Defendant’s fraud claim fails against Morales because LVDF lacks standing to
23 sue either Morales or the Morales Entities for fraud where LVDF is not in privity
24 of contract with the Morales Entities

A fraud requires a showing that one party made a knowingly false representation to

1 another party. *Epperson v. Roloff*, 102 Nev. 206, 210, 719 P.2d 799, 802 (1986). Necessarily, to
2 meet the element of a knowingly false representation, LVDF must show that Morales and
3 Defendants had some dealings with one another. Here, LVDF never spoke with Morales or any
4 member of the Morales Entities. There is no contract between Morales or the Morales Entities
5 and LVDF. LVDF is essentially suing Morales and the Morales Entities for allegedly fraudulent
6 conduct based upon Morales' and/or the Morales Entities' dealings with Front Sight. LVDF has
7 no standing to sue for fraud because it never contracted or dealt with Morales or the Morales
8 Entities in any way.

9 The fact that Front Sight via Mr. Meacher, reported to LVDF the terms of the Morales
10 LOC to LVDF does not give LVDF recourse against Morales or the Morales Entities. LVDF
11 was not party to the Morales LOC. Morales made no representations to LVDF. LVDF could not
12 have relied upon any representations from Morales. Any duties owed to by Morales and/or the
13 Morales Entities were owed only to Front Sight. For LVDF to have any standing to sue Morales
14 or the Morales Entities for fraud, LVDF would have to assert that it was an intended beneficiary
15 of the Morales LOC.

16 Without a contract or any dealing between Morales and/or the Morales Entities and
17 LVDF, there can be no fraud as to LVDF. Therefore, LVDF lacks standing to sue Morales or the
18 Morales Entities for fraud.

19 **C. THE AMENDED COUNTERCLAIM FAILS TO STATE A CLAIM FOR CIVIL**
20 **CONSPIRACY AGAINST MORALES OR THE MORALES ENTITIES AND**
21 **SHOULD THEREFORE BE DISMISSED**

22 As its "Fifth Cause of Action," LVDF alleges "Civil Conspiracy" against "all
23 counterdefendants." LVDF alleges the following:

24 While acting in their individual capacities and in their capacity as Trustees and/or
beneficiaries of the VNV Trust Defendants, Ignatius Piazza and Jennifer Piazza
conspired with the Front Sight and VNV Trust Defendants, using Front Sight and

1 VNV Trust Defendants to achieve their unlawful objective of diverting monies
2 from Front Sight that were needed to maintain Front Sight's solvency and its
3 ability to meet its obligations under the CLA regarding timely completion of the
4 Project and repayment of the loan, for their own individual advantage and benefit.

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(Counterclaim, ¶ 103.)

To state a claim for conspiracy, LVDF must demonstrate a combination of two or more persons who, by some concerted action, intend to accomplish an unlawful objective for the purpose of harming another, and that damage has resulted from said act or acts. *See Hilton Hotels Corp. v. Butch Lewis Prods., Inc.*, 109 Nev. 1043, 862 P.2d 1207, 1210 (1993). To properly plead a claim for civil conspiracy, a plaintiff must set forth facts showing: (1) the commission of an underlying tort; and (2) an agreement between the defendants to commit that tort. *GES, Inc. v. Corbitt*, 117 Nev. 265, 21 P.3d 11, 15 (Nev.2001). Further, the cause of action must be pled with **particular specificity** as to "the manner in which a defendant joined in the conspiracy and how he participated in it." *Arroyo v. Wheat*, 591 F.Supp. 141, 144 (D. Nev. 1984).

In the instant matter, as set forth herein, LVDF has failed to set forth a cause of action for an underlying tort. LVDF does not even mention Morales or the Morales Entities in paragraphs 101-107 of the Amended Counterclaim. Even if Front Sight assumes that the underlying predicate tort claim is the alleged fraud claim against Morales and the Morales Entities, as discussed in Section A *supra*, the alleged fraud claim fails as a matter of law.

Even if the Court does not dismiss the underlying fraud claim, LVDF's claim for civil conspiracy still fails as it is insufficiently particular. Here, Counterclaimant has failed to plead with the requisite particularity how Front Sight and/or the other "counterdefendants" joined and participated in the alleged conspiracy. (Counterclaim, ¶¶ 101-107.) Instead, Counterclaimant's civil conspiracy claim only states that Dr. Piazza, Mrs. Piazza, the VNV Trust Defendants, and

1 Front Sight “conspired . . . to achieve their unlawful objective of diverting monies from Front
2 Sight that were needed to maintain Front Sight’s solvency. . . .” (Counterclaim, ¶ 103.) The
3 Counterclaim fails to allege the manner in which Front and the other Counterdefendants joined in
4 the conspiracy. The Counterclaim is completely devoid of any allegations as to Morales’ or the
5 Morales Entities’ alleged roles in the conspiracy. There is no specificity whatsoever regarding
6 the alleged misconduct. Accordingly, the civil conspiracy claim must be dismissed.

7 V.

8 **CONCLUSION**

9 Based on the foregoing, Counterdefendants Morales and the Morales Entities respectfully
10 request that the Court grant this Motion to Dismiss Defendants’ Counterclaim for fraud and civil
11 conspiracy.

12 DATED this 3rd day of August, 2020.

13 **ALDRICH LAW FIRM, LTD.**

14 /s/ John P. Aldrich
15 John P. Aldrich, Esq.
Nevada Bar No. 6877
16 Catherine Hernandez, Esq.
Nevada Bar No. 8410
17 Jamie S. Hendrickson, Esq.
Nevada Bar No. 12770
7866 West Sahara Avenue
18 Las Vegas, NV 89117
Tel (702) 853-5490
19 Fax (702) 226-1975
Attorneys for Plaintiff/Counterdefendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 3rd day of August, 2020, I caused the foregoing
**COUNTERDEFENDANTS EFRAIN RENE MORALES-MORENO, MORALES
CONSTRUCTION, INC., TOP RANK BUILDERS, INC., AND ALL AMERICAN
CONCRETE, & MASONRY INC.'S MOTION TO DISMISS FIRST AMENDED
COUNTERCLAIM** to be electronically filed and served with the Clerk of the Court using
Wiznet which will send notification of such filing to the email addresses denoted on the
Electronic Mail Notice List, or by U.S. mail, postage prepaid, if not included on the Electronic
Mail Notice List, to the following parties:

John R. Bailey, Esq.
Joshua M. Dickey, Esq.
Andrea M. Champion, Esq.
BAILEY KENNEDY
8984 Spanish Ridge Avenue
Las Vegas, Nevada 89148

Attorneys for Defendants/Counterclaimants

/s/ T. Bixenmann
An employee of ALDRICH LAW FIRM, LTD.

EXHIBIT 1

EXHIBIT 1

From: Jon Fleming <jfleming@EB5impactcapital.com>
Sent: Tue, 31 Oct 2017 17:02:10 -0700
To: Mike Meacher <meacher@frontsight.com>
CC: Ignatius Piazza <Ignatius@frontsight.com>, Bob Dziubla <rdziubla@eb5impactcapital.com>
Subject: RE: Executed documents from Front Sight

Mike,

Thank you for sending the attached documents. I will confirm with you when I get the overnight package with the loan amendment documents and return the copies of the signed documents.

We will update the agents on the financing progress and do all we can to close new investors. I will also call you to update you on some other progress.

Thanks,

Jon

From: Mike Meacher [mailto:meacher@frontsight.com]
Sent: Tuesday, October 31, 2017 11:51 AM
To: Jon Fleming <jfleming@EB5impactcapital.com>
Cc: Ignatius Piazza <Ignatius@frontsight.com>
Subject: Executed documents from Front Sight

Jon,

Attached please find fully executed documents between Front Sight Management and our three primary contractors. This Construction Line of Credit and associated Promissory Note extends to Front Sight up to \$36,000,000 in construction credit pursuant to the terms of the agreements.

Naish will be at U.S. Capital Partners later this week to execute the Commitment Letter to provide an additional \$15,000,000 to Front Sight for any business purpose we elect. As I told you, the lender will want to see an updated appraisal from Mark Lukens or another MAI appraisal firm of their election. This loan is being funded all at once and is scheduled to close at the end of November.

I also sent you by overnight delivery the three revised documents between Front Sight Management and Las Vegas Development Fund. They are:

- First Amendment to the Loan Agreement executed by Naish
- Amended and Restated Promissory Note executed by Naish
- First Amendment to Construction Deed of Trust, Security Agreement and Fixture Filing executed by Naish

Please counter sign these three and return a fully executed copy to me.

These documents and the attached construction line of credit along with the upcoming Letter of Commitment from USCP should jump start the marketing in both China and India. Please release the funds for the investor you now hold and give me the vehicle by which we send the funds for Dr. Shah's marketing road show that we promised with his next closing. Also light a fire under David and Kyle. Get them to put some serious effort to close the 26 investors in China who are currently looking for another project. There are now no excuse for not closing more of these EB-5 investors.

Thanks,

Mike

Meacher@frontsight.com

702-425-6550

EXHIBIT 2

EXHIBIT 2

From: Ignatius Piazza <ignatius@frontsight.com>
Sent: Wed, 28 Feb 2018 20:46:05 -0800
To: Robert Dziubla <rdziubla@eb5impactcapital.com>
CC: Mike Meacher <meacher@frontsight.com>
Subject: RE: Well done Bob!

Thanks Bob,

Don't let the senior loan issue get in the way or be an excuse for failing to source more investors. The fact that we are building the facility with cash flow and the few investors you bring every couple months is what you should press to your investors. We are strong, profitable, building the resort and it is a great investment for them. As we complete more construction using the Morales Construction line of credit, which we pay down each month, and need less in the way of a senior loan, the better the senior loan terms are becoming. I have hesitated signing any senior loan because we have two other lenders now offering better terms. One lender is an American brick and mortar bank with Asian owners. Theirs is a line of credit format which we can close and draw when we need it. We are awaiting their term sheet and it will be a MUCH better deal than the USCP offer or the second lender who wants to beat the USCP offer. The USCP and competing offer are not lines of credit. We would have to close those loans and start paying interest on money we cannot yet put to work. Be patient, keep delivering investors, hopefully at the rate you did this month and the senior loan will fall into place when it is needed. Right now, even if we closed a loan, we do not have a use for the funds and it would be foolish to take it and pay interest on money we couldn't use in the construction of the resort for at least another 3 or 4 months... Let's extend the senior loan agreement another 90 days as that is the realistic time frame that we will be ready to start going vertical and would actually need it. Until then, keep bringing in the investors. With a few EB5 investors each month, our cash flow and the Morales credit line we are building the facility without any delays and preparing for the time we actually need the senior loan to close.

I will wire as directed below tomorrow.

From: Robert Dziubla [mailto:rdziubla@eb5impactcapital.com]
Sent: Wednesday, February 28, 2018 1:52 PM
To: 'Ignatius Piazza'
Cc: 'Mike Meacher'
Subject: RE: Well done Bob!

Dear Naish,

Through yesterday, we have wired to FSM \$1,125,000 representing EB5 investments from three Chinese investors sourced by Endeavor Shanghai (Kyle and David) at \$375k each.

Accordingly, please wire the **\$60,000** for Endeavor Shanghai's \$20k per investor performance bonus. Please wire these funds to:

EXHIBIT 3

EXHIBIT 3

From: Mike Meacher <meacher@frontsight.com>
Sent: Wed, 31 Jan 2018 09:33:35 -0800
To: Robert Dziubla <rdziubla@eb5impactcapital.com>
Subject: Front Sight update

Bob,

This email will update you on the progress at Front Sight which will supplement the video we just produced. The video has a lot more information for your investors to see but here is what you requested.

The timeline for the 36-month construction schedule has been delayed by Morales Construction because they are waiting for the local electrical cooperative, Valley Electric Association, to provide them a timeline for an electrical system upgrade. I will forward that when received.

Mike

The \$36 million construction line of credit remains in place and is being used to mitigate cash flows for construction.

U.S. Capital Partners in San Francisco has provided two offers which are being considered by Front Sight. Both are pending final review by the lenders of the 2017 financial statements by Front Sight. Additionally, Front Sight has been approached by a Houston, Texas based bank, American First National Bank, who has expressed interest in loaning construction money to Front Sight. The rate and terms of this offer may be superior to the U.S. Capital Partners two offers so Front Sight is negotiating all three concurrently to come up with the best long-term construction financing at the lowest cost.

The construction progress status is best seen in the linked video. All 25 phase 3 ranges are completed and operational. Front Sight now has 50 shooting ranges which make it the largest firearms training facility in the United States. In addition to completing all the ranges, the video shows that Front Sight has added a live-fire simulator between each of these new ranges. The students find this more convenient and it saves time by not having to transport students during this portion of the training. One of the 25 new ranges is the 800-yard long rifle range. The video shows this new facility from one end to the other and how enthusiastic students are with this new quality facility.

Final grading permit was issued on the 44-acre grading site that will have a massive 1350 car parking lot, a classroom for up to 2,000 students, an armory a pro shop and retail sales building. The finished construction site of this grading project will be about 14-16 acres. The Front Sight engineers estimate that about 250,000 cubic yards (6,750,000 cubic feet) of dirt will be moved to create the building pad for this portion of the project. The architects will be meeting to design the final layout of these facilities shortly. When the buildings are completely designed, building permits will be applied for and construction will begin thereafter.

For more information, please refer to the linked video below.

https://www.dropbox.com/s/zpebnnyugz836d/Phase%203%20Completion%20%26%20Patriot%20Pavillion%20Construction%20Progress%2001_24_18.mp4?dl=0

EXHIBIT 4

EXHIBIT 4

1 CASE NO. A-18-781084-B

2 DOCKET U

3 DEPT. XVI

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6

DISTRICT COURT

7

CLARK COUNTY, NEVADA

8

* * * * *

9

FRONT SIGHT MANAGEMENT LLC,)

10

Plaintiff,)

11

vs.)

12

LAS VEGAS DEVELOPMENT FUND LLC,)

13

Defendant.)

14

15

REPORTER'S TRANSCRIPT

16

OF
HEARING

17

18

BEFORE THE HONORABLE JUDGE TIMOTHY C. WILLIAMS

19

DISTRICT COURT JUDGE

20

21

DATED FRIDAY, SEPTEMBER 20, 2019

22

23

24

25

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

02:25:49 1 A. Your Honor, there is only one person in this
2 room that truly cares about these immigrant investors'
3 visas and the project, and that's me. I'm -- I'm the
4 one that kept this project going when Robert Dziubla
02:26:05 5 was starving it and not giving us the money that he had
6 to put into the project. I'm the only one that's kept
7 it going in spite of this frivolous and fraudulent
8 foreclosure action that had no merit that caused us to
9 lose an investment banker loan.

02:26:28 10 We are -- we've tried to build this as quickly
11 as we possibly can with the limited funds that we
12 received. This was supposed to be initially a
13 \$150 million project. Then he said he could not
14 provide 150 million. He could provide 75. So we had
02:26:44 15 to scale the project back.

16 Then he comes to us and says, "Well, we can
17 provide 50 on the back end as a fully subordinated
18 second, but you have to go out and find a \$25 million
19 first," and we did. We went through all of the ugliest
02:26:59 20 types of lenders you can possibly imagine, and we had
21 to turn down most of those. But we were able to secure
22 the Morales construction loan agreement.

23 But here's the kicker there: Dziubla kept
24 telling us, "You got to get me that first -- that first
02:27:15 25 lender so that I can then go out and secure the rest of

02:27:19 1 these investors. They're all waiting for that first
2 lender." So we went out and secured the first lender,
3 the Morales construction loan. But Dziubla knew
4 because we told him how it was going to work. Morales
02:27:31 5 would start the building, and it was the EB5 money
6 coming in that would pay down that construction loan.
7 He understood that.

8 So we secured the Morales loan so that he
9 could point out to his agents and his investors that
02:27:45 10 Front Sight has secured a first lender. We get Morales
11 started on it and then Dziubla doesn't come through
12 with any further money. So we were on the hook, and
13 we've paid down that -- those construction costs that
14 Morales provided. We paid it down. Even though
02:28:00 15 Dziubla starved the project, didn't provide anything
16 else, we have -- we are the ones that have paid him
17 down.

18 So it was -- it was the best that we can do
19 under those circumstances. And under the loan
02:28:12 20 contract, that's all we were asked to do is the best we
21 can do, and we found it for him.

22 We've since now found another lender who's
23 willing to loan and now we're at this point where we've
24 created the jobs, and we've got a lender that will
02:28:24 25 basically take Dziubla out and we can move the project

EXHIBIT 5

EXHIBIT 5

Atkinson-Baker, Inc.
www.depo.com

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EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, STATE OF NEVADA

CERTIFIED COPY

FRONT SIGHT MANAGEMENT, LLC, a)
Nevada Limited Liability Company,)
)
Plaintiff,)
)
vs.)
)
LAS VEGAS DEVELOPMENT FUND LLC,)
a Nevada Limited Liability Company,)
et al.,)
)
Defendants.)
)
and related Cross-Claims.)
)

Case No.
A-18-781084-B

DEPOSITION OF
30(b)(6) WITNESS OF ALL AMERICAN CONCRETE,
MORALES CONSTRUCTION, AND TOP RANK BUILDERS - RENE MORALES
PAHRUMP, NEVADA
MONDAY, MARCH 16, 2020

ATKINSON-BAKER, INC.
(800)288-3376
www.depo.com
REPORTED BY: DEBORAH ANN HINES, NEVADA CCR #473, RPR
FILE NO: AE02A9F

Atkinson-Baker, Inc.
www.depo.com

1 Q. And you still have those contracts at your
2 office?

3 A. Yes.

4 Q. Okay. So those will be -- that's some of
5 the documents we've asked for that you pull together
6 would be those contracts.

7 A. Yeah.

8 Q. Do have any contracts now where the work
9 hasn't been completed?

10 A. Well, the villas. You know, I have to --
11 I'm like 85 percent done. I have to complete it.
12 But Mr. Piazza has stated I guess, I don't know who
13 they are, because I'm not familiar, but he says the
14 money was coming from some EB5 money and didn't come
15 so he had to pay me out of -- like in payments. So
16 we're not doing any more because I guess the EB5
17 people didn't come through with that financing.

18 Q. When did you have that conversation with
19 Mr. Piazza?

20 A. That was like six months ago. Because we
21 were going to build the whole thing. I give him a
22 credit line for like \$25 million. My company,
23 they're self-integrated companies, we own Morales
24 Construction Trucking Company and all that stuff, and
25 we own the gravel pit, and we were going to do the

Reception

From: efilngmail@tylerhost.net
Sent: Monday, August 3, 2020 4:45 PM
To: BKfederaldownloads
Subject: Notification of Service for Case: A-18-781084-B, Front Sight Management LLC, Plaintiff(s)vs.Las Vegas Development Fund LLC, Defendant(s) for filing Motion to Dismiss - MDSM (CIV), Envelope Number: 6413796

Notification of Service

Case Number: A-18-781084-B
Case Style: Front Sight Management LLC,
Plaintiff(s)vs.Las Vegas Development Fund LLC,
Defendant(s)
Envelope Number: 6413796



This is a notification of service for the filing listed. Please click the link below to retrieve the submitted document.

Filing Details

Case Number	A-18-781084-B
Case Style	Front Sight Management LLC, Plaintiff(s)vs.Las Vegas Development Fund LLC, Defendant(s)
Date/Time Submitted	8/3/2020 4:43 PM PST
Filing Type	Motion to Dismiss - MDSM (CIV)
Filing Description	Counterdefendants Efrain Rene Morales-Moreno, Morales Construction, Inc., Top Rank Builders, Inc., and All American Concrete & Masonry Inc.'s Motion to Dismiss First Amended Counterclaim
Filed By	Traci Bixenmann
Service Contacts	<p>Front Sight Management LLC:</p> <p>Traci Bixenmann (traci@johnaldrichlawfirm.com)</p> <p>John Aldrich (jaldrich@johnaldrichlawfirm.com)</p> <p>Las Vegas Development Fund LLC:</p> <p>Joshua Dickey (jdickey@baileykennedy.com)</p> <p>John Bailey (jbailey@baileykennedy.com)</p> <p>Bailey Kennedy, LLP (bkfederaldownloads@baileykennedy.com)</p>

	Andrea Champion (achampion@baileykennedy.com)
--	--------------------------------------------------------------------------------------------------

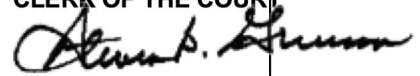
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EXHIBIT 4

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8/19/2020 4:48 PM
Steven D. Grierson
CLERK OF THE COURT



1 **MDSM**
John P. Aldrich, Esq.
2 Nevada Bar No. 6877
Catherine Hernandez, Esq.
3 Nevada Bar No. 8410
Jamie S. Hendrickson, Esq.
4 Nevada Bar No. 12770
ALDRICH LAW FIRM, LTD.
5 7866 West Sahara Avenue
Las Vegas, Nevada 89117
6 Telephone: (702) 853-5490
Facsimile: (702) 227-1975
7 *Attorneys for Plaintiff/Counterdefendants*

8 **EIGHTH JUDICIAL DISTRICT COURT**
9 **CLARK COUNTY, NEVADA**

10 FRONT SIGHT MANAGEMENT LLC, a
Nevada Limited Liability Company,
11
Plaintiff,

CASE NO.: A-18-781084-B
DEPT NO.: 16

12 vs.

13 LAS VEGAS DEVELOPMENT FUND LLC, a
Nevada Limited Liability Company; et al.
14
Defendants.

COUNTERDEFENDANT FRONT
SIGHT MANAGEMENT LLC'S
MOTION TO DISMISS LAS
VEGAS DEVELOPMENT FUND
LLC'S FIRST AMENDED
COUNTERCLAIM

HEARING REQUESTED

15
16 AND ALL RELATED COUNTERCLAIMS.

17
18 COMES NOW Plaintiff/Counterdefendant FRONT SIGHT MANAGEMENT LLC
19 (“Plaintiff” or “Front Sight”), by and through attorneys, John P. Aldrich, Esq., Catherine
20 Hernandez, Esq., and Jamie S. Hendrickson, Esq. of the Aldrich Law Firm, Ltd., and hereby
21 moves the Court for an order dismissing Defendant/Counterclaimant LAS VEGAS
22 DEVELOPMENT FUND LLC’s (“LVDF”) First Amended Counterclaim (“Counterclaim”).
23
24

1 This Motion to Dismiss LVDF’s Counterclaim is made and based on the attached
2 memorandum of points and authorities and supporting documentation, the papers and pleadings
3 on file in this action, and any oral argument this Court may allow.

4 DATED this 19th day of August, 2020.

5 **ALDRICH LAW FIRM, LTD.**

6 /s/ John P. Aldrich
7 John P. Aldrich, Esq.
8 Nevada Bar No. 6877
9 Catherine Hernandez, Esq.
10 Nevada Bar No. 8410
11 Jamie S. Hendrickson, Esq.
12 Nevada Bar No. 12770
13 7866 West Sahara Avenue
14 Las Vegas, Nevada 89117
15 Telephone: (702) 853-5490
16 Facsimile: (702) 227-1975
17 *Attorneys for Plaintiff/Counterdefendants*

18 **MEMORANDUM OF POINTS AND AUTHORITIES**

19 **I.**

20 **INTRODUCTION**

21 Front Sight seeks dismissal of Defendants’ counterclaims for fraud and fraudulent
22 transfers contained in its First Amended Counterclaim (“Counterclaim”). As shown below, these
23 claims fail to allege facts sufficient to show that, even if taken as true for purposes of this
24 motion, Defendants are entitled to relief. To the contrary, Defendants are not entitled to relief
and this Motion should be granted.

Although Nevada is a notice-pleading state, Counterclaimants still have to assert viable
claims and give the defending party adequate notice of the nature of the claims being asserted. A
pleading party cannot simply parrot the elements of a claim and expect to survive a Rule 12(b)(5)
motion to dismiss. Defendants’ Counterclaim consists primarily of claims whose factual

1 allegations are conclusory and are simple recitations of the elements of the claim being asserted.
2 Defendants' counterclaim for fraud is not pled with sufficient particularity to articulate Front
3 Sight's role in the alleged fraud scheme. Additionally, Defendants fail to allege how and when
4 Front Sight made any false representations to any Defendant. Finally, Defendants fail to
5 articulate their damages, as LVDF loaned Front Sight funds to which it has not only a right to
6 repayment but also which are secured by real estate owned by Front Sight.

7 Defendants' counterclaims for fraudulent transfers must be dismissed pursuant to NRPC
8 12(b)(5) because LVDF is secured creditor with sufficient recourse to collect on its debts via
9 foreclosure on its Deed of Trust. Additionally, Defendants fail to offer any facts to demonstrate
10 that Front Sight is or was insolvent at the time of the transfers. Finally, Defendants'
11 Counterclaim fails as a matter of law because Front Sight's transfers were made pursuant to a
12 Loan to Shareholder, which means that Front Sight has the right to repayment on all transfers to
13 the Dynasty Trusts. Accordingly, Front Sight has received reasonably equivalent value for the
14 monetary transfers where it also has a right to repayment. Therefore, Defendants' fraudulent
15 transfer claims fail on two essential elements: 1) Front Sight is not insolvent; and, 2) Front Sight
16 received reasonably equivalent value for its transfers.

17 **II.**

18 **PROCEDURAL HISTORY**

19 On April 3, 2020, Counterclaimants filed their Motion for Leave to Amend the Counter-
20 complaint. The Court granted Counterclaimants' Motion for Leave to Amend on May 13, 2020.
21 On June 4, 2020, Counterclaimants filed its Answer to Front Sight's Complaint and First
22 Amended Counterclaim.

23 ///

24 ///

III.

ALLEGATIONS OF DEFENDANTS’ FIRST AMENDED COUNTERCLAIM

In the First Amended Counterclaim, Defendants assert claims for (1) fraud (against Front Sight, Michael Meacher, Ignatius Piazza, Rene Efrain Morales-Moreno, Top Rank Builders, Inc., All American Concrete & Masonry, Inc., and Morales Construction, Inc.); (2) fraudulent transfers (against Front Sight, the VNV Trust Defendants); (3) intentional interference with contractual relations (against Ignatius Piazza, Jennifer Piazza, and the VNV Trust Defendants); (4) conversion (against Front Sight, Ignatius Piazza, and Jennifer Piazza); (5) civil conspiracy (against all counterdefendants); (6) judicial foreclosure (against Front Sight); and, (7) waste (against Front Sight, Ignatius Piazza and the VNV Trust Defendants).¹

Plaintiff/Counterdefendant Front Sight now brings this motion to dismiss Defendants’ First Amended Counterclaim. The allegations of the Counterclaim are not well-founded, and many of them are conclusory and made upon information and belief in an attempt to keep the claims alive in the face of a motion to dismiss.²

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¹ This Motion to Dismiss will concern only the claims brought against Front Sight. The remaining Counter-Defendants will file separate Motions to Dismiss.

² As a preliminary matter, Plaintiff points out that in its counterclaim, LVDF refers to the Amended Deed of Trust by calling it simply the “Deed of Trust.” A little background should help prevent any confusion: LVDF’s claim for judicial foreclosure seeks to foreclose under the document entitled First Amendment to Construction Deed of Trust, Security Agreement and Fixture Filing recorded on January 12, 2018, in the Nye County Recorder’s office as Document No. 886510 (“Amended Deed of Trust”). (See LVDF’s Counterclaim, p. 18, ls. 17-20) (explaining that LVDF’s Counterclaim means the Amended Deed of Trust when referencing “Deed of Trust,” **not** the document entitled Construction Deed of Trust, Security Agreement, Assignment of Leases and Rents, and Fixture Filing recorded on October 13, 2016, as Document No. 860867 in the Nye County Recorder’s office). Plaintiff reserves the right to argue that the Amended Deed of Trust is not a legitimate deed of trust under Nevada law.

1 IV.

2 **THE COURT SHOULD DISMISS COUNTERCLAIMANT DEFENDANTS'**
3 **COUNTERCLAIMS FOR FRAUD AND FRAUDULENT TRANSFERS**

4 A. LEGAL STANDARD FOR NRCP 12(b)(5) MOTION TO DISMISS

5 1. NRCP 12(B)(5) REQUIRES DISMISSAL WHERE A CLAIM FAILS TO
6 ALLEGE ENOUGH FACTS THAT, IF TRUE, WOULD ESTABLISH A *BONA*
7 *FIDE* CLAIM FOR RELIEF

8 NRCP Rule 12(b)(5) allows a party to move for dismissal of a counterclaim for “failure
9 to state a claim upon which relief can be granted.” If the Court assumes the veracity of the
10 factual allegations pleaded, for the purposes of a 12(b)(5) motion to dismiss, taking them at “face
11 value” and construing them “favorably” for the pleading party, dismissal is required where it
12 appears that the facts alleged “fail to state a cognizable claim for relief.” *Morris v. Bank of Amer.*
13 *Nev.*, 110 Nev. 1274, 1276, 886 P.2d 454, 456 (1994) (internal quotation marks omitted)
14 (quoting *Edgar v. Wagner*, 101 Nev. 226, 227-28, 699 P.2d 110, 111-12 (1985)). Where the
15 party seeking dismissal proves “beyond a doubt” that the counterclaimant “could prove no set of
16 facts which, if accepted by the trier of fact, would entitle him [or her] to relief,” dismissal of the
17 counterclaim is appropriate. *Id.* (alteration supplied in *Morris*) (internal quotation marks omitted)
18 (quoting *Edgar*, at 228, 699 P.2d at 112).

19 Counterclaimant must do more than simply parrot the legal elements of its claims and
20 still hope to survive dismissal pursuant to NRCP 12(b)(5). Nevada law requires Counterclaimant
21 to demonstrate its claims in a way that provides adequate notice of the nature of those claims, not
22 just notice of the simple existence of those claims. *Western States Constr. v. Michoff*, 108 Nev.
23 931, 936, 840 P.2d 1220, 1223 (1992) (citing *Hay v. Hay*, 100 Nev. 196, 198, 678 P.2d 672, 674
24 (1984).

///

2. NEVADA LAW DISFAVORS PLEADING WITH CONCLUSORY ALLEGATIONS AND A CLAIMANT MUST ASSERT ACTUAL FACTS THAT, IF TRUE, SHOW WHY RELIEF IS JUSTIFIED IN ORDER TO SURVIVE DISMISSAL

In *Taylor v. State*, 73 Nev. 151, 152-53, 311 P.2d 733, 734 (1957), the Supreme Court of Nevada found the complaint’s conclusory factual allegation of waiver to be “insufficient,” even after acknowledging that “[i]t is true that the pleading of conclusions, either of fact or of law, is sufficient under NRCP, provided the allegation is sufficiently definite to give fair notice of the nature and basis or grounds of the claim” 73 Nev. 151, 152-53, 311 P.2d 733, 734 (1957) (emphasis added). The allegation at issue in the *Taylor* opinion was plainly conclusory, and the Supreme Court of Nevada upheld, on appeal, the district court’s order dismissing the claim:

The complaint alleged “That the defendants, the State of Nevada and University of Nevada, have waived their immunity from suit for the cause herein set forth.” The trial court held this allegation insufficient, relying upon the general rule that waiver is a conclusion of law and that the facts from which the conclusion flows must be pleaded.

Id. at 152, 311 P.2d at 734. And, in doing so, the *Taylor* opinion upheld the trial court’s finding that the fact of waiver was insufficiently pled. LVDF’s Counterclaim against Plaintiff consists of repeated plainly conclusory allegations and little-to-nothing more.

B. THE AMENDED COUNTERCLAIM FAILS TO STATE A CLAIM FOR FRAUD AND SHOULD THEREFORE BE DISMISSED

As its first cause of action, LVDF alleges fraud against Front Sight, Dr. Piazza, Mr. Meacher, Mr. Morales, and the Morales Entities for alleged misrepresentations by Mr. Meacher to Mr. Fleming regarding a construction line of credit between Front Sight and the Morales Entities.

To prevail on a claim for fraud, also known as intentional misrepresentation, plaintiff must prove the following elements by *clear and convincing evidence*: (a) that the defendant made a false representation; (b) with knowledge or belief that the representation was false or

1 without a sufficient basis for making the representation; (c) that the defendant intended to induce
2 the plaintiff to act or refrain from acting on the representation; (d) the plaintiff justifiably relied
3 on the representation; and (e) the plaintiff was damaged as a result of his reliance. *J.A. Jones*
4 *Const. Co. v. Lehrer McGovern Bovis, Inc.*, 120 Nev. 277, 290–91, 89 P.3d 1009 (2004); *Albert*
5 *H. Wohlers & Co. v. Bartgis*, 114 Nev. 1249, 1260, 969 P.2d 949 (1998) (plaintiff has burden of
6 proving each element of fraud claim by clear and convincing evidence). As required by NRCPC
7 9(b), fraud must be alleged with particularity in order to afford adequate notice to the opposing
8 party. *Ivory Ranch, Inc. v. Quinn River Ranch, Inc.*, 101 Nev. 471, 73, 705 P.2d 673 (1985).
9 This means that the circumstances attendant to the alleged fraud must be detailed and include
10 averments to the time, the place, the identity of the parties involved, and the nature of the fraud
11 or mistake.” *Brown v. Kellar*, 97 Nev. 582, 583-84, 636 P.2d 874 (1981).

12 Here, the Counterclaim’s allegations fall far short of threshold pleading requirements to
13 state a claim for fraud.

14 1. LVDF’s fraud counterclaim is not pled with particularity

15 To plead fraud with particularity, LVDF must include detailed allegations regarding the
16 time, place, and identities of the parties involved in the fraud scheme, including all attendant
17 circumstances pertaining to the fraud. The only particulars pertaining to the alleged fraud that
18 LVDF offers is an email between Meacher and Jon Fleming on October 31, 2017, attached
19 hereto as **Exhibit 1**. In **Exhibit 1**, Meacher tells Fleming about the existence of the Morales
20 LOC. LVDF offers no other specifics regarding when Meacher learned about the Morales LOC,
21 whether or when Meacher participated in the allegedly fraudulent scheme to negotiate the
22 Morales LOC, and whether or when Meacher received orders from Ignatius Piazza to notify
23 Fleming of the Morales LOC. LVDF never actually states that Meacher even knew that any
24 statement made in his email to Fleming was false. LVDF does not state how Meacher would

1 have or could have known that his statements to Fleming were false. Without any facts to
2 demonstrate where Meacher received his information about the Morales LOC or how he could
3 have known or actually knew the alleged fraudulent nature of the loan, LVDF has failed to plead
4 fraud with particularity. Other than Meacher's statement via email to Fleming, the Counterl
5 claim offers no specific information regarding the role of any other member of Front Sight in the
6 alleged fraud scheme. Therefore, LVDF's fraud claim must be dismissed.

7 2. LVDF's fraud counterclaim fails because Meacher's statement was true in every
8 respect

9 An essential element of a fraud claim is that the defendant made a knowingly false
10 statement. *Jordan v. State ex rel. Dep't of Motor Vehicles & Pub. Safety*, 121 Nev. 44, 75, 110
11 P.3d 30, 51 (2005); *J.A. Jones Constr. Co. v. Lehrer McGovern Bovis, Inc.*, 120 Nev. 277, 89
12 P.3d 1009 (2004); *Barmettler v. Reno Air, Inc.*, 14 Nev. 441, 956 P.2d 1382 (1998); *Blanchard v.*
13 *Blanchard*, 108 Nev. 908 (1992); *Bulbman, Inc. v. Nev. Bell*, 108 Nev. 105, 111, 825 P.2d 588,
14 592 (1992); *Albert H. Wohlers & Co. v. Bartgis*, 114 Nev. 1249, 1260, 969 P.2d 949, 957 (1998);
15 *Sanguinetti v. Strecker*, 94 Nev. 200, 206, 577 P.2d 404, 408 (1978); *Lubbe v. Barba*, 91 Nev.
16 596, 541 P.2d 115 (1975).

17 Meacher's October 31, 2017 email to Fleming states in its entirety:

18 Attached please find fully executed documents between Front Sight Management
19 and our three primary contractors. This Construction Line of Credit and
associated Promissory Note extends to Front Sight up to \$36,000,000 in
construction credit pursuant to the terms of the agreements.

20 Naish will be at U.S. Capital Partners later this week to execute the Commitment
21 Letter to provide an additional \$15,000,00 to Front Sight for any business purpose
we elect. As I told you, the lender will want to see an updated appraisal from
22 Mark Lukens or another MAI appraisal firm of their election. This loan is being
funded all at once and is scheduled to close at the end of November.

23 I also sent you by overnight delivery the three revised documents between Front
24 Sight Management and Las Vegas Development Fund. They are:

- First Amendment to the Loan Agreement executed by Naish
- Amended and Restated Promissory Note executed by Naish
- First Amendment to Construction Deed of Trust, Security Agreement and Fixture Filing executed by Naish

Please counter sign these three and return a fully executed copy to me.

These documents and the attached construction line of credit along with the upcoming Letter of Commitment from USCP should jump start the marking in both China and India. Please release the funds for the investor you now hold and give me the vehicle by which we send the fund for Dr. Shah's marketing road show that we promised with his next closing. Also light a fire under David and Kyle. Get them to put some serious effort to close the 26 investors in China who are currently looking for another project. There are now no excuse for not closing more of these EB-5 investors.

See Exhibit 1. Meacher only made true statements to Fleming. Meacher stated that Front Sight entered into a \$36 million line of credit with the Morales Entities. The Morales LOC is a construction line of credit that authorizes Front Sight to engage the Morales Entities. *See Answer and Amended Counterclaims, Exhibit 8, pp. 6-7.* The Morales LOC is evidenced by a promissory note executed by Ignatius Piazza on behalf of Front Sight. *Id.* at p. 7. These statements are objectively true. LVDF attached a copy of the Morales LOC to its counterclaim. There is no doubt about the existence of the line of credit or its balance. Meacher made no further representations regarding the Morales LOC other than that it existed, that it was between Front Sight and the Morales Entities, and that it had a maximum balance of \$36 million. Because all of these statements are objectively and unequivocally true, Meacher cannot have committed fraud as a matter of law.

LVDF did not plead that Meacher knew that his statement was false. LVDF did not plead that Meacher was privy to any negotiations of the Morales LOC. LVDF did not plead that Meacher had even spoken to Morales about the Morales LOC. Meacher's email does not state how, when or to what extend that Front Sight intends to use the Morales LOC. Meacher does not

1 even offer an opinion on whether the Morales LOC meets the definition of senior debt under the
2 Construction Loan Agreement. Meacher's email only includes true statements regarding the
3 Morales LOC.

4 If Meacher's statement was true, then Front Sight could not have committed fraud
5 without further representations to LVDF. Because the Counterclaim fails to detail how or when
6 Front Sight made any further representations to LVDF, LVDF's fraud claim fails as a matter of
7 law.

8 3. Defendants' fraud counterclaim fails because Morales performed on his Line of
9 Credit

10 LVDF's fraud claim against Front Sight, Meacher, and Morales absolutely depends on
11 Front Sight never actually utilizing the Morales LOC. If Front Sight utilized the Morales LOC,
12 then LVDF's fraud claim necessarily fails because LVDF unequivocally asserted that neither
13 Front Sight nor the Morales Entities intended to utilize the Morales LOC. LVDF also called the
14 Morales LOC a "sham" loan. If the Morales LOC was used by Front Sight, even once, it was not
15 a "sham" loan and neither Front Sight, Mr. Morales, Mr. Meacher, nor Dr. Piazza made any false
16 statements to Front Sight.

17 Dr. Piazza sent an email correspondence to Mr. Dziubla on February 28, 2018, wherein
18 he stated:

19 Don't let the senior loan issue get in the way or be an excuse for failing to source
20 more investors. The fact that we are building the facility with cash flow and the
21 few investors you bring every couple months is what you should press to your
22 investors. We are strong, profitable, building the resort and it is a great
23 investment for them. As we complete more construction using the Morales
24 Construction line of credit, *which we pay down each month*, and need less in the
way of a senior loan, the better the senior loan terms are becoming. I have
hesitated signing any senior loan because we have two other lenders now offering
better terms Be patient, keep delivering investors, hopefully at the rate you
did this month and the senior loan will fall into place when it is needed. Right
now, even if we closed a loan, *we do not have a use for the funds* and it would be
foolish to take it and pay interest on money we couldn't use in the construction of

1 the resort for at least another 3 to 4 months. . . .

2 **Exhibit 2.** (emphasis added) Dr. Piazza explicitly told Mr. Dziubla that Front Sight utilized the
3 Morales LOC and paid it down each month. On January 31, 2018, Mr. Meacher sent an email to
4 Mr. Dziubla, “The \$36 million construction line of credit [Morales LOC] remains in place and is
5 being used to mitigate cash flows for construction.” **Exhibit 3.**

6 Dr. Piazza testified that Front Sight paid the Morales LOC down when LVDF failed
7 deliver further EB-5 funds. *See* Evid. Hrg. Transcript, September 20, 2019, at pp. 132-133,
8 attached hereto as **Exhibit 4.** Mr. Morales also testified at his March 16, 2020 deposition that
9 Front Sight had to pay down the Morales LOC with its own operating capital because LVDF
10 failed to provide sufficient EB-5 funds to complete the project. *See* Transcript of the Deposition
11 of 30(b)(6) Witness of All American Concrete, Morales Construction, and Top Rank Builders -
12 Rene Morales, March 16, 2020 at p. 10:10-17, attached hereto as **Exhibit 5.** Both Mr. Meacher
13 and Dr. Piazza put LVDF on notice in early 2018 that Front Sight had utilized the Morales LOC.
14 Dr. Piazza testified that Front Sight utilized and paid down the Morales LOC. Mr. Morales
15 corroborated the testimony of Dr. Piazza.

16 Additionally, Front Sight’s own accounting records show numerous payments to the
17 Morales Entities from January 2017 to December 2017. *See* Evid. Hrg. Exhibit 47, pp. 0407-
18 0431. Because the objective evidence demonstrates that Front Sight actually utilized the Morales
19 LOC, the Morales Entities could not have committed fraud by extending a “sham” line of credit
20 to Front Sight.

21 4. LVDF’s fraud counterclaims fails for lack of damages

22 LVDF claims that it was damaged by Meacher’s alleged fraudulent statement because it
23 loaned Front Sight money that it would have otherwise never loaned. Even if this allegation is
24 true, LVDF is not damaged by the alleged false statements for three reasons: (1) LVDF is

1 entitled to repayment of any funds loaned; (2) LVDF has collected interest on the funds loaned;
2 and, (3) LVDF has a security interest in land that is worth far more than the total amount of the
3 funds LVDF loaned Front Sight. Moreover, LVDF is currently seeking to foreclose on its
4 security interest in that land. Hence, even if Meacher made false statements, LVDF has only
5 profited from those statements to date. Therefore, LVDF cannot show that it was damaged in
6 any way by Meacher's statements, even if those statements were false (they were not).
7 Accordingly, LVDF's fraud claim against Meacher fails as a matter of law for lack of damages.

8 **C. DEFENDANTS' CLAIM FOR FRAUDULENT TRANSFERS SHOULD BE**
9 **DISMISSED**

10 Defendants assert fraudulent transfer claims against Front Sight and the VNV Dynasty
11 Trust Defendants under NRS 112.180 and NRS 112.190. Pursuant to NRS 112.180, a debtor
12 commits a fraudulent transfer in one of two ways. First, a fraudulent transfer occurs where the
13 debtor makes the transfer "with intent to hinder, delay, or defraud a creditor." NRS
14 112.180(1)(a). Secondly, a fraudulent transfer occurs where the transfer was made "without
15 receiving reasonably equivalent value for the transfer or obligation" and where the debtor "the
16 remaining assets of the debtor were unreasonably small in relation to the business or transaction;
17 or, where the debtor incurred or intended to incur debts beyond the debtor's ability to pay when
18 they become due. NRS 112.180(1)(b).

19 Pursuant to NRS 112.190, a fraudulent transfer occurs where a debtor makes a transfer to
20 an insider while the debtor is insolvent and where the debtor fails to obtain reasonably equivalent
21 value for the transfer. NRS 112.190(1).

22 LVDF asserts that Front Sight made fraudulent transfers in 2016, 2017, 2018, and 2019
23 when it was insolvent, in the form of monetary transfers to Dr. Piazza via the VNV Dynasty
24 Trusts. *See Counterclaim*, ¶¶ 77-82. The alleged transfers increased Front Sight's Loan to

1 Shareholder, which LVDF asserts is nothing more than a “disguised distribution ... for the
2 benefit of a shareholder.” *Id.* at ¶ 78.

3 LVDF’s fraudulent transfer claims rests on two premises: (1) Front Sight was insolvent at
4 the time of the transfers; and, (2) Front Sight did not receive reasonably equivalent value for the
5 transfers. Both premises are false.

6 First, Front Sight was not insolvent at the time of the transfers. LVDF’s assertion that
7 Front Sight was insolvent at the time of the transfers is based upon a negative retained earnings
8 balance on its balance sheets in its 2016, 2017, and 2018 federal tax returns. Three facts prove
9 that Front Sight is not insolvent: (1) Front Sight’s balance sheet contained in its federal tax
10 returns do not list its assets at fair market value; (2) the Loan to Shareholder must be repaid by
11 the shareholder; (3) if either the Loan to Shareholder is repaid or Front Sight’s assets
12 (specifically the land upon which the resort and training facility lie) are presented at fair market
13 value, Front Sight’s retained earnings balance would no longer be negative. Additionally, Front
14 Sight is not insolvent because it has consistently posted net income from 2016 to 2019 and is
15 current on its obligations. Therefore, Front Sight is not insolvent. If Front Sight is not insolvent,
16 LVDF does not have a fraudulent transfer claim under either NRS 112.180 or NRS 112.190.

17 Under NRS 112.190, the text of the statute makes insolvency a prerequisite for a transfer
18 to be fraudulent. Under NRS 112.180(1)(b), a transfer is fraudulent where the debtor’s
19 remaining assets are unreasonably small in comparison to the transfer, frustrating the creditor’s
20 ability to collect on the debt.

21 Alternatively, the transfer is fraudulent where the debtor can no longer repay its
22 obligations as they become due after the transfer. Neither scenario applies to Front Sight. First,
23 Front Sight’s remaining assets, including its land, are more than sufficient to cover the \$6.3
24

1 million owed to LVDF. The CLA states that the land upon which the project sits was appraised
2 at \$25 million in 2016. *See* Evid. Hrg. Exhibit 33, at 0193.

3 Also, Front Sight cannot have made fraudulent transfers to under NRS 112.180(1)(b)
4 because it has received reasonably equivalent value for the transfers in the form of reciprocal
5 debt. Assuming what Defendants claim is correct, Front Sight transferred funds to a shareholder,
6 which is one side of the transaction. The other side to the transaction is the Loan to Shareholder,
7 which must be repaid. Therefore, Front Sight has received reasonably equivalent value for the
8 transfers where it is owed the funds.

9 Front Sight cannot have committed fraudulent transfers under NRS 112.180(1)(a)
10 because the transfers must be made with intent to “hinder, delay, or defraud” LVDF. However,
11 pursuant to Section 1.3 of the CLA Front Sight may not prepay any advance on the loan until an
12 investor’s I-829 Petition is fully adjudicated. *See* Evid. Hrg. Exhibit 33, at 0206. Here,
13 Defendants have taken the position that Front Sight cannot repay the loan because no investor’s
14 I-829 Petition has been adjudicated. By definition, Front Sight could not have made the transfers
15 with intent to delay, hinder, or defraud LVDF. In fact, quite to the contrary, Front Sight would
16 gladly repay the loan immediately if Defendants would agree to allow it to do so.

17 Finally, the policies that support the law of fraudulent transfers do not apply to Front
18 Sight’s transfers to the Dynasty Trusts because LVDF is a secured creditor whose security
19 interest is indisputably over-secured. The purpose of the Nevada Fraudulent Transfer Act is to
20 prevent a debtor from defrauding a creditor by transferring assets to third-parties to frustrate the
21 creditor’s right to collect. Here, LVDF is a secured creditor whose loan is secured by a Deed of
22 Trust. The value of the land at the time of execution of the CLA was \$25 million, while LVDF’s
23 loan is only \$6.35 million. LVDF has more than adequate recourse to collect on its debt via
24 foreclosure on its Deed of Trust. Accordingly, even if Front Sight transferred every dime of

1 revenue it earned to the Dynasty Trusts, LVDF's security interest and ability to collect on the
2 loan would not be impaired. Therefore, LVDF's fraudulent transfer claim fails as a matter of law
3 and must be dismissed.

4 V.

5 **CONCLUSION**

6 Based on the foregoing, Plaintiff respectfully requests that the Court grant this motion to
7 dismiss LVDF's counterclaims against Front Sight for fraud and fraudulent transfers.

8 DATED this 19th day of August, 2020.

9 **ALDRICH LAW FIRM, LTD.**

10 /s/ John P. Aldrich
11 John P. Aldrich, Esq.
Nevada Bar No. 6877
12 Catherine Hernandez, Esq.
Nevada Bar No. 8410
13 Jamie S. Hendrickson, Esq.
Nevada Bar No. 12770
14 7866 West Sahara Avenue
Las Vegas, NV 89117
15 Tel (702) 853-5490
Fax (702) 226-1975
16 *Attorneys for Plaintiff/Counterdefendants*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 19th day of August, 2020, I caused the foregoing
**COUNTERDEFENDANT FRONT SIGHT MANAGEMENT LLC'S MOTION TO
DISMISS LAS VEGAS DEVELOPMENT FUND LLC'S FIRST AMENDED
COUNTERCLAIM** to be electronically filed and served with the Clerk of the Court using
Wiznet which will send notification of such filing to the email addresses denoted on the
Electronic Mail Notice List, or by U.S. mail, postage prepaid, if not included on the Electronic
Mail Notice List, to the following parties:

John R. Bailey, Esq.
Joshua M. Dickey, Esq.
Andrea M. Champion, Esq.
BAILEY KENNEDY
8984 Spanish Ridge Avenue
Las Vegas, NV 89148
Attorneys for Defendants/Counterclaimant

/s/ T. Bixenmann
An employee of ALDRICH LAW FIRM, LTD.

EXHIBIT 1

EXHIBIT 1

From: Jon Fleming <jfleming@EB5impactcapital.com>
Sent: Tue, 31 Oct 2017 17:02:10 -0700
To: Mike Meacher <meacher@frontsight.com>
CC: Ignatius Piazza <ignatius@frontsight.com>, Bob Dziubla <rdziubla@eb5impactcapital.com>
Subject: RE: Executed documents from Front Sight

Mike,

Thank you for sending the attached documents. I will confirm with you when I get the overnight package with the loan amendment documents and return the copies of the signed documents.

We will update the agents on the financing progress and do all we can to close new investors. I will also call you to update you on some other progress.

Thanks,

Jon

From: Mike Meacher [mailto:meacher@frontsight.com]
Sent: Tuesday, October 31, 2017 11:51 AM
To: Jon Fleming <jfleming@EB5impactcapital.com>
Cc: Ignatius Piazza <ignatius@frontsight.com>
Subject: Executed documents from Front Sight

Jon,

Attached please find fully executed documents between Front Sight Management and our three primary contractors. This Construction Line of Credit and associated Promissory Note extends to Front Sight up to \$36,000,000 in construction credit pursuant to the terms of the agreements.

Naish will be at U.S. Capital Partners later this week to execute the Commitment Letter to provide an additional \$15,000,000 to Front Sight for any business purpose we elect. As I told you, the lender will want to see an updated appraisal from Mark Lukens or another MAI appraisal firm of their election. This loan is being funded all at once and is scheduled to close at the end of November.

I also sent you by overnight delivery the three revised documents between Front Sight Management and Las Vegas Development Fund. They are:

- First Amendment to the Loan Agreement executed by Naish
- Amended and Restated Promissory Note executed by Naish
- First Amendment to Construction Deed of Trust, Security Agreement and Fixture Filing executed by Naish

Please counter sign these three and return a fully executed copy to me.

These documents and the attached construction line of credit along with the upcoming Letter of Commitment from USCP should jump start the marketing in both China and India. Please release the funds for the investor you now hold and give me the vehicle by which we send the funds for Dr. Shah's marketing road show that we promised with his next closing. Also light a fire under David and Kyle. Get them to put some serious effort to close the 26 investors in China who are currently looking for another project. There are now no excuse for not closing more of these EB-5 investors.

Thanks,

Mike

Meacher@frontsight.com

702-425-6550

EXHIBIT 2

EXHIBIT 2

From: Ignatius Piazza <ignatius@frontsight.com>
Sent: Wed, 28 Feb 2018 20:46:05 -0800
To: Robert Dziubla <rdziubla@eb5impactcapital.com>
CC: Mike Meacher <meacher@frontsight.com>
Subject: RE: Well done Bob!

Thanks Bob,

Don't let the senior loan issue get in the way or be an excuse for failing to source more investors. The fact that we are building the facility with cash flow and the few investors you bring every couple months is what you should press to your investors. We are strong, profitable, building the resort and it is a great investment for them. As we complete more construction using the Morales Construction line of credit, which we pay down each month, and need less in the way of a senior loan, the better the senior loan terms are becoming. I have hesitated signing any senior loan because we have two other lenders now offering better terms. One lender is an American brick and mortar bank with Asian owners. Theirs is a line of credit format which we can close and draw when we need it. We are awaiting their term sheet and it will be a MUCH better deal than the USCP offer or the second lender who wants to beat the USCP offer. The USCP and competing offer are not lines of credit. We would have to close those loans and start paying interest on money we cannot yet put to work. Be patient, keep delivering investors, hopefully at the rate you did this month and the senior loan will fall into place when it is needed. Right now, even if we closed a loan, we do not have a use for the funds and it would be foolish to take it and pay interest on money we couldn't use in the construction of the resort for at least another 3 or 4 months... Let's extend the senior loan agreement another 90 days as that is the realistic time frame that we will be ready to start going vertical and would actually need it. Until then, keep bringing in the investors. With a few EB5 investors each month, our cash flow and the Morales credit line we are building the facility without any delays and preparing for the time we actually need the senior loan to close.

I will wire as directed below tomorrow.

From: Robert Dziubla [mailto:rdziubla@eb5impactcapital.com]
Sent: Wednesday, February 28, 2018 1:52 PM
To: 'Ignatius Piazza'
Cc: 'Mike Meacher'
Subject: RE: Well done Bob!

Dear Naish,

Through yesterday, we have wired to FSM \$1,125,000 representing EB5 investments from three Chinese investors sourced by Endeavor Shanghai (Kyle and David) at \$375k each.

Accordingly, please wire the **\$60,000** for Endeavor Shanghai's \$20k per investor performance bonus. Please wire these funds to:

EXHIBIT 3

EXHIBIT 3

From: Mike Meacher <meacher@frontsight.com>
Sent: Wed, 31 Jan 2018 09:33:35 -0800
To: Robert Dziubla <rdziubla@eb5impactcapital.com>
Subject: Front Sight update

Bob,

This email will update you on the progress at Front Sight which will supplement the video we just produced. The video has a lot more information for your investors to see but here is what you requested.

The timeline for the 36-month construction schedule has been delayed by Morales Construction because they are waiting for the local electrical cooperative, Valley Electric Association, to provide them a timeline for an electrical system upgrade. I will forward that when received.

Mike

The \$36 million construction line of credit remains in place and is being used to mitigate cash flows for construction.

U.S. Capital Partners in San Francisco has provided two offers which are being considered by Front Sight. Both are pending final review by the lenders of the 2017 financial statements by Front Sight. Additionally, Front Sight has been approached by a Houston, Texas based bank, American First National Bank, who has expressed interest in loaning construction money to Front Sight. The rate and terms of this offer may be superior to the U.S. Capital Partners two offers so Front Sight is negotiating all three concurrently to come up with the best long-term construction financing at the lowest cost.

The construction progress status is best seen in the linked video. All 25 phase 3 ranges are completed and operational. Front Sight now has 50 shooting ranges which make it the largest firearms training facility in the United States. In addition to completing all the ranges, the video shows that Front Sight has added a live-fire simulator between each of these new ranges. The students find this more convenient and it saves time by not having to transport students during this portion of the training. One of the 25 new ranges is the 800-yard long rifle range. The video shows this new facility from one end to the other and how enthusiastic students are with this new quality facility.

Final grading permit was issued on the 44-acre grading site that will have a massive 1350 car parking lot, a classroom for up to 2,000 students, an armory a pro shop and retail sales building. The finished construction site of this grading project will be about 14-16 acres. The Front Sight engineers estimate that about 250,000 cubic yards (6,750,000 cubic feet) of dirt will be moved to create the building pad for this portion of the project. The architects will be meeting to design the final layout of these facilities shortly. When the buildings are completely designed, building permits will be applied for and construction will begin thereafter.

For more information, please refer to the linked video below.

https://www.dropbox.com/s/zpebnnyugz836d/Phase%203%20Completion%20%26%20Patriot%20Pavillion%20Construction%20Progress%2001_24_18.mp4?dl=0

EXHIBIT 4

EXHIBIT 4

1 CASE NO. A-18-781084-B

2 DOCKET U

3 DEPT. XVI

4

5

6

DISTRICT COURT

7

CLARK COUNTY, NEVADA

8

* * * * *

9

FRONT SIGHT MANAGEMENT LLC,)

10

Plaintiff,)

11

vs.)

12

LAS VEGAS DEVELOPMENT FUND LLC,)

13

Defendant.)

14

15

REPORTER'S TRANSCRIPT

16

OF
HEARING

17

18

BEFORE THE HONORABLE JUDGE TIMOTHY C. WILLIAMS

19

DISTRICT COURT JUDGE

20

21

DATED FRIDAY, SEPTEMBER 20, 2019

22

23

24

25

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

02:25:49 1 A. Your Honor, there is only one person in this
2 room that truly cares about these immigrant investors'
3 visas and the project, and that's me. I'm -- I'm the
4 one that kept this project going when Robert Dziubla
02:26:05 5 was starving it and not giving us the money that he had
6 to put into the project. I'm the only one that's kept
7 it going in spite of this frivolous and fraudulent
8 foreclosure action that had no merit that caused us to
9 lose an investment banker loan.

02:26:28 10 We are -- we've tried to build this as quickly
11 as we possibly can with the limited funds that we
12 received. This was supposed to be initially a
13 \$150 million project. Then he said he could not
14 provide 150 million. He could provide 75. So we had
02:26:44 15 to scale the project back.

16 Then he comes to us and says, "Well, we can
17 provide 50 on the back end as a fully subordinated
18 second, but you have to go out and find a \$25 million
19 first," and we did. We went through all of the ugliest
02:26:59 20 types of lenders you can possibly imagine, and we had
21 to turn down most of those. But we were able to secure
22 the Morales construction loan agreement.

23 But here's the kicker there: Dziubla kept
24 telling us, "You got to get me that first -- that first
02:27:15 25 lender so that I can then go out and secure the rest of

02:27:19 1 these investors. They're all waiting for that first
2 lender." So we went out and secured the first lender,
3 the Morales construction loan. But Dziubla knew
4 because we told him how it was going to work. Morales
02:27:31 5 would start the building, and it was the EB5 money
6 coming in that would pay down that construction loan.
7 He understood that.

8 So we secured the Morales loan so that he
9 could point out to his agents and his investors that
02:27:45 10 Front Sight has secured a first lender. We get Morales
11 started on it and then Dziubla doesn't come through
12 with any further money. So we were on the hook, and
13 we've paid down that -- those construction costs that
14 Morales provided. We paid it down. Even though
02:28:00 15 Dziubla starved the project, didn't provide anything
16 else, we have -- we are the ones that have paid him
17 down.

18 So it was -- it was the best that we can do
19 under those circumstances. And under the loan
02:28:12 20 contract, that's all we were asked to do is the best we
21 can do, and we found it for him.

22 We've since now found another lender who's
23 willing to loan and now we're at this point where we've
24 created the jobs, and we've got a lender that will
02:28:24 25 basically take Dziubla out and we can move the project

EXHIBIT 5

EXHIBIT 5

Atkinson-Baker, Inc.
www.depo.com

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EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, STATE OF NEVADA

CERTIFIED COPY

FRONT SIGHT MANAGEMENT, LLC, a)
Nevada Limited Liability Company,)
)
Plaintiff,)
)
vs.)
)
LAS VEGAS DEVELOPMENT FUND LLC,)
a Nevada Limited Liability Company,)
et al.,)
)
Defendants.)
)
and related Cross-Claims.)
)

Case No.
A-18-781084-B

DEPOSITION OF
30(b)(6) WITNESS OF ALL AMERICAN CONCRETE,
MORALES CONSTRUCTION, AND TOP RANK BUILDERS - RENE MORALES
PAHRUMP, NEVADA
MONDAY, MARCH 16, 2020

ATKINSON-BAKER, INC.
(800)288-3376
www.depo.com
REPORTED BY: DEBORAH ANN HINES, NEVADA CCR #473, RPR
FILE NO: AE02A9F

Atkinson-Baker, Inc.
www.depo.com

1 Q. And you still have those contracts at your
2 office?

3 A. Yes.

4 Q. Okay. So those will be -- that's some of
5 the documents we've asked for that you pull together
6 would be those contracts.

7 A. Yeah.

8 Q. Do have any contracts now where the work
9 hasn't been completed?

10 A. Well, the villas. You know, I have to --
11 I'm like 85 percent done. I have to complete it.
12 But Mr. Piazza has stated I guess, I don't know who
13 they are, because I'm not familiar, but he says the
14 money was coming from some EB5 money and didn't come
15 so he had to pay me out of -- like in payments. So
16 we're not doing any more because I guess the EB5
17 people didn't come through with that financing.

18 Q. When did you have that conversation with
19 Mr. Piazza?

20 A. That was like six months ago. Because we
21 were going to build the whole thing. I give him a
22 credit line for like \$25 million. My company,
23 they're self-integrated companies, we own Morales
24 Construction Trucking Company and all that stuff, and
25 we own the gravel pit, and we were going to do the

Reception

From: efilinmail@tylerhost.net
Sent: Wednesday, August 19, 2020 4:51 PM
To: BKfederaldownloads
Subject: Notification of Service for Case: A-18-781084-B, Front Sight Management LLC, Plaintiff(s)vs.Las Vegas Development Fund LLC, Defendant(s) for filing Motion to Dismiss - MDSM (CIV), Envelope Number: 6497635

Notification of Service

Case Number: A-18-781084-B
 Case Style: Front Sight Management LLC, Plaintiff(s)vs.Las Vegas Development Fund LLC, Defendant(s)
 Envelope Number: 6497635



This is a notification of service for the filing listed. Please click the link below to retrieve the submitted document.

Filing Details	
Case Number	A-18-781084-B
Case Style	Front Sight Management LLC, Plaintiff(s)vs.Las Vegas Development Fund LLC, Defendant(s)
Date/Time Submitted	8/19/2020 4:48 PM PST
Filing Type	Motion to Dismiss - MDSM (CIV)
Filing Description	Counterdefendant Front Sight Management LLC's Motion to Dismiss Defendants' First Amended Counterclaim
Filed By	Traci Bixenmann
Service Contacts	Front Sight Management LLC: John Aldrich (jaldrich@johnaldrichlawfirm.com) Traci Bixenmann (traci@johnaldrichlawfirm.com) Las Vegas Development Fund LLC: Joshua Dickey (jdickey@baileykennedy.com) John Bailey (jbailey@baileykennedy.com) Bailey Kennedy, LLP (bkfederaldownloads@baileykennedy.com)

	Andrea Champion (achampion@baileykennedy.com)
--	--------------------------------------------------------------------------------------------------

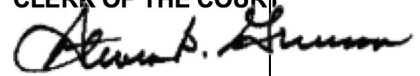
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EXHIBIT 5

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1 **MDSM**
John P. Aldrich, Esq.
2 Nevada Bar No. 6877
Catherine Hernandez, Esq.
3 Nevada Bar No. 8410
Jamie S. Hendrickson, Esq.
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ALDRICH LAW FIRM, LTD.
5 7866 West Sahara Avenue
Las Vegas, NV 89117
6 Telephone: (702) 853-5490
Facsimile: (702) 227-1975
7 *Attorneys for Plaintiff/Counterdefendants*

8 **EIGHTH JUDICIAL DISTRICT COURT**
9 **CLARK COUNTY, NEVADA**

10 FRONT SIGHT MANAGEMENT LLC, a
Nevada Limited Liability Company,

11 Plaintiff,

12 vs.

13 LAS VEGAS DEVELOPMENT FUND LLC, a
Nevada Limited Liability Company; et al.,

14 Defendants.
15 _____

CASE NO.: A-18-781084-B
DEPT NO.: 16

COUNTERDEFENDANT IGNATIUS
PIAZZA’S MOTION TO DISMISS
DEFENDANTS’ FIRST AMENDED
COUNTERCLAIM

HEARING REQUESTED

16 AND ALL RELATED COUNTERCLAIMS
17 _____

18 COMES NOW Counterdefendant IGNATIUS PIAZZA, as an individual and in his
19 capacity as Trustee and/or beneficiary of VNV DYNASTY TRUST I and VNV DYNASTY
20 TRUST II (“Dr. Piazza”), by and through his attorneys, John P. Aldrich, Esq., Catherine
21 Hernandez, Esq., and Jamie S. Hendrickson, Esq., of the Aldrich Law Firm, Ltd., and hereby
22 moves the Court for an order dismissing Defendants’ First Amended Counterclaim
23 (“Counterclaim”) as to the claims therein against Dr. Piazza.

24 This Motion to Dismiss Defendants’ counterclaims against Dr. Piazza is made and based

1 on the attached memorandum of points and authorities and supporting documentation, the papers
2 and pleadings on file in this action, and any oral argument this Court may allow.

3 DATED this 19th day of August, 2020.

4 **ALDRICH LAW FIRM, LTD.**

5 /s/ John P. Aldrich
6 John P. Aldrich, Esq.
7 Nevada Bar No. 6877
8 Catherine Hernandez, Esq.
9 Nevada Bar No. 8410
10 Jamie S. Hendrickson, Esq.
11 Nevada Bar No. 12770
12 7866 West Sahara Avenue
13 Las Vegas, Nevada 89117
14 Telephone: (702) 853-5490
15 Facsimile: (702) 227-1975
16 *Attorneys for Plaintiff/Counterdefendants*

17 **MEMORANDUM OF POINTS AND AUTHORITIES**

18 **I.**

19 **INTRODUCTION**

20 Dr. Piazza seeks dismissal of Defendants' counterclaims for fraud and fraudulent
21 transfers contained in its First Amended Counterclaim ("Counterclaim"). As shown below, these
22 claims fail to allege facts sufficient to show that, even if taken as true for purposes of this
23 motion, Defendants are entitled to relief. To the contrary, Defendants are not entitled to relief
24 and this Motion should be granted.

Although Nevada is a notice-pleading state, Counterclaimants still must assert viable
claims and give the defending party adequate notice of the nature of the claims being asserted. A
pleading party cannot simply parrot the elements of a claim and expect to survive a Rule 12(b)(5)
motion to dismiss. Defendants' Counterclaim consists primarily of claims whose factual
allegations are conclusory and are simple recitations of the elements of the claim being asserted.

1 Defendants' counterclaim for fraud is not pled with sufficient particularity to articulate Dr.
2 Piazza's role in the alleged fraud scheme. Additionally, Defendants fails to allege how and when
3 Dr. Piazza made any false representations to any Defendant. Finally, Defendants fail to
4 articulate their damages, as LVDF loaned Front Sight funds to which it has not only a right to
5 repayment but also which are secured by real estate owned by Front Sight.

6 Defendants' counterclaims for fraudulent transfers must be dismissed pursuant to NRPC
7 12(b)(5) because LVDF is secured creditor with sufficient recourse to collect on its debts via
8 foreclosure on its Deed of Trust. Additionally, Defendants' assertion that Front Sight is or was
9 insolvent at the time of the transfers is objectively and indisputably false. Finally, Defendants'
10 counterclaim fails as a matter of law because Front Sight's transfers were made pursuant to a
11 Loan to Shareholder, which means that Front Sight has the right to repayment on all transfers to
12 the Dynasty Trusts. Accordingly, Front Sight has received reasonably equivalent value for the
13 monetary transfers where it also has a right to repayment. Therefore, Defendants' fraudulent
14 transfer claims fail on two essential elements: 1) Front Sight is not insolvent; and, 2) Front Sight
15 received reasonably equivalent value for its transfers.

16 **II.**

17 **PROCEDURAL HISTORY**

18 On April 3, 2020, Counterclaimants filed their Motion for Leave to Amend the Counter-
19 complaint. The Court granted Counterclaimants' Motion for Leave to Amend on May 13, 2020.
20 On June 4, 2020, Counterclaimants filed their Answer to Front Sight's Complaint and First
21 Amended Counterclaims.

22 **III.**

23 **ALLEGATIONS OF DEFENDANTS' FIRST AMENDED COUNTERCLAIM**

24 In the First Amended Counterclaim, Defendants assert claims for (1) fraud (against Front

1 Sight, Michael Meacher, Ignatius Piazza, Rene Efrain Morales-Moreno, Top Rank Builders, Inc.,
2 All American Concrete & Masonry, Inc., and Morales Construction, Inc.); (2) fraudulent
3 transfers (against Front Sight, the VNV Trust Defendants); (3) intentional interference with
4 contractual relations (against Ignatius Piazza, Jennifer Piazza, and the VNV Trust Defendants);
5 (4) conversion (against Front Sight, Ignatius Piazza, and Jennifer Piazza); (5) civil conspiracy
6 (against all counterdefendants); (6) judicial foreclosure (against Front Sight); and, (7) waste
7 (against Front Sight, Ignatius Piazza and the VNV Trust Defendants).¹ Dr. Piazza now brings
8 this motion to dismiss Defendants’ First Amended Counterclaim, specifically Defendants’ claims
9 for fraud and fraudulent transfers. The allegations of the Counterclaim are not well-founded, and
10 many of them are conclusory and made upon information and belief in an attempt to keep the
11 claims alive in the face of a motion to dismiss.²

12 **IV.**

13 **THE COURT SHOULD DISMISS COUNTERCLAIMANTS’ COUNTERCLAIMS FOR**
14 **FRAUD AND FRAUDLENT TRANSFERS**

15 As mentioned above, on June 4, 2020, Defendants filed their Answer and First Amended
16 Counterclaim. Dr. Piazza now moves to dismiss the newly-asserted claims against him (Fraud
17 and Fraudulent Transfers).

18 ///

19 ///

20 ¹ This Motion to Dismiss will concern only the claims brought against Dr. Piazza. The remaining Counter-
Defendants will file separate Motions to Dismiss.

21 ² As a preliminary matter, Plaintiff points out that in its counterclaim, LVDF refers to the Amended Deed of Trust
22 by calling it simply the “Deed of Trust.” A little background should help prevent any confusion: LVDF’s claim for
judicial foreclosure seeks to foreclose under the document entitled First Amendment to Construction Deed of Trust,
23 Security Agreement and Fixture Filing recorded on January 12, 2018, in the Nye County Recorder’s office as
Document No. 886510 (“Amended Deed of Trust”). (See LVDF’s Counterclaim, p. 18, ls. 17-20) (explaining that
24 LVDF’s Counterclaim means the Amended Deed of Trust when referencing “Deed of Trust,” **not** the document
entitled Construction Deed of Trust, Security Agreement, Assignment of Leases and Rents, and Fixture Filing
recorded on October 13, 2016, as Document No. 860867 in the Nye County Recorder’s office). Plaintiff reserves
the right to argue that the Amended Deed of Trust is not a legitimate deed of trust under Nevada law.

1 **A. LEGAL STANDARD FOR NRCP 12(b)(5) MOTION TO DISMISS**

2 1. NRCP 12(B)(5) REQUIRES DISMISSAL WHERE A CLAIM FAILS TO
3 ALLEGE ENOUGH FACTS THAT, IF TRUE, WOULD ESTABLISH A BONA
4 FIDE CLAIM FOR RELIEF

5 NRCP Rule 12(b)(5) allows a party to move for dismissal of a counterclaim for “failure
6 to state a claim upon which relief can be granted.” If the Court assumes the veracity of the
7 factual allegations pleaded, for the purposes of a 12(b)(5) motion to dismiss, taking them at “face
8 value” and construing them “favorably” for the pleading party, dismissal is required where it
9 appears that the facts alleged “fail to state a cognizable claim for relief.” *Morris v. Bank of*
10 *Amer. Nev.*, 110 Nev. 1274, 1276, 886 P.2d 454, 456 (1994) (internal quotation marks omitted)
11 (quoting *Edgar v. Wagner*, 101 Nev. 226, 227-28, 699 P.2d 110, 111-12 (1985)). Where the
12 party seeking dismissal proves “beyond a doubt” that the counterclaimant “could prove no set of
13 facts which, if accepted by the trier of fact, would entitle him [or her] to relief,” dismissal of the
14 counterclaim is appropriate. *See id.* (alteration supplied in *Morris*) (internal quotation marks
15 omitted) (quoting *Edgar*, at 228, 699 P.2d at 112).

16 Counterclaimants must do more than simply parrot the legal elements of its claims and
17 still hope to survive dismissal pursuant to NRCP 12(b)(5). Nevada law requires
18 Counterclaimants to demonstrate their claims in a way that provides adequate notice of the
19 nature of those claims, not just notice of the simple existence of those claims. *Western States*
20 *Constr. v. Michoff*, 108 Nev. 931, 936, 840 P.2d 1220, 1223 (1992) (citing *Hay v. Hay*, 100 Nev.
21 196, 198, 678 P.2d 672, 674 (1984).

22 2. NEVADA LAW DISFAVORS PLEADING WITH CONCLUSORY
23 ALLEGATIONS AND A CLAIMANT MUST ASSERT ACTUAL FACTS
24 THAT, IF TRUE, SHOW WHY RELIEF IS JUSTIFIED IN ORDER TO
SURVIVE DISMISSAL

In *Taylor v. State*, the Supreme Court of Nevada found the complaint’s conclusory

1 factual allegation of waiver to be “insufficient,” even after acknowledging that “[i]t is true that
2 the pleading of conclusions, either of fact or of law, is sufficient under NRCP, provided the
3 allegation is sufficiently definite to give fair notice of the nature and basis or grounds of the
4 claim” 73 Nev. 151, 152-53, 311 P.2d 733, 734 (1957) (emphasis added). The allegation at
5 issue in the *Taylor* opinion was plainly conclusory, and the Supreme Court of Nevada upheld, on
6 appeal, the district court’s order dismissing the claim:

7 The complaint alleged “That the defendants, the State of Nevada and University
8 of Nevada, have waived their immunity from suit for the cause herein set forth.”
9 The trial court held this allegation insufficient, relying upon the general rule that
waiver is a conclusion of law and that the facts from which the conclusion flows
must be pleaded.

10 *Id.* at 152, 311 P.2d at 734. And, in doing so, the *Taylor* opinion upheld the trial court’s finding
11 that the fact of waiver was insufficiently pled.

12 **B. DEFENDANTS’ CLAIM FOR FRAUD SHOULD BE DISMISSED FOR FAILURE**
13 **TO STATE A CLAIM**

14 As its “First Cause of Action,” Defendants’ allege fraud against Front Sight, Morales,
15 Ignatius Piazza, Meacher, and the Morales Entities. To prevail on a claim for fraud, also known
16 as intentional misrepresentation, plaintiff must prove the following elements by *clear and*
17 *convincing evidence*: (a) that the defendant made a false representation; (b) with knowledge or
18 belief that the representation was false or without a sufficient basis for making the
19 representation; (c) that the defendant intended to induce the plaintiff to act or refrain from acting
20 on the representation; (d) the plaintiff justifiably relied on the representation; and (e) the plaintiff
21 was damaged as a result of his reliance. *J.A. Jones Const. Co. v. Lehrer McGovern Bovis, Inc.*,
22 120 Nev. 277, 290–91, 89 P.3d 1009 (2004); *Albert H. Wohlers & Co. v. Bartgis*, 114 Nev. 1249,
23 1260, 969 P.2d 949 (1998) (plaintiff has burden of proving each element of fraud claim by clear
24 and convincing evidence). As required by NRCP 9(b), fraud must be alleged with particularity

1 in order to afford adequate notice to the opposing party. *Ivory Ranch, Inc. v. Quinn River Ranch,*
2 *Inc.*, 101 Nev. 471, 73, 705 P.2d 673 (1985). This means that the circumstances attendant to the
3 alleged fraud must be detailed and include averments to the time, the place, the identity of the
4 parties involved, and the nature of the fraud or mistake.” *Brown v. Kellar*, 97 Nev. 582, 583-84,
5 636 P.2d 874 (1981).

6 Here, the Amended Counterclaim’s allegations fall far short of threshold pleading
7 requirements to state a claim for fraud.

8 1. Defendants’ fraud counterclaim is not pled with particularity

9 To plead fraud with particularity, Defendants must include detailed allegations regarding
10 the time, place, and identities of the parties involved in the fraud scheme, including all attendant
11 circumstances pertaining to the fraud.

12 Here, Defendants’ fraud claim does not state with particularity how, when, or where Dr.
13 Piazza made false statements to LVDF or any other Defendant. There are no allegations in the
14 Counterclaim whatsoever regarding Dr. Piazza in his personal capacity. There is no mention of
15 any contact whatsoever between Dr. Piazza, Mr. Morales or the Morales Entities. The alleged
16 fraud scheme is merely presumed. Dr. Piazza’s role is not specified or detailed in any way.

17 Defendants do not allege how Dr. Piazza knew or could have known of any scheme
18 between Front Sight and Morales or the Morales Entities because the only communications
19 alleged in the Counterclaim are between Mr. Meacher and Mr. Fleming. The Counterclaim does
20 not state whether, how, or when Dr. Piazza negotiated this allegedly fraudulent scheme with Mr.
21 Morales. The Counterclaim does not state that Dr. Piazza knew about or ratified fraud
22 committed by other directors or officers of Front Sight. The allegations in the Counterclaim as
23 currently pled equally support a scenario where Front Sight obtained funding for construction
24 from the Morales Entities. If the facts alleged, absent the Defendants’ conclusory declarations of

1 an alleged fraud scheme, merely support a legitimate business transaction, then Defendants have
2 failed to plead fraud with sufficient particularity.

3 Moreover, the facts as currently pled, at best, could only support a fraud claim by Front
4 Sight against Mr. Morales and the Morales Entities because Defendants have only merely alleged
5 that both Front Sight and Mr. Morales knew at the time that each executed the Morales LOC that
6 Mr. Morales could not fund the entire \$36 million balance of the line of credit. Even if true,
7 Defendants do not even allege one fact to demonstrate how Front Sight, much less Dr. Piazza in
8 his individual capacity, could have known that at the time the Morales LOC was executed.

9 Therefore, Defendants' fraud counterclaim fails for lack of factual assertions that could
10 demonstrate fraud with particularity.

11 2. LVDF's fraud counterclaim fails because Meacher's statement was true in every
12 respect

13 An essential element of a fraud claim is that the defendant made a knowingly false
14 statement. *Jordan v. State ex rel. Dep't of Motor Vehicles & Pub. Safety*, 121 Nev. 44, 75, 110
15 P.3d 30, 51 (2005); *J.A. Jones Constr. Co. v. Lehrer McGovern Bovis, Inc.*, 120 Nev. 277, 89
16 P.3d 1009 (2004); *Barmettler v. Reno Air, Inc.*, 14 Nev. 441, 956 P.2d 1382 (1998); *Blanchard v.*
17 *Blanchard*, 108 Nev. 908 (1992); *Bulbman, Inc. v. Nev. Bell*, 108 Nev. 105, 111, 825 P.2d 588,
18 592 (1992); *Albert H. Wohlers & Co. v. Bartgis*, 114 Nev. 1249, 1260, 969 P.2d 949, 957 (1998);
19 *Sanguinetti v. Strecker*, 94 Nev. 200, 206, 577 P.2d 404, 408 (1978); *Lubbe v. Barba*, 91 Nev.
20 596, 541 P.2d 115 (1975).

21 Meacher's October 31, 2017 email to Fleming states in its entirety:

22 Attached please find fully executed documents between Front Sight Management
23 and our three primary contractors. This Construction Line of Credit and
associated Promissory Note extends to Front Sight up to \$36,000,000 in
construction credit pursuant to the terms of the agreements.

24 Naish will be at U.S. Capital Partners later this week to execute the Commitment

1 Letter to provide an additional \$15,000,00 to Front Sight for any business purpose
2 we elect. As I told you, the lender will want to see an updated appraisal from
3 Mark Lukens or another MAI appraisal firm of their election. This loan is being
4 funded all at once and is scheduled to close at the end of November.

5 I also sent you by overnight delivery the three revised documents between Front
6 Sight Management and Las Vegas Development Fund. They are:

- 7 • First Amendment to the Loan Agreement executed by Naish
- 8 • Amended and Restated Promissory Note executed by Naish
- 9 • First Amendment to Construction Deed of Trust, Security Agreement and
10 Fixture Filing executed by Naish

11 Please counter sign these three and return a fully executed copy to me.

12 These documents and the attached construction line of credit along with the
13 upcoming Letter of Commitment from USCP should jump start the marking in
14 both China and India. Please release the funds for the investor you now hold and
15 give me the vehicle by which we send the fund for Dr. Shah's marketing road
16 show that we promised with his next closing. Also light a fire under David and
17 Kyle. Get them to put some serious effort to close the 26 investors in China who
18 are currently looking for another project. There are now no excuse for not closing
19 more of these EB-5 investors.

20 **See Exhibit 1.**

21 Meacher only made true statements to Fleming. Meacher stated that Front Sight entered
22 into a \$36 million line of credit with the Morales Entities. The Morales LOC is a construction
23 line of credit that authorizes Front Sight to engage the Morales Entities. *See Answer and*
24 *Amended Counterclaims, Exhibit 8, pp. 6-7.* The Morales LOC is evidenced by a promissory
note executed by Ignatius Piazza on behalf of Front Sight. *Id.* at p. 7. These statements are
objectively true. LVDF attached a copy of the Morales LOC to its counterclaim. There is no
doubt about the existence of the line of credit or its balance. Meacher made no further
representations regarding the Morales LOC other than that it existed, that it was between Front
Sight and the Morales Entities, and that it had a maximum balance of \$36 million. Because all of
these statements are objectively and unequivocally true, Meacher cannot have committed fraud
as a matter of law.

1 Although Defendants now claim Dr. Piazza is somehow individually responsible for
2 Meacher's e-mail, Defendants did not plead that Meacher knew that his statement was false.
3 Defendants did not plead that Meacher was privy to any negotiations of the Morales LOC.
4 Defendants did not plead that Meacher had even spoken to Morales about the Morales LOC.
5 Meacher's email does not state how, when or to what extent that Front Sight intends to use the
6 Morales LOC. Meacher does not even offer an opinion on whether the Morales LOC meets the
7 definition of senior debt under the Construction Loan Agreement. Meacher's email only
8 includes true statements regarding the Morales LOC.

9 Defendants did not plead any facts to demonstrate that Dr. Piazza ratified Meacher's
10 statements, even if they were false, sufficient to sustain a fraud claim against Dr. Piazza in his
11 independent capacity. Defendants did not plead any facts to suggest that Dr. Piazza benefitted in
12 his personal capacity by any statements made by Mr. Meacher. If Meacher made his statements
13 in his capacity as an officer of Front Sight, then Defendants would only have a fraud claim, if at
14 all, against Front Sight. The very purpose of corporate formalities is to shield the owners of a
15 corporation from liability by actions taken by corporate officers.

16 To support a fraud claim against Dr. Piazza in his personal capacity, Defendants had to
17 allege particular facts that demonstrate how Dr. Piazza acted solely for his individual benefit, as
18 opposed to Front Sight's benefit, or that Dr. Piazza is the alter ego of Front Sight. Defendants
19 have pled neither. Accordingly, Defendants' fraud claim against Dr. Piazza fails as a matter of
20 law and must be dismissed.

21 3. Defendants' fraud counterclaim fails because Morales performed on his Line of
22 Credit

23 LVDF's fraud claim against Front Sight, Meacher, and Morales absolutely depends on
24 Front Sight never actually utilizing the Morales LOC. If Front Sight utilized the Morales LOC,

1 then LVDF's fraud claim necessarily fails because LVDF unequivocally asserted that neither
2 Front Sight nor the Morales Entities intended to utilize the Morales LOC. LVDF also called the
3 Morales LOC a "sham" loan. If the Morales LOC was used by Front Sight, even once, it was not
4 a "sham" loan and neither Front Sight, Mr. Morales, Mr. Meacher, nor Dr. Piazza made any false
5 statements to Front Sight.

6 Dr. Piazza sent an email correspondence to Mr. Dziubla on February 28, 2018, wherein
7 he stated:

8 Don't let the senior loan issue get in the way or be an excuse for failing to source
9 more investors. The fact that we are building the facility with cash flow and the
10 few investors you bring every couple months is what you should press to your
11 investors. We are strong, profitable, building the resort and it is a great
12 investment for them. As we complete more construction using the Morales
13 Construction line of credit, *which we pay down each month*, and need less in the
14 way of a senior loan, the better the senior loan terms are becoming. I have
hesitated signing any senior loan because we have two other lenders now offering
better terms Be patient, keep delivering investors, hopefully at the rate you
did this month and the senior loan will fall into place when it is needed. Right
now, even if we closed a loan, *we do not have a use for the funds* and it would be
foolish to take it and pay interest on money we couldn't use in the construction of
the resort for at least another 3 to 4 months. . . .

15 **Exhibit 2.** (emphasis added) Dr. Piazza explicitly told Mr. Dziubla that Front Sight utilized the
16 Morales LOC and paid it down each month. On January 31, 2018, Mr. Meacher sent an email to
17 Mr. Dziubla, "The \$36 million construction line of credit [Morales LOC] remains in place and is
18 being used to mitigate cash flows for construction." **Exhibit 3.**

19 Dr. Piazza testified that Front Sight paid the Morales LOC down when LVDF failed
20 deliver further EB-5 funds. See Evid. Hrg. Transcript, September 20, 2019, at pp. 132-133,
21 attached hereto as **Exhibit 4.** Mr. Morales also testified at his March 16, 2020 deposition that
22 Front Sight had to pay down the Morales LOC with its own operating capital because LVDF
23 failed to provide sufficient EB-5 funds to complete the project. See Transcript of the Deposition
24 of 30(b)(6) Witness of All American Concrete, Morales Construction, and Top Rank Builders -

1 Rene Morales, March 16, 2020 at p. 10:10-17, attached hereto as **Exhibit 5**. Both Mr. Meacher
2 and Dr. Piazza put LVDF on notice in early 2018 that Front Sight had utilized the Morales LOC.
3 Dr. Piazza testified that Front Sight utilized and paid down the Morales LOC. Mr. Morales
4 corroborated the testimony of Dr. Piazza.

5 Additionally, Front Sight's own accounting records show numerous payments to the
6 Morales Entities from January 2017 to December 2017. *See Evid. Hrg. Exhibit 47, pp. 0407-*
7 *0431*. Because the objective evidence demonstrates that Front Sight actually utilized the Morales
8 LOC, the Morales Entities could not have committed fraud by extending a "sham" line of credit
9 to Front Sight.

10 4. LVDF's fraud counterclaims fails for lack of damages

11 Defendants claim that they were damaged by Meacher's alleged fraudulent statement
12 because LVDF loaned Front Sight money that it would have otherwise never loaned. Even if
13 this allegation were true (it is not), Defendants have not been damaged by the alleged false
14 statements for three reasons: (1) LVDF is entitled to repayment of any funds loaned; (2) LVDF
15 has collected interest on the funds loaned; and, (3) LVDF has a security interest in land that is
16 worth far more than the total amount of the funds LVDF loaned Front Sight. Moreover, LVDF
17 is currently seeking to foreclose on its security interest in that land. Hence, even if Meacher
18 made false statements (he did not), LVDF has only profited from those statements to date.
19 Accordingly, Defendants' fraud claim as to Dr. Piazza in his individual capacity necessarily fails.

20 **C. DEFENDANTS' CLAIM FOR FRAUDULENT TRANSFERS SHOULD BE**
21 **DISMISSED FOR FAILURE TO STATE A CLAIM**

22 Defendants assert fraudulent transfer claims against Front Sight and the VNV Dynasty
23 Trust Defendants under NRS 112.180 and NRS 112.190. Pursuant to NRS 112.180, a debtor
24 commits a fraudulent transfer in one of two ways. First, a fraudulent transfer occurs where the

1 debtor makes the transfer “with intent to hinder, delay, or defraud a creditor.” NRS
2 112.180(1)(a). Secondly, a fraudulent transfer occurs where the transfer was made “without
3 receiving reasonably equivalent value for the transfer or obligation” and where the debtor “the
4 remaining assets of the debtor were unreasonably small in relation to the business or transaction;
5 or, where the debtor incurred or intended to incur debts beyond the debtor’s ability to pay when
6 they become due. NRS 112.180(1)(b).

7 Pursuant to NRS 112.190, a fraudulent transfer occurs where a debtor makes a transfer to
8 an insider while the debtor is insolvent and where the debtor fails to obtain reasonably equivalent
9 value for the transfer. NRS 112.190(1).

10 Defendants assert that Front Sight made fraudulent transfers in 2016, 2017, 2018, and
11 2019 when it was insolvent, in the form of monetary transfers to Dr. Piazza via the VNV
12 Dynasty Trusts. *See* Counterclaim, ¶¶ 77-82. The alleged transfers increased Front Sight’s Loan
13 to Shareholder, which Defendants assert is nothing more than a “disguised distribution ... for the
14 benefit of a shareholder.” *Id.* at ¶ 78.

15 Defendants’ fraudulent transfer claims rests on two premises: (1) Front Sight was
16 insolvent at the time of the transfers; and, (2) Front Sight did not receive reasonably equivalent
17 value for the transfers. Both premises are false.

18 First, Front Sight was not insolvent at the time of the transfers. Defendants’ assertion
19 that Front Sight was insolvent at the time of the transfers is based upon a negative retained
20 earnings balance on its balance sheets in its 2016, 2017, and 2018 federal tax returns. Three
21 facts prove that Front Sight is not insolvent: (1) Front Sight’s balance sheet contained in its
22 federal tax returns do not list its assets at fair market value; (2) the Loan to Shareholder must be
23 repaid by the shareholder; (3) if either the Loan to Shareholder is repaid or Front Sight’s assets
24 (specifically the land upon which the resort and training facility lie) are presented at fair market

1 value, Front Sight's retained earnings balance would no longer be negative. Additionally, Front
2 Sight is not insolvent because it has consistently posted net income from 2016 to 2019 and is
3 current on its obligations. Therefore, Front Sight is not insolvent. If Front Sight is not insolvent,
4 Defendants do not have a fraudulent transfer claim under either NRS 112.180 or NRS 112.190.

5 Under NRS 112.190, the text of the statute makes insolvency a prerequisite for a transfer
6 to be fraudulent. Under NRS 112.180(1)(b), a transfer is fraudulent where the debtor's
7 remaining assets are unreasonably small in comparison to the transfer, frustrating the creditor's
8 ability to collect on the debt.

9 Alternatively, the transfer is fraudulent where the debtor can no longer repay its
10 obligations as they become due after the transfer. Neither scenario applies to Front Sight. First,
11 Front Sight's remaining assets, including its land, are more than sufficient to cover the \$6.3
12 million owed to LVDF. The CLA states that the land upon which the project sits was appraised
13 at \$25 million in 2016. *See Evid. Hrg. Exhibit 33, at 0193.*

14 Also, Front Sight cannot have made fraudulent transfers to under NRS 112.180(1)(b)
15 because it has received reasonably equivalent value for the transfers in the form of reciprocal
16 debt. Assuming what Defendants claim is correct, Front Sight transferred funds to a shareholder,
17 which is one side of the transaction. The other side to the transaction is the Loan to Shareholder,
18 which must be repaid. Therefore, Front Sight has received reasonably equivalent value for the
19 transfers where it is owed the funds.

20 Front Sight cannot have committed fraudulent transfers under NRS 112.180(1)(a)
21 because the transfers must be made with intent to "hinder, delay, or defraud" LVDF. However,
22 pursuant to Section 1.3 of the CLA Front Sight may not prepay any advance on the loan until an
23 investor's I-829 Petition is fully adjudicated. *See Evid. Hrg. Exhibit 33, at 0206.* Here,
24 Defendants have taken the position that Front Sight cannot repay the loan because no investor's

1 I-829 Petition has been adjudicated. By definition, Front Sight could not have made the transfers
2 with intent to delay, hinder, or defraud LVDF. In fact, quite to the contrary, Front Sight would
3 gladly repay the loan immediately if Defendants would agree to allow it to do so.

4 Additionally, the policies that support the law of fraudulent transfers do not apply to
5 Front Sight's transfers to the Dynasty Trusts because LVDF is a secured creditor whose security
6 interest is indisputably over-secured. The purpose of the Nevada Fraudulent Transfer Act is to
7 prevent a debtor from defrauding a creditor by transferring assets to third-parties to frustrate the
8 creditor's right to collect. Here, LVDF is a secured creditor whose loan is secured by a Deed of
9 Trust. The value of the land at the time of execution of the CLA was \$25 million, while LVDF's
10 loan is only \$6.35 million. LVDF has more than adequate recourse to collect on its debt via
11 foreclosure on its Deed of Trust. Accordingly, even if Front Sight transferred every dime of
12 revenue it earned to the Dynasty Trusts, LVDF's security interest and ability to collect on the
13 loan would not be impaired.

14 The only basis for a fraudulent transfer claim against Dr. Piazza is that the alleged
15 transfers to the Dynasty Trusts benefitted Dr. Piazza and were made in exchange for a Loan to
16 Shareholder. However, this very fact defeats Defendants' fraudulent transfer claim because
17 where Dr. Piazza must pay the loan back to Front Sight, then Front Sight has received reasonably
18 equivalent value for the transfers in the form of the liability due. If Front Sight were to declare
19 bankruptcy, its Loan to Shareholder would be priority debt that would be paid before any other
20 unsecured creditors. The fact that Dr. Piazza owes the funds to Front Sight is fatal to
21 Defendants' fraudulent transfer claim.

22 Therefore, Defendants' fraudulent transfer claim fails as a matter of law and must be
23 dismissed.

24 ///

V.

CONCLUSION

Based on the foregoing, Plaintiff respectfully requests that the Court grant this motion to dismiss Defendants' counterclaims for fraud and fraudulent transfers against Dr. Piazza. Additionally, Dr. Piazza requests that this Court deny any request for leave to amend, as these specific counterclaims.

DATED this 19th day of August, 2020.

ALDRICH LAW FIRM, LTD.

/s/ John P. Aldrich
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Attorneys for Plaintiff/Counterdefendants

1 **CERTIFICATE OF SERVICE**

2 I HEREBY CERTIFY that on the 19th day of August, 2020, I caused the foregoing
3 **COUNTERDEFENDANT IGNATIUS PIAZZA’S MOTION TO DEFENDANTS’ FIRST**
4 **AMENDED COUNTERCLAIM** to be electronically filed and served with the Clerk of the
5 Court using Wiznet which will send notification of such filing to the email addresses denoted on
6 the Electronic Mail Notice List, or by U.S. mail, postage prepaid, if not included on the
7 Electronic Mail Notice List, to the following parties:

8 John R. Bailey, Esq.
9 Joshua M. Dickey, Esq.
10 Andrea M. Champion, Esq.
11 BAILEY KENNEDY
12 8984 Spanish Ridge Avenue
13 Las Vegas, NV 89148
14 *Attorneys for Defendants/Counterclaimant*

15
16
17
18
19
20
21
22
23
24

/s/ T. Bixenmann
An employee of ALDRICH LAW FIRM, LTD.

1 **MDSM**
John P. Aldrich, Esq.
2 Nevada Bar No. 6877
Catherine Hernandez, Esq.
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4 Nevada Bar No. 12770

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7 *Attorneys for Plaintiff/Counterdefendants*

8 **EIGHTH JUDICIAL DISTRICT COURT**
9 **CLARK COUNTY, NEVADA**

10 FRONT SIGHT MANAGEMENT LLC, a
Nevada Limited Liability Company,

11 Plaintiff,

12 vs.

13 LAS VEGAS DEVELOPMENT FUND LLC, a
Nevada Limited Liability Company; EB5
14 IMPACT CAPITAL REGIONAL CENTER
LLC, a Nevada Limited Liability Company;
15 EB5 IMPACT ADVISORS LLC, a Nevada
Limited Liability Company; ROBERT W.
16 DZIUBLA, individually and as President and
CEO of LAS VEGAS DEVELOPMENT
17 FUND LLC and EB5 IMPACT ADVISORS
LLC; JON FLEMING, individually and as an
18 agent of LAS VEGAS DEVELOPMENT
FUND LLC and EB5 IMPACT ADVISORS
19 LLC; LINDA STANWOOD, individually and
as Senior Vice President of LAS VEGAS
20 DEVELOPMENT FUND LLC and EB5
IMPACT ADVISORS LLC; DOES 1-
21 10, inclusive; and ROE CORPORATIONS 1-
10, inclusive,

22 Defendants.

23 _____
24 **AND ALL RELATED COUNTERCLAIMS**

CASE NO.: A-18-781084-B
DEPT NO.: 16

COUNTERDEFENDANT IGNATIUS
PIAZZA’S MOTION TO DISMISS
DEFENDANTS’ FIRST AMENDED
COUNTERCLAIM

HEARING REQUESTED

1 COMES NOW Counterdefendant IGNATIUS PIAZZA, as an individual and in his
2 capacity as Trustee and/or beneficiary of VNV DYNASTY TRUST I and VNV DYNASTY
3 TRUST II (“Dr. Piazza”), by and through his attorneys, John P. Aldrich, Esq., Catherine
4 Hernandez, Esq., and Jamie S. Hendrickson, Esq., of the Aldrich Law Firm, Ltd., and hereby
5 moves the Court for an order dismissing Defendants’ First Amended Counterclaim
6 (“Counterclaim”) as to the claims therein against Dr. Piazza.

7 This Motion to Dismiss Defendants’ counterclaims against Dr. Piazza is made and based
8 on the attached memorandum of points and authorities and supporting documentation, the papers
9 and pleadings on file in this action, and any oral argument this Court may allow.

10 DATED this 19th day of August, 2020.

11 **ALDRICH LAW FIRM, LTD.**

12 /s/ John P. Aldrich
13 John P. Aldrich, Esq.
Nevada Bar No. 6877
14 Catherine Hernandez, Esq.
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18
19 **MEMORANDUM OF POINTS AND AUTHORITIES**

20 **I.**

21 **INTRODUCTION**

22 Dr. Piazza seeks dismissal of Defendants’ counterclaims for fraud and fraudulent
23 transfers contained in its First Amended Counterclaim (“Counterclaim”). As shown below, these
24 claims fail to allege facts sufficient to show that, even if taken as true for purposes of this

1 motion, Defendants are entitled to relief. To the contrary, Defendants are not entitled to relief
2 and this Motion should be granted.

3 Although Nevada is a notice-pleading state, Counterclaimants still must assert viable
4 claims and give the defending party adequate notice of the nature of the claims being asserted. A
5 pleading party cannot simply parrot the elements of a claim and expect to survive a Rule 12(b)(5)
6 motion to dismiss. Defendants' Counterclaim consists primarily of claims whose factual
7 allegations are conclusory and are simple recitations of the elements of the claim being asserted.
8 Defendants' counterclaim for fraud is not pled with sufficient particularity to articulate Dr.
9 Piazza's role in the alleged fraud scheme. Additionally, Defendants fails to allege how and when
10 Dr. Piazza made any false representations to any Defendant. Finally, Defendants fail to
11 articulate their damages, as LVDF loaned Front Sight funds to which it has not only a right to
12 repayment but also which are secured by real estate owned by Front Sight.

13 Defendants' counterclaims for fraudulent transfers must be dismissed pursuant to NRPC
14 12(b)(5) because LVDF is secured creditor with sufficient recourse to collect on its debts via
15 foreclosure on its Deed of Trust. Additionally, Defendants' assertion that Front Sight is or was
16 insolvent at the time of the transfers is objectively and indisputably false. Finally, Defendants'
17 counterclaim fails as a matter of law because Front Sight's transfers were made pursuant to a
18 Loan to Shareholder, which means that Front Sight has the right to repayment on all transfers to
19 the Dynasty Trusts. Accordingly, Front Sight has received reasonably equivalent value for the
20 monetary transfers where it also has a right to repayment. Therefore, Defendants' fraudulent
21 transfer claims fail on two essential elements: 1) Front Sight is not insolvent; and, 2) Front Sight
22 received reasonably equivalent value for its transfers.

23 ///

24 ///

1 II.

2 **PROCEDURAL HISTORY**

3 On April 3, 2020, Counterclaimants filed their Motion for Leave to Amend the Counter-
4 complaint. The Court granted Counterclaimants' Motion for Leave to Amend on May 13, 2020.
5 On June 4, 2020, Counterclaimants filed their Answer to Front Sight's Complaint and First
6 Amended Counterclaims.

7 III.

8 **ALLEGATIONS OF DEFENDANTS' FIRST AMENDED COUNTERCLAIM**

9 In the First Amended Counterclaim, Defendants assert claims for (1) fraud (against Front
10 Sight, Michael Meacher, Ignatius Piazza, Rene Efrain Morales-Moreno, Top Rank Builders, Inc.,
11 All American Concrete & Masonry, Inc., and Morales Construction, Inc.); (2) fraudulent
12 transfers (against Front Sight, the VNV Trust Defendants); (3) intentional interference with
13 contractual relations (against Ignatius Piazza, Jennifer Piazza, and the VNV Trust Defendants);
14 (4) conversion (against Front Sight, Ignatius Piazza, and Jennifer Piazza); (5) civil conspiracy
15 (against all counterdefendants); (6) judicial foreclosure (against Front Sight); and, (7) waste
16 (against Front Sight, Ignatius Piazza and the VNV Trust Defendants).¹ Dr. Piazza now brings
17 this motion to dismiss Defendants' First Amended Counterclaim, specifically Defendants' claims
18 for fraud and fraudulent transfers. The allegations of the Counterclaim are not well-founded, and
19 many of them are conclusory and made upon information and belief in an attempt to keep the
20 claims alive in the face of a motion to dismiss.²

21 _____
22 ¹ This Motion to Dismiss will concern only the claims brought against Dr. Piazza. The remaining Counter-
Defendants will file separate Motions to Dismiss.

23 ² As a preliminary matter, Plaintiff points out that in its counterclaim, LVDF refers to the Amended Deed of Trust
24 by calling it simply the "Deed of Trust." A little background should help prevent any confusion: LVDF's claim for
judicial foreclosure seeks to foreclose under the document entitled First Amendment to Construction Deed of Trust,
Security Agreement and Fixture Filing recorded on January 12, 2018, in the Nye County Recorder's office as

1 IV.

2 **THE COURT SHOULD DISMISS COUNTERCLAIMANTS' COUNTERCLAIMS FOR**
3 **FRAUD AND FRAUDULENT TRANSFERS**

4 As mentioned above, on June 4, 2020, Defendants filed their Answer and First Amended
5 Counterclaim. Dr. Piazza now moves to dismiss the newly-asserted claims against him (Fraud
6 and Fraudulent Transfers).

7 **A. LEGAL STANDARD FOR NRCP 12(b)(5) MOTION TO DISMISS**

- 8 1. NRCP 12(B)(5) REQUIRES DISMISSAL WHERE A CLAIM FAILS TO
9 ALLEGE ENOUGH FACTS THAT, IF TRUE, WOULD ESTABLISH A *BONA*
10 *FIDE* CLAIM FOR RELIEF

11 NRCP Rule 12(b)(5) allows a party to move for dismissal of a counterclaim for “failure
12 to state a claim upon which relief can be granted.” If the Court assumes the veracity of the
13 factual allegations pleaded, for the purposes of a 12(b)(5) motion to dismiss, taking them at “face
14 value” and construing them “favorably” for the pleading party, dismissal is required where it
15 appears that the facts alleged “fail to state a cognizable claim for relief.” *Morris v. Bank of*
16 *Amer. Nev.*, 110 Nev. 1274, 1276, 886 P.2d 454, 456 (1994) (internal quotation marks omitted)
17 (quoting *Edgar v. Wagner*, 101 Nev. 226, 227-28, 699 P.2d 110, 111-12 (1985)). Where the
18 party seeking dismissal proves “beyond a doubt” that the counterclaimant “could prove no set of
19 facts which, if accepted by the trier of fact, would entitle him [or her] to relief,” dismissal of the
20 counterclaim is appropriate. *See id.* (alteration supplied in *Morris*) (internal quotation marks
21 omitted) (quoting *Edgar*, at 228, 699 P.2d at 112).

22 Counterclaimants must do more than simply parrot the legal elements of its claims and
23 still hope to survive dismissal pursuant to NRCP 12(b)(5). Nevada law requires

24 Document No. 886510 (“Amended Deed of Trust”). (See LVDF’s Counterclaim, p. 18, ls. 17-20) (explaining that
LVDF’s Counterclaim means the Amended Deed of Trust when referencing “Deed of Trust,” **not** the document
entitled Construction Deed of Trust, Security Agreement, Assignment of Leases and Rents, and Fixture Filing
recorded on October 13, 2016, as Document No. 860867 in the Nye County Recorder’s office). Plaintiff reserves
the right to argue that the Amended Deed of Trust is not a legitimate deed of trust under Nevada law.

1 Counterclaimants to demonstrate their claims in a way that provides adequate notice of the
2 nature of those claims, not just notice of the simple existence of those claims. *Western States*
3 *Constr. v. Michoff*, 108 Nev. 931, 936, 840 P.2d 1220, 1223 (1992) (citing *Hay v. Hay*, 100 Nev.
4 196, 198, 678 P.2d 672, 674 (1984).

5 2. NEVADA LAW DISFAVORS PLEADING WITH CONCLUSORY
6 ALLEGATIONS AND A CLAIMANT MUST ASSERT ACTUAL FACTS
7 THAT, IF TRUE, SHOW WHY RELIEF IS JUSTIFIED IN ORDER TO
8 SURVIVE DISMISSAL

9 In *Taylor v. State*, the Supreme Court of Nevada found the complaint’s conclusory
10 factual allegation of waiver to be “insufficient,” even after acknowledging that “[i]t is true that
11 the pleading of conclusions, either of fact or of law, is sufficient under NRCP, provided the
12 allegation is sufficiently definite to give fair notice of the nature and basis or grounds of the
13 claim” 73 Nev. 151, 152-53, 311 P.2d 733, 734 (1957) (emphasis added). The allegation at
14 issue in the *Taylor* opinion was plainly conclusory, and the Supreme Court of Nevada upheld, on
15 appeal, the district court’s order dismissing the claim:

16 The complaint alleged “That the defendants, the State of Nevada and University
17 of Nevada, have waived their immunity from suit for the cause herein set forth.”
18 The trial court held this allegation insufficient, relying upon the general rule that
19 waiver is a conclusion of law and that the facts from which the conclusion flows
20 must be pleaded.

21 *Id.* at 152, 311 P.2d at 734. And, in doing so, the *Taylor* opinion upheld the trial court’s finding
22 that the fact of waiver was insufficiently pled.

23 **B. DEFENDANTS’ CLAIM FOR FRAUD SHOULD BE DISMISSED FOR FAILURE**
24 **TO STATE A CLAIM**

As its “First Cause of Action,” Defendants’ allege fraud against Front Sight, Morales,
Ignatius Piazza, Meacher, and the Morales Entities. To prevail on a claim for fraud, also known
as intentional misrepresentation, plaintiff must prove the following elements by *clear and*
convincing evidence: (a) that the defendant made a false representation; (b) with knowledge or

1 belief that the representation was false or without a sufficient basis for making the
2 representation; (c) that the defendant intended to induce the plaintiff to act or refrain from acting
3 on the representation; (d) the plaintiff justifiably relied on the representation; and (e) the plaintiff
4 was damaged as a result of his reliance. *J.A. Jones Const. Co. v. Lehrer McGovern Bovis, Inc.*,
5 120 Nev. 277, 290–91, 89 P.3d 1009 (2004); *Albert H. Wohlers & Co. v. Bartgis*, 114 Nev. 1249,
6 1260, 969 P.2d 949 (1998) (plaintiff has burden of proving each element of fraud claim by clear
7 and convincing evidence). As required by NRC 9(b), fraud must be alleged with particularity
8 in order to afford adequate notice to the opposing party. *Ivory Ranch, Inc. v. Quinn River Ranch,*
9 *Inc.*, 101 Nev. 471, 73, 705 P.2d 673 (1985). This means that the circumstances attendant to the
10 alleged fraud must be detailed and include averments to the time, the place, the identity of the
11 parties involved, and the nature of the fraud or mistake.” *Brown v. Kellar*, 97 Nev. 582, 583-84,
12 636 P.2d 874 (1981).

13 Here, the Amended Counterclaim’s allegations fall far short of threshold pleading
14 requirements to state a claim for fraud.

15 1. Defendants’ fraud counterclaim is not pled with particularity

16 To plead fraud with particularity, Defendants must include detailed allegations regarding
17 the time, place, and identities of the parties involved in the fraud scheme, including all attendant
18 circumstances pertaining to the fraud.

19 Here, Defendants’ fraud claim does not state with particularity how, when, or where Dr.
20 Piazza made false statements to LVDF or any other Defendant. There are no allegations in the
21 Counterclaim whatsoever regarding Dr. Piazza in his personal capacity. There is no mention of
22 any contact whatsoever between Dr. Piazza, Mr. Morales or the Morales Entities. The alleged
23 fraud scheme is merely presumed. Dr. Piazza’s role is not specified or detailed in any way.

24 Defendants do not allege how Dr. Piazza knew or could have known of any scheme

1 between Front Sight and Morales or the Morales Entities because the only communications
2 alleged in the Counterclaim are between Mr. Meacher and Mr. Fleming. The Counterclaim does
3 not state whether, how, or when Dr. Piazza negotiated this allegedly fraudulent scheme with Mr.
4 Morales. The Counterclaim does not state that Dr. Piazza knew about or ratified fraud
5 committed by other directors or officers of Front Sight. The allegations in the Counterclaim as
6 currently pled equally support a scenario where Front Sight obtained funding for construction
7 from the Morales Entities. If the facts alleged, absent the Defendants' conclusory declarations of
8 an alleged fraud scheme, merely support a legitimate business transaction, then Defendants have
9 failed to plead fraud with sufficient particularity.

10 Moreover, the facts as currently pled, at best, could only support a fraud claim by Front
11 Sight against Mr. Morales and the Morales Entities because Defendants have only merely alleged
12 that both Front Sight and Mr. Morales knew at the time that each executed the Morales LOC that
13 Mr. Morales could not fund the entire \$36 million balance of the line of credit. Even if true,
14 Defendants do not even allege one fact to demonstrate how Front Sight, much less Dr. Piazza in
15 his individual capacity, could have known that at the time the Morales LOC was executed.

16 Therefore, Defendants' fraud counterclaim fails for lack of factual assertions that could
17 demonstrate fraud with particularity.

18 2. LVDF's fraud counterclaim fails because Meacher's statement was true in every
19 respect

20 An essential element of a fraud claim is that the defendant made a knowingly false
21 statement. *Jordan v. State ex rel. Dep't of Motor Vehicles & Pub. Safety*, 121 Nev. 44, 75, 110
22 P.3d 30, 51 (2005); *J.A. Jones Constr. Co. v. Lehrer McGovern Bovis, Inc.*, 120 Nev. 277, 89
23 P.3d 1009 (2004); *Barmettler v. Reno Air, Inc.*, 14 Nev. 441, 956 P.2d 1382 (1998); *Blanchard v.*
24 *Blanchard*, 108 Nev. 908 (1992); *Bulbman, Inc. v. Nev. Bell*, 108 Nev. 105, 111, 825 P.2d 588,

1 592 (1992); *Albert H. Wohlers & Co. v. Bartgis*, 114 Nev. 1249, 1260, 969 P.2d 949, 957 (1998);
2 *Sanguinetti v. Strecker*, 94 Nev. 200, 206, 577 P.2d 404, 408 (1978); *Lubbe v. Barba*, 91 Nev.
3 596, 541 P.2d 115 (1975).

4 Meacher's October 31, 2017 email to Fleming states in its entirety:

5 Attached please find fully executed documents between Front Sight Management
6 and our three primary contractors. This Construction Line of Credit and
7 associated Promissory Note extends to Front Sight up to \$36,000,000 in
8 construction credit pursuant to the terms of the agreements.

9 Naish will be at U.S. Capital Partners later this week to execute the Commitment
10 Letter to provide an additional \$15,000,00 to Front Sight for any business purpose
11 we elect. As I told you, the lender will want to see an updated appraisal from
12 Mark Lukens or another MAI appraisal firm of their election. This loan is being
13 funded all at once and is scheduled to close at the end of November.

14 I also sent you by overnight delivery the three revised documents between Front
15 Sight Management and Las Vegas Development Fund. They are:

- 16 • First Amendment to the Loan Agreement executed by Naish
- 17 • Amended and Restated Promissory Note executed by Naish
- 18 • First Amendment to Construction Deed of Trust, Security Agreement and
19 Fixture Filing executed by Naish

20 Please counter sign these three and return a fully executed copy to me.

21 These documents and the attached construction line of credit along with the
22 upcoming Letter of Commitment from USCP should jump start the marking in
23 both China and India. Please release the funds for the investor you now hold and
24 give me the vehicle by which we send the fund for Dr. Shah's marketing road
show that we promised with his next closing. Also light a fire under David and
Kyle. Get them to put some serious effort to close the 26 investors in China who
are currently looking for another project. There are now no excuse for not closing
more of these EB-5 investors.

25 **See Exhibit 1.**

26 Meacher only made true statements to Fleming. Meacher stated that Front Sight entered
27 into a \$36 million line of credit with the Morales Entities. The Morales LOC is a construction
28 line of credit that authorizes Front Sight to engage the Morales Entities. *See Answer and*
29 *Amended Counterclaims, Exhibit 8, pp. 6-7.* The Morales LOC is evidenced by a promissory

1 note executed by Ignatius Piazza on behalf of Front Sight. *Id.* at p. 7. These statements are
2 objectively true. LVDF attached a copy of the Morales LOC to its counterclaim. There is no
3 doubt about the existence of the line of credit or its balance. Meacher made no further
4 representations regarding the Morales LOC other than that it existed, that it was between Front
5 Sight and the Morales Entities, and that it had a maximum balance of \$36 million. Because all of
6 these statements are objectively and unequivocally true, Meacher cannot have committed fraud
7 as a matter of law.

8 Although Defendants now claim Dr. Piazza is somehow individually responsible for
9 Meacher's e-mail, Defendants did not plead that Meacher knew that his statement was false.
10 Defendants did not plead that Meacher was privy to any negotiations of the Morales LOC.
11 Defendants did not plead that Meacher had even spoken to Morales about the Morales LOC.
12 Meacher's email does not state how, when or to what extent that Front Sight intends to use the
13 Morales LOC. Meacher does not even offer an opinion on whether the Morales LOC meets the
14 definition of senior debt under the Construction Loan Agreement. Meacher's email only
15 includes true statements regarding the Morales LOC.

16 Defendants did not plead any facts to demonstrate that Dr. Piazza ratified Meacher's
17 statements, even if they were false, sufficient to sustain a fraud claim against Dr. Piazza in his
18 independent capacity. Defendants did not plead any facts to suggest that Dr. Piazza benefitted in
19 his personal capacity by any statements made by Mr. Meacher. If Meacher made his statements
20 in his capacity as an officer of Front Sight, then Defendants would only have a fraud claim, if at
21 all, against Front Sight. The very purpose of corporate formalities is to shield the owners of a
22 corporation from liability by actions taken by corporate officers.

23 To support a fraud claim against Dr. Piazza in his personal capacity, Defendants had to
24 allege particular facts that demonstrate how Dr. Piazza acted solely for his individual benefit, as

1 opposed to Front Sight's benefit, or that Dr. Piazza is the alter ego of Front Sight. Defendants
2 have pled neither. Accordingly, Defendants' fraud claim against Dr. Piazza fails as a matter of
3 law and must be dismissed.

4 3. Defendants' fraud counterclaim fails because Morales performed on his Line of
5 Credit

6 LVDF's fraud claim against Front Sight, Meacher, and Morales absolutely depends on
7 Front Sight never actually utilizing the Morales LOC. If Front Sight utilized the Morales LOC,
8 then LVDF's fraud claim necessarily fails because LVDF unequivocally asserted that neither
9 Front Sight nor the Morales Entities intended to utilize the Morales LOC. LVDF also called the
10 Morales LOC a "sham" loan. If the Morales LOC was used by Front Sight, even once, it was not
11 a "sham" loan and neither Front Sight, Mr. Morales, Mr. Meacher, nor Dr. Piazza made any false
12 statements to Front Sight.

13 Dr. Piazza sent an email correspondence to Mr. Dziubla on February 28, 2018, wherein
14 he stated:

15 Don't let the senior loan issue get in the way or be an excuse for failing to source
16 more investors. The fact that we are building the facility with cash flow and the
17 few investors you bring every couple months is what you should press to your
18 investors. We are strong, profitable, building the resort and it is a great
19 investment for them. As we complete more construction using the Morales
20 Construction line of credit, *which we pay down each month*, and need less in the
21 way of a senior loan, the better the senior loan terms are becoming. I have
22 hesitated signing any senior loan because we have two other lenders now offering
23 better terms Be patient, keep delivering investors, hopefully at the rate you
24 did this month and the senior loan will fall into place when it is needed. Right
now, even if we closed a loan, *we do not have a use for the funds* and it would be
foolish to take it and pay interest on money we couldn't use in the construction of
the resort for at least another 3 to 4 months. . . .

21 **Exhibit 2.** (emphasis added) Dr. Piazza explicitly told Mr. Dziubla that Front Sight utilized the
22 Morales LOC and paid it down each month. On January 31, 2018, Mr. Meacher sent an email to
23 Mr. Dziubla, "The \$36 million construction line of credit [Morales LOC] remains in place and is
24

1 being used to mitigate cash flows for construction.” **Exhibit 3.**

2 Dr. Piazza testified that Front Sight paid the Morales LOC down when LVDF failed
3 deliver further EB-5 funds. *See Evid. Hrg. Transcript, September 20, 2019, at pp. 132-133,*
4 attached hereto as **Exhibit 4.** Mr. Morales also testified at his March 16, 2020 deposition that
5 Front Sight had to pay down the Morales LOC with its own operating capital because LVDF
6 failed to provide sufficient EB-5 funds to complete the project. *See Transcript of the Deposition*
7 *of 30(b)(6) Witness of All American Concrete, Morales Construction, and Top Rank Builders -*
8 *Rene Morales, March 16, 2020 at p. 10:10-17, attached hereto as **Exhibit 5.** Both Mr. Meacher*
9 *and Dr. Piazza put LVDF on notice in early 2018 that Front Sight had utilized the Morales LOC.*
10 *Dr. Piazza testified that Front Sight utilized and paid down the Morales LOC. Mr. Morales*
11 *corroborated the testimony of Dr. Piazza.*

12 Additionally, Front Sight’s own accounting records show numerous payments to the
13 Morales Entities from January 2017 to December 2017. *See Evid. Hrg. Exhibit 47, pp. 0407-*
14 *0431. Because the objective evidence demonstrates that Front Sight actually utilized the Morales*
15 *LOC, the Morales Entities could not have committed fraud by extending a “sham” line of credit*
16 *to Front Sight.*

17 4. LVDF’s fraud counterclaims fails for lack of damages

18 Defendants claim that they were damaged by Meacher’s alleged fraudulent statement
19 because LVDF loaned Front Sight money that it would have otherwise never loaned. Even if
20 this allegation were true (it is not), Defendants have not been damaged by the alleged false
21 statements for three reasons: (1) LVDF is entitled to repayment of any funds loaned; (2) LVDF
22 has collected interest on the funds loaned; and, (3) LVDF has a security interest in land that is
23 worth far more than the total amount of the funds LVDF loaned Front Sight. Moreover, LVDF
24 is currently seeking to foreclose on its security interest in that land. Hence, even if Meacher

1 made false statements (he did not), LVDF has only profited from those statements to date.
2 Accordingly, Defendants' fraud claim as to Dr. Piazza in his individual capacity necessarily fails.

3 **C. DEFENDANTS' CLAIM FOR FRAUDULENT TRANSFERS SHOULD BE**
4 **DISMISSED FOR FAILURE TO STATE A CLAIM**

5 Defendants assert fraudulent transfer claims against Front Sight and the VNV Dynasty
6 Trust Defendants under NRS 112.180 and NRS 112.190. Pursuant to NRS 112.180, a debtor
7 commits a fraudulent transfer in one of two ways. First, a fraudulent transfer occurs where the
8 debtor makes the transfer "with intent to hinder, delay, or defraud a creditor." NRS
9 112.180(1)(a). Secondly, a fraudulent transfer occurs where the transfer was made "without
10 receiving reasonably equivalent value for the transfer or obligation" and where the debtor "the
11 remaining assets of the debtor were unreasonably small in relation to the business or transaction;
12 or, where the debtor incurred or intended to incur debts beyond the debtor's ability to pay when
13 they become due. NRS 112.180(1)(b).

14 Pursuant to NRS 112.190, a fraudulent transfer occurs where a debtor makes a transfer to
15 an insider while the debtor is insolvent and where the debtor fails to obtain reasonably equivalent
16 value for the transfer. NRS 112.190(1).

17 Defendants assert that Front Sight made fraudulent transfers in 2016, 2017, 2018, and
18 2019 when it was insolvent, in the form of monetary transfers to Dr. Piazza via the VNV
19 Dynasty Trusts. *See* Counterclaim, ¶¶ 77-82. The alleged transfers increased Front Sight's Loan
20 to Shareholder, which Defendants assert is nothing more than a "disguised distribution ... for the
21 benefit of a shareholder." *Id.* at ¶ 78.

22 Defendants' fraudulent transfer claims rests on two premises: (1) Front Sight was
23 insolvent at the time of the transfers; and, (2) Front Sight did not receive reasonably equivalent
24 value for the transfers. Both premises are false.

1 First, Front Sight was not insolvent at the time of the transfers. Defendants' assertion
2 that Front Sight was insolvent at the time of the transfers is based upon a negative retained
3 earnings balance on its balance sheets in its 2016, 2017, and 2018 federal tax returns. Three
4 facts prove that Front Sight is not insolvent: (1) Front Sight's balance sheet contained in its
5 federal tax returns do not list its assets at fair market value; (2) the Loan to Shareholder must be
6 repaid by the shareholder; (3) if either the Loan to Shareholder is repaid or Front Sight's assets
7 (specifically the land upon which the resort and training facility lie) are presented at fair market
8 value, Front Sight's retained earnings balance would no longer be negative. Additionally, Front
9 Sight is not insolvent because it has consistently posted net income from 2016 to 2019 and is
10 current on its obligations. Therefore, Front Sight is not insolvent. If Front Sight is not insolvent,
11 Defendants do not have a fraudulent transfer claim under either NRS 112.180 or NRS 112.190.

12 Under NRS 112.190, the text of the statute makes insolvency a prerequisite for a transfer
13 to be fraudulent. Under NRS 112.180(1)(b), a transfer is fraudulent where the debtor's
14 remaining assets are unreasonably small in comparison to the transfer, frustrating the creditor's
15 ability to collect on the debt.

16 Alternatively, the transfer is fraudulent where the debtor can no longer repay its
17 obligations as they become due after the transfer. Neither scenario applies to Front Sight. First,
18 Front Sight's remaining assets, including its land, are more than sufficient to cover the \$6.3
19 million owed to LVDF. The CLA states that the land upon which the project sits was appraised
20 at \$25 million in 2016. *See Evid. Hrg. Exhibit 33, at 0193.*

21 Also, Front Sight cannot have made fraudulent transfers to under NRS 112.180(1)(b)
22 because it has received reasonably equivalent value for the transfers in the form of reciprocal
23 debt. Assuming what Defendants claim is correct, Front Sight transferred funds to a shareholder,
24 which is one side of the transaction. The other side to the transaction is the Loan to Shareholder,

1 which must be repaid. Therefore, Front Sight has received reasonably equivalent value for the
2 transfers where it is owed the funds.

3 Front Sight cannot have committed fraudulent transfers under NRS 112.180(1)(a)
4 because the transfers must be made with intent to “hinder, delay, or defraud” LVDF. However,
5 pursuant to Section 1.3 of the CLA Front Sight may not prepay any advance on the loan until an
6 investor’s I-829 Petition is fully adjudicated. *See Evid. Hrg. Exhibit 33*, at 0206. Here,
7 Defendants have taken the position that Front Sight cannot repay the loan because no investor’s
8 I-829 Petition has been adjudicated. By definition, Front Sight could not have made the transfers
9 with intent to delay, hinder, or defraud LVDF. In fact, quite to the contrary, Front Sight would
10 gladly repay the loan immediately if Defendants would agree to allow it to do so.

11 Additionally, the policies that support the law of fraudulent transfers do not apply to
12 Front Sight’s transfers to the Dynasty Trusts because LVDF is a secured creditor whose security
13 interest is indisputably over-secured. The purpose of the Nevada Fraudulent Transfer Act is to
14 prevent a debtor from defrauding a creditor by transferring assets to third-parties to frustrate the
15 creditor’s right to collect. Here, LVDF is a secured creditor whose loan is secured by a Deed of
16 Trust. The value of the land at the time of execution of the CLA was \$25 million, while LVDF’s
17 loan is only \$6.35 million. LVDF has more than adequate recourse to collect on its debt via
18 foreclosure on its Deed of Trust. Accordingly, even if Front Sight transferred every dime of
19 revenue it earned to the Dynasty Trusts, LVDF’s security interest and ability to collect on the
20 loan would not be impaired.

21 The only basis for a fraudulent transfer claim against Dr. Piazza is that the alleged
22 transfers to the Dynasty Trusts benefitted Dr. Piazza and were made in exchange for a Loan to
23 Shareholder. However, this very fact defeats Defendants’ fraudulent transfer claim because
24 where Dr. Piazza must pay the loan back to Front Sight, then Front Sight has received reasonably

1 equivalent value for the transfers in the form of the liability due. If Front Sight were to declare
2 bankruptcy, its Loan to Shareholder would be priority debt that would be paid before any other
3 unsecured creditors. The fact that Dr. Piazza owes the funds to Front Sight is fatal to
4 Defendants' fraudulent transfer claim.

5 Therefore, Defendants' fraudulent transfer claim fails as a matter of law and must be
6 dismissed.

7 V.

8 **CONCLUSION**

9 Based on the foregoing, Plaintiff respectfully requests that the Court grant this motion to
10 dismiss Defendants' counterclaims for fraud and fraudulent transfers against Dr. Piazza.
11 Additionally, Dr. Piazza requests that this Court deny any request for leave to amend, as these
12 specific counterclaims.

13 DATED this 19th day of August, 2020.

14 **ALDRICH LAW FIRM, LTD.**

15 /s/ John P. Aldrich
16 John P. Aldrich, Esq.
17 Nevada Bar No. 6877
18 Catherine Hernandez, Esq.
19 Nevada Bar No. 8410
20 Jamie S. Hendrickson, Esq.
21 Nevada Bar No. 12770
22 7866 West Sahara Avenue
23 Las Vegas, Nevada 89117
24 Telephone: (702) 853-5490
Facsimile: (702) 227-1975
Attorneys for Plaintiff/Counterdefendants

EXHIBIT 1

EXHIBIT 1

From: Jon Fleming <jfleming@EB5impactcapital.com>
Sent: Tue, 31 Oct 2017 17:02:10 -0700
To: Mike Meacher <meacher@frontsight.com>
CC: Ignatius Piazza <ignatius@frontsight.com>, Bob Dziubla <rdziubla@eb5impactcapital.com>
Subject: RE: Executed documents from Front Sight

Mike,

Thank you for sending the attached documents. I will confirm with you when I get the overnight package with the loan amendment documents and return the copies of the signed documents.

We will update the agents on the financing progress and do all we can to close new investors. I will also call you to update you on some other progress.

Thanks,

Jon

From: Mike Meacher [mailto:meacher@frontsight.com]
Sent: Tuesday, October 31, 2017 11:51 AM
To: Jon Fleming <jfleming@EB5impactcapital.com>
Cc: Ignatius Piazza <ignatius@frontsight.com>
Subject: Executed documents from Front Sight

Jon,

Attached please find fully executed documents between Front Sight Management and our three primary contractors. This Construction Line of Credit and associated Promissory Note extends to Front Sight up to \$36,000,000 in construction credit pursuant to the terms of the agreements.

Naish will be at U.S. Capital Partners later this week to execute the Commitment Letter to provide an additional \$15,000,000 to Front Sight for any business purpose we elect. As I told you, the lender will want to see an updated appraisal from Mark Lukens or another MAI appraisal firm of their election. This loan is being funded all at once and is scheduled to close at the end of November.

I also sent you by overnight delivery the three revised documents between Front Sight Management and Las Vegas Development Fund. They are:

- First Amendment to the Loan Agreement executed by Naish
- Amended and Restated Promissory Note executed by Naish
- First Amendment to Construction Deed of Trust, Security Agreement and Fixture Filing executed by Naish

Please counter sign these three and return a fully executed copy to me.

These documents and the attached construction line of credit along with the upcoming Letter of Commitment from USCP should jump start the marketing in both China and India. Please release the funds for the investor you now hold and give me the vehicle by which we send the funds for Dr. Shah's marketing road show that we promised with his next closing. Also light a fire under David and Kyle. Get them to put some serious effort to close the 26 investors in China who are currently looking for another project. There are now no excuse for not closing more of these EB-5 investors.

Thanks,

Mike

Meacher@frontsight.com

702-425-6550

EXHIBIT 2

EXHIBIT 2

From: Ignatius Piazza <ignatius@frontsight.com>
Sent: Wed, 28 Feb 2018 20:46:05 -0800
To: Robert Dziubla <rdziubla@eb5impactcapital.com>
CC: Mike Meacher <meacher@frontsight.com>
Subject: RE: Well done Bob!

Thanks Bob,

Don't let the senior loan issue get in the way or be an excuse for failing to source more investors. The fact that we are building the facility with cash flow and the few investors you bring every couple months is what you should press to your investors. We are strong, profitable, building the resort and it is a great investment for them. As we complete more construction using the Morales Construction line of credit, which we pay down each month, and need less in the way of a senior loan, the better the senior loan terms are becoming. I have hesitated signing any senior loan because we have two other lenders now offering better terms. One lender is an American brick and mortar bank with Asian owners. Theirs is a line of credit format which we can close and draw when we need it. We are awaiting their term sheet and it will be a MUCH better deal than the USCP offer or the second lender who wants to beat the USCP offer. The USCP and competing offer are not lines of credit. We would have to close those loans and start paying interest on money we cannot yet put to work. Be patient, keep delivering investors, hopefully at the rate you did this month and the senior loan will fall into place when it is needed. Right now, even if we closed a loan, we do not have a use for the funds and it would be foolish to take it and pay interest on money we couldn't use in the construction of the resort for at least another 3 or 4 months... Let's extend the senior loan agreement another 90 days as that is the realistic time frame that we will be ready to start going vertical and would actually need it. Until then, keep bringing in the investors. With a few EB5 investors each month, our cash flow and the Morales credit line we are building the facility without any delays and preparing for the time we actually need the senior loan to close.

I will wire as directed below tomorrow.

From: Robert Dziubla [mailto:rdziubla@eb5impactcapital.com]
Sent: Wednesday, February 28, 2018 1:52 PM
To: 'Ignatius Piazza'
Cc: 'Mike Meacher'
Subject: RE: Well done Bob!

Dear Naish,

Through yesterday, we have wired to FSM \$1,125,000 representing EB5 investments from three Chinese investors sourced by Endeavor Shanghai (Kyle and David) at \$375k each.

Accordingly, please wire the **\$60,000** for Endeavor Shanghai's \$20k per investor performance bonus. Please wire these funds to:

EXHIBIT 3

EXHIBIT 3

From: Mike Meacher <meacher@frontsight.com>
Sent: Wed, 31 Jan 2018 09:33:35 -0800
To: Robert Dziubla <rdziubla@eb5impactcapital.com>
Subject: Front Sight update

Bob,

This email will update you on the progress at Front Sight which will supplement the video we just produced. The video has a lot more information for your investors to see but here is what you requested.

The timeline for the 36-month construction schedule has been delayed by Morales Construction because they are waiting for the local electrical cooperative, Valley Electric Association, to provide them a timeline for an electrical system upgrade. I will forward that when received.

Mike

The \$36 million construction line of credit remains in place and is being used to mitigate cash flows for construction.

U.S. Capital Partners in San Francisco has provided two offers which are being considered by Front Sight. Both are pending final review by the lenders of the 2017 financial statements by Front Sight. Additionally, Front Sight has been approached by a Houston, Texas based bank, American First National Bank, who has expressed interest in loaning construction money to Front Sight. The rate and terms of this offer may be superior to the U.S. Capital Partners two offers so Front Sight is negotiating all three concurrently to come up with the best long-term construction financing at the lowest cost.

The construction progress status is best seen in the linked video. All 25 phase 3 ranges are completed and operational. Front Sight now has 50 shooting ranges which make it the largest firearms training facility in the United States. In addition to completing all the ranges, the video shows that Front Sight has added a live-fire simulator between each of these new ranges. The students find this more convenient and it saves time by not having to transport students during this portion of the training. One of the 25 new ranges is the 800-yard long rifle range. The video shows this new facility from one end to the other and how enthusiastic students are with this new quality facility.

Final grading permit was issued on the 44-acre grading site that will have a massive 1350 car parking lot, a classroom for up to 2,000 students, an armory a pro shop and retail sales building. The finished construction site of this grading project will be about 14-16 acres. The Front Sight engineers estimate that about 250,000 cubic yards (6,750,000 cubic feet) of dirt will be moved to create the building pad for this portion of the project. The architects will be meeting to design the final layout of these facilities shortly. When the buildings are completely designed, building permits will be applied for and construction will begin thereafter.

For more information, please refer to the linked video below.

https://www.dropbox.com/s/zpebnnyugz836d/Phase%203%20Completion%20%26%20Patriot%20Pavillion%20Construction%20Progress%2001_24_18.mp4?dl=0

EXHIBIT 4

EXHIBIT 4

1 CASE NO. A-18-781084-B
2 DOCKET U
3 DEPT. XVI
4
5

6 DISTRICT COURT
7 CLARK COUNTY, NEVADA

8 * * * * *

9 FRONT SIGHT MANAGEMENT LLC,)
10 Plaintiff,)
11 vs.)
12 LAS VEGAS DEVELOPMENT FUND LLC,)
13 Defendant.)
14 -----)

15 REPORTER'S TRANSCRIPT
16 OF
17 HEARING

18 BEFORE THE HONORABLE JUDGE TIMOTHY C. WILLIAMS
19 DISTRICT COURT JUDGE

20
21 DATED FRIDAY, SEPTEMBER 20, 2019
22
23
24

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

02:25:49 1 A. Your Honor, there is only one person in this
2 room that truly cares about these immigrant investors'
3 visas and the project, and that's me. I'm -- I'm the
4 one that kept this project going when Robert Dziubla
02:26:05 5 was starving it and not giving us the money that he had
6 to put into the project. I'm the only one that's kept
7 it going in spite of this frivolous and fraudulent
8 foreclosure action that had no merit that caused us to
9 lose an investment banker loan.

02:26:28 10 We are -- we've tried to build this as quickly
11 as we possibly can with the limited funds that we
12 received. This was supposed to be initially a
13 \$150 million project. Then he said he could not
14 provide 150 million. He could provide 75. So we had
02:26:44 15 to scale the project back.

16 Then he comes to us and says, "Well, we can
17 provide 50 on the back end as a fully subordinated
18 second, but you have to go out and find a \$25 million
19 first," and we did. We went through all of the ugliest
02:26:59 20 types of lenders you can possibly imagine, and we had
21 to turn down most of those. But we were able to secure
22 the Morales construction loan agreement.

23 But here's the kicker there: Dziubla kept
24 telling us, "You got to get me that first -- that first
02:27:15 25 lender so that I can then go out and secure the rest of

02:27:19 1 these investors. They're all waiting for that first
2 lender." So we went out and secured the first lender,
3 the Morales construction loan. But Dziubla knew
4 because we told him how it was going to work. Morales
02:27:31 5 would start the building, and it was the EB5 money
6 coming in that would pay down that construction loan.
7 He understood that.

8 So we secured the Morales loan so that he
9 could point out to his agents and his investors that
02:27:45 10 Front Sight has secured a first lender. We get Morales
11 started on it and then Dziubla doesn't come through
12 with any further money. So we were on the hook, and
13 we've paid down that -- those construction costs that
14 Morales provided. We paid it down. Even though
02:28:00 15 Dziubla starved the project, didn't provide anything
16 else, we have -- we are the ones that have paid him
17 down.

18 So it was -- it was the best that we can do
19 under those circumstances. And under the loan
02:28:12 20 contract, that's all we were asked to do is the best we
21 can do, and we found it for him.

22 We've since now found another lender who's
23 willing to loan and now we're at this point where we've
24 created the jobs, and we've got a lender that will
02:28:24 25 basically take Dziubla out and we can move the project

EXHIBIT 5

EXHIBIT 5

Atkinson-Baker, Inc.
www.depo.com

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EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, STATE OF NEVADA

CERTIFIED COPY

FRONT SIGHT MANAGEMENT, LLC, a)
Nevada Limited Liability Company,)
)
Plaintiff,)
)
vs.)
)
LAS VEGAS DEVELOPMENT FUND LLC,)
a Nevada Limited Liability Company,)
et al.,)
)
Defendants.)
)
and related Cross-Claims.)
)

Case No.
A-18-781084-B

DEPOSITION OF
30(b)(6) WITNESS OF ALL AMERICAN CONCRETE,
MORALES CONSTRUCTION, AND TOP RANK BUILDERS - RENE MORALES
PAHRUMP, NEVADA
MONDAY, MARCH 16, 2020

ATKINSON-BAKER, INC.
(800)288-3376
www.depo.com
REPORTED BY: DEBORAH ANN HINES, NEVADA CCR #473, RPR
FILE NO: AE02A9F

Atkinson-Baker, Inc.
www.depo.com

1 Q. And you still have those contracts at your
2 office?

3 A. Yes.

4 Q. Okay. So those will be -- that's some of
5 the documents we've asked for that you pull together
6 would be those contracts.

7 A. Yeah.

8 Q. Do have any contracts now where the work
9 hasn't been completed?

10 A. Well, the villas. You know, I have to --
11 I'm like 85 percent done. I have to complete it.
12 But Mr. Piazza has stated I guess, I don't know who
13 they are, because I'm not familiar, but he says the
14 money was coming from some EB5 money and didn't come
15 so he had to pay me out of -- like in payments. So
16 we're not doing any more because I guess the EB5
17 people didn't come through with that financing.

18 Q. When did you have that conversation with
19 Mr. Piazza?

20 A. That was like six months ago. Because we
21 were going to build the whole thing. I give him a
22 credit line for like \$25 million. My company,
23 they're self-integrated companies, we own Morales
24 Construction Trucking Company and all that stuff, and
25 we own the gravel pit, and we were going to do the

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Case Number: A-18-781084-B
 Case Style: Front Sight Management LLC, Plaintiff(s)vs.Las Vegas Development Fund LLC, Defendant(s)
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Filing Details	
Case Number	A-18-781084-B
Case Style	Front Sight Management LLC, Plaintiff(s)vs.Las Vegas Development Fund LLC, Defendant(s)
Date/Time Submitted	8/19/2020 4:48 PM PST
Filing Type	Motion to Dismiss - MDSM (CIV)
Filing Description	Counterdefendant Ignatius Piazza's Motion to Dismiss Defendants' First Amended Counterclaim
Filed By	Traci Bixenmann
Service Contacts	Front Sight Management LLC: Traci Bixenmann (traci@johnaldrichlawfirm.com) John Aldrich (jaldrich@johnaldrichlawfirm.com) Las Vegas Development Fund LLC: Joshua Dickey (jdickey@baileykennedy.com) John Bailey (jbailey@baileykennedy.com) Bailey Kennedy, LLP (bkfederaldownloads@baileykennedy.com)

	Andrea Champion (achampion@baileykennedy.com)
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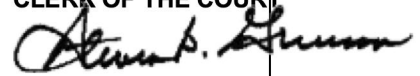
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Attorneys for Plaintiff, Counterdefendants

**EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA**

FRONT SIGHT MANAGEMENT LLC, a
Nevada Limited Liability Company,

Plaintiff,

vs.

LAS VEGAS DEVELOPMENT FUND LLC, a
Nevada Limited Liability Company; et al.

Defendants.

CASE NO.: A-18-781084-B
DEPT NO.: 16

**COUNTERDEFENDANTS VNV
DYNASTY TRUST I AND VNV
DYNASTY TRUST II'S MOTION
TO DISMISS DEFENDANTS' FIRST
AMENDED COUNTERCLAIM**

HEARING REQUESTED

AND ALL RELATED COUNTERCLAIMS.

COME NOW Counterdefendants VNV DYNASTY TRUST I, an irrevocable Nevada trust and VNV DYNASTY TRUST II, an irrevocable Nevada trust (collectively "VNV Trusts"), by and through its attorneys, John P. Aldrich, Esq., Catherine Hernandez, Esq., and Matthew B. Beckstead, Esq., of the Aldrich Law Firm, Ltd., and hereby moves the Court for an order dismissing Counterclaimant LAS VEGAS DEVELOPMENT FUND LLC's ("LVDF") Counterclaim.

1 This Motion to Dismiss Defendants’ Amended Counterclaim is made and based on the
2 attached memorandum of points and authorities and supporting documentation, the papers and
3 pleadings on file in this action, and any oral argument this Court may allow.

4 DATED this 19th day of August, 2020.

5 **ALDRICH LAW FIRM, LTD.**

6 /s/ John P. Aldrich
7 John P. Aldrich, Esq.
8 Nevada Bar No. 6877
9 Catherine Hernandez, Esq.
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11 Jamie S. Hendrickson, Esq.
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17 *Attorneys for Plaintiff/Counterdefendants*

18 **MEMORANDUM OF POINTS AND AUTHORITIES**

19 **I.**

20 **INTRODUCTION**

21 The VNV Trusts seek dismissal of Defendants’ counterclaim fraudulent transfers
22 contained in its First Amended Counterclaim (“Counterclaim”). As shown below, these claims
23 fail to allege facts sufficient to show that, even if taken as true for purposes of this motion,
24 Defendants are entitled to relief. To the contrary, Defendants are not entitled to relief and this
Motion should be granted.

Although Nevada is a notice-pleading state, Counterclaimants still must assert viable
claims and give the defending party adequate notice of the nature of the claims being asserted. A
pleading party cannot simply parrot the elements of a claim and expect to survive a Rule 12(b)(5)

1 motion to dismiss. Defendants' Counterclaim consists primarily of claims whose factual
2 allegations are conclusory and are simple recitations of the elements of the claim being asserted.

3 Defendants' counterclaims for fraudulent transfers must be dismissed pursuant to NRPC
4 12(b)(5) because LVDF is secured creditor with sufficient recourse to collect on its debts via
5 foreclosure on its Deed of Trust. Additionally, Defendants fail to offer any facts to demonstrate
6 that Front Sight is or was insolvent at the time of the transfers. Finally, Defendants'
7 counterclaim fails as a matter of law because Front Sight's transfers were made pursuant to a
8 Loan to Shareholder, which means that Front Sight has the right to repayment on all transfers to
9 the Dynasty Trusts. Accordingly, Front Sight has received reasonably equivalent value for the
10 monetary transfers where it also has a right to repayment. Therefore, Defendants' fraudulent
11 transfer claims fail on two essential elements: (1) Front Sight is not insolvent; and, (2) Front
12 Sight received reasonably equivalent value for its transfers.

13 **II.**

14 **DEFENDANTS' AMENDED COUNTERCLAIM**

15 In the First Amended Counterclaim, Defendants assert claims for (1) fraud (against
16 Front Sight, Michael Meacher, Ignatius Piazza, Rene Efrain Morales-Moreno, Top Rank
17 Builders, Inc., All American Concrete & Masonry, Inc., and Morales Construction, Inc.); (2)
18 fraudulent transfers (against Front Sight, the VNV Trust Defendants); (3) intentional interference
19 with contractual relations (against Ignatius Piazza, Jennifer Piazza, and the VNV Trust
20 Defendants); (4) conversion (against Front Sight, Ignatius Piazza, and Jennifer Piazza); (5) civil
21 conspiracy (against all counterdefendants); (6) judicial foreclosure (against Front Sight); and, (7)
22 waste (against Front Sight, Ignatius Piazza and the VNV Trust Defendants).¹ The VNV Trusts

23 _____
24 ¹ This Motion to Dismiss will concern only the fraudulent transfer claims brought against the VNV Trusts. The remaining Counter-Defendants will file separate Motions to Dismiss.

1 now bring this motion to dismiss Defendants’ First Amended Counterclaim, specifically
2 Defendants’ claims for fraudulent transfers against them. The allegations of the Counterclaim
3 are not well-founded.

4 **III.**

5 **PROCEDURAL HISTORY**

6 On April 3, 2020, Counterclaimants filed their Motion for Leave to Amend the Counter-
7 complaint. The Court granted Counterclaimants’ Motion for Leave to Amend on May 13, 2020.
8 On June 4, 2020, Counterclaimants filed their Answer to Front Sight’s Complaint and First
9 Amended Counterclaims.

10 **IV.**

11 **THE COURT SHOULD DISMISS COUNTERCLAIMANT’S COUNTERCLAIM FOR**
12 **FRAUDULENT TRANSFERS**

13 As mentioned above, on June 4, 2020, Defendants’ filed their Amended Answer and
14 Counterclaim. The VNV Trusts now move to dismiss the portion of the amended counterclaim
15 against them for alleging fraudulent transfers.

16 **A. LEGAL STANDARD FOR NRCP 12(b)(5) MOTION TO DISMISS**

- 17 1. NRCP 12(B)(5) REQUIRES DISMISSAL WHERE A CLAIM FAILS TO
18 ALLEGE ENOUGH FACTS THAT, IF TRUE, WOULD ESTABLISH A *BONA*
FIDE CLAIM FOR RELIEF

19 NRCP Rule 12(b)(5) allows a party to move for dismissal of a counterclaim for “failure
20 to state a claim upon which relief can be granted.” If the Court assumes the veracity of the
21 factual allegations pleaded, for the purposes of a 12(b)(5) motion to dismiss, taking them at “face
22 value” and construing them “favorably” for the pleading party, dismissal is required where it
23 appears that the facts alleged “fail to state a cognizable claim for relief.” *Morris v. Bank of Amer.*
24 *Nev.*, 110 Nev. 1274, 1276, 886 P.2d 454, 456 (1994) (internal quotation marks omitted)

1 (quoting *Edgar v. Wagner*, 101 Nev. 226, 227-28, 699 P.2d 110, 111-12 (1985)). Where the
2 party seeking dismissal proves “beyond a doubt” that the counterclaimant “could prove no set of
3 facts which, if accepted by the trier of fact, would entitle him [or her] to relief,” dismissal of the
4 counterclaim is appropriate. *Id.* (alteration supplied in *Morris*) (internal quotation marks omitted)
5 (quoting *Edgar*, at 228, 699 P.2d at 112).

6 Counterclaimants must do more than simply parrot the legal elements of its claims and
7 still hope to survive dismissal pursuant to NRCP 12(b)(5). Nevada law requires
8 Counterclaimants to demonstrate their claims in a way that provides adequate notice of the
9 nature of those claims, not just notice of the simple existence of those claims. *Western States*
10 *Constr. v. Michoff*, 108 Nev. 931, 936, 840 P.2d 1220, 1223 (1992) (citing *Hay v. Hay*, 100 Nev.
11 196, 198, 678 P.2d 672, 674 (1984)).

12 2. NEVADA LAW DISFAVORS PLEADING WITH CONCLUSORY
13 ALLEGATIONS AND A CLAIMANT MUST DEMONSTRATE WHY RELIEF
IS JUSTIFIED IN ORDER TO SURVIVE DISMISSAL

14 In *Taylor v. State*, 73 Nev. 151, 152-53, 311 P.2d 733, 734 (1957), the Supreme Court of
15 Nevada found the complaint’s conclusory factual allegation of waiver to be “insufficient,” even
16 after acknowledging that “[i]t is true that the pleading of conclusions, either of fact or of law, is
17 sufficient under NRCP, provided the allegation is sufficiently definite to give fair notice of the
18 nature and basis or grounds of the claim” 73 Nev. 151, 152-53, 311 P.2d 733, 734 (1957)
19 (emphasis added). The allegation at issue in the *Taylor* opinion was plainly conclusory, and the
20 Supreme Court of Nevada upheld, on appeal, the district court’s order dismissing the claim:

21 The complaint alleged “That the defendants, the State of Nevada and University
22 of Nevada, have waived their immunity from suit for the cause herein set forth.”
23 The trial court held this allegation insufficient, relying upon the general rule that
24 waiver is a conclusion of law and that the facts from which the conclusion flows
must be pleaded.

1 *Id.* at 152, 311 P.2d at 734. And, in doing so, the *Taylor* opinion upheld the trial court’s finding
2 that the fact of waiver was insufficiently pled.

3 Here, Defendants’ allegations merely recite the elements of the claim, with the exception
4 of calling Front Sight’s Loan to Shareholder a “disguised distribution.” Defendants do not
5 provide facts to demonstrate how Front Sight was insolvent, nor do Defendants allege that any of
6 the transfers impaired Front Sight’s ability to repay the construction loan. Moreover, Defendants
7 fail to allege any facts for why Front Sight did not receive reasonably equivalent value for the
8 transfers to the VNV Trusts, as Front Sight is actually owed the funds from Dr. Piazza.
9 Defendants’ allegations do not even mention the VNV Trusts. *See* Amended Counterclaim, ¶¶
10 75-88. Because Defendants’ allegations are merely conclusory recitations of the elements of the
11 cause of action and because the allegations do not mention the VNV Trusts or their roles in the
12 transfers, Defendants’ claim for fraudulent transfers must be dismissed pursuant to NRCPC
13 12(b)(5) for failure to state a claim against the VNV Trusts.

14 **DEFENDANTS’ CLAIM FOR FRAUDULENT TRANSFERS SHOULD BE**
15 **DISMISSED FOR FAILURE TO STATE A CLAIM**

16 Defendants assert fraudulent transfer claims against Front Sight and the VNV Dynasty
17 Trust Defendants under NRS 112.180 and NRS 112.190. Pursuant to NRS 112.180, a debtor
18 commits a fraudulent transfer in one of two ways. First, a fraudulent transfer occurs where the
19 debtor makes the transfer “with intent to hinder, delay, or defraud a creditor.” NRS
20 112.180(1)(a). Secondly, a fraudulent transfer occurs where the transfer was made “without
21 receiving reasonably equivalent value for the transfer or obligation” and where the debtor “the
22 remaining assets of the debtor were unreasonably small in relation to the business or transaction;
23 or, where the debtor incurred or intended to incur debts beyond the debtor’s ability to pay when
24 they become due. NRS 112.180(1)(b).

1 Pursuant to NRS 112.190, a fraudulent transfer occurs where a debtor makes a transfer to
2 an insider while the debtor is insolvent and where the debtor fails to obtain reasonably equivalent
3 value for the transfer. NRS 112.190(1).

4 LVDF asserts that Front Sight made fraudulent transfers in 2016, 2017, 2018, and 2019
5 when it was insolvent, in the form of monetary transfers to Dr. Piazza via the VNV Dynasty
6 Trusts. *See Counterclaim*, ¶¶ 77-82. The alleged transfers increased Front Sight’s Loan to
7 Shareholder, which LVDF asserts is nothing more than a “disguised distribution ... for the
8 benefit of a shareholder.” *Id.* at ¶ 78.

9 LVDF’s fraudulent transfer claims rests on two premises: (1) Front Sight was insolvent at
10 the time of the transfers; and, (2) Front Sight did not receive reasonably equivalent value for the
11 transfers. Both premises are false.

12 First, Front Sight was not insolvent at the time of the transfers. LVDF’s assertion that
13 Front Sight was insolvent at the time of the transfers is based upon a negative retained earnings
14 balance on its balance sheets in its 2016, 2017, and 2018 federal tax returns. Three facts prove
15 that Front Sight is not insolvent: (1) Front Sight’s balance sheet contained in its federal tax
16 returns do not list its assets at fair market value; (2) the Loan to Shareholder must be repaid by
17 the shareholder; (3) if either the Loan to Shareholder is repaid or Front Sight’s assets
18 (specifically the land upon which the resort and training facility lie) are presented at fair market
19 value, Front Sight’s retained earnings balance would no longer be negative. Additionally, Front
20 Sight is not insolvent because it has consistently posted net income from 2016 to 2019 and is
21 current on its obligations. Therefore, Front Sight is not insolvent. If Front Sight is not insolvent,
22 LVDF does not have a fraudulent transfer claim under either NRS 112.180 or NRS 112.190.

1 Under NRS 112.190, the text of the statute makes insolvency a prerequisite for a transfer
2 to be fraudulent. Under NRS 112.180(1)(b), a transfer is fraudulent where the debtor's
3 remaining assets are unreasonably small in comparison to the transfer, frustrating the creditor's
4 ability to collect on the debt.

5 Alternatively, the transfer is fraudulent where the debtor can no longer repay its
6 obligations as they become due after the transfer. Neither scenario applies to Front Sight. First,
7 Front Sight's remaining assets, including its land, are more than sufficient to cover the \$6.3
8 million owed to LVDF. The CLA states that the land upon which the project sits was appraised
9 at \$25 million in 2016. *See* Evid. Hrg. Exhibit 33, at 0193.

10 Also, Front Sight cannot have made fraudulent transfers to under NRS 112.180(1)(b)
11 because it has received reasonably equivalent value for the transfers in the form of reciprocal
12 debt. Assuming what Defendants claim is correct, Front Sight transferred funds to a shareholder,
13 which is one side of the transaction. The other side to the transaction is the Loan to Shareholder,
14 which must be repaid. Therefore, Front Sight has received reasonably equivalent value for the
15 transfers where it is owed the funds.

16 Front Sight cannot have committed fraudulent transfers under NRS 112.180(1)(a)
17 because the transfers must be made with intent to "hinder, delay, or defraud" LVDF. However,
18 pursuant to Section 1.3 of the CLA Front Sight may not prepay any advance on the loan until an
19 investor's I-829 Petition is fully adjudicated. *See* Evid. Hrg. Exhibit 33, at 0206. Here,
20 Defendants have taken the position that Front Sight cannot repay the loan because no investor's
21 I-829 Petition has been adjudicated. By definition, Front Sight could not have made the transfers
22 with intent to delay, hinder, or defraud LVDF. In fact, quite to the contrary, Front Sight would
23 gladly repay the loan immediately if Defendants would agree to allow it to do so.

24

1 Finally, the policies that support the law of fraudulent transfers do not apply to Front
2 Sight's transfers to the Dynasty Trusts because LVDF is a secured creditor whose security
3 interest is indisputably over-secured. The purpose of the Nevada Fraudulent Transfer Act is to
4 prevent a debtor from defrauding a creditor by transferring assets to third-parties to frustrate the
5 creditor's right to collect. Here, LVDF is a secured creditor whose loan is secured by a Deed of
6 Trust. The value of the land at the time of execution of the CLA was \$25 million, while LVDF's
7 loan is only \$6.35 million. LVDF has more than adequate recourse to collect on its debt via
8 foreclosure on its Deed of Trust. Accordingly, even if Front Sight transferred every dime of
9 revenue it earned to the Dynasty Trusts, LVDF's security interest and ability to collect on the
10 loan would not be impaired. Therefore, LVDF's fraudulent transfer claim fails as a matter of law
11 and must be dismissed.

12 **V.**

13 **CONCLUSION**

14 Based on the foregoing, Plaintiff respectfully requests that the Court grant this motion to
15 dismiss Defendants' counterclaim for fraudulent transfers against the VNV Trust Defendants.

16 ///

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24

1 Additionally, the VNV Trust Defendants request that this Court deny any request for leave to
2 amend the counterclaims for fraudulent transfers against the VNV Trust Defendants.

3 DATED this 19th day of August, 2020.

4 **ALDRICH LAW FIRM, LTD.**

5 /s/ John P. Aldrich
6 John P. Aldrich, Esq.
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16 *Attorneys for Plaintiff/Counterdefendants*

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 19th day of August, 2020, I caused the foregoing **COUNTERDEFENDANT VNV DYNASTY TRUST I AND VNV DYNASTY TRUST II'S MOTION TO DISMISS DEFENDANTS' AMENDED COUNTERCLAIM** to be electronically filed and served with the Clerk of the Court using Wiznet which will send notification of such filing to the email addresses denoted on the Electronic Mail Notice List, or by U.S. mail, postage prepaid, if not included on the Electronic Mail Notice List, to the following parties:

John R. Bailey, Esq.
Joshua M. Dickey, Esq.
Andrea M. Champion, Esq.
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8984 Spanish Ridge Avenue
Las Vegas, Nevada 89148
Attorneys for Defendants/Counterclaimant

/s/ T. Bixenmann
An employee of ALDRICH LAW FIRM, LTD.

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Date/Time Submitted	8/19/2020 4:48 PM PST
Filing Type	Motion to Dismiss - MDSM (CIV)
Filing Description	Counterdefendant VNV Dynasty Trust I and VNV Dynasty Trust II's Motion to Dismiss Defendants' First Amended Counterclaim
Filed By	Traci Bixenmann
Service Contacts	Las Vegas Development Fund LLC: John Bailey (jbailey@baileykennedy.com) Bailey Kennedy, LLP (bkfederaldownloads@baileykennedy.com) Andrea Champion (achampion@baileykennedy.com) Joshua Dickey (jdickey@baileykennedy.com) Front Sight Management LLC: John Aldrich (jaldrich@johnaldrichlawfirm.com)

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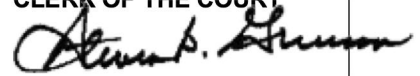
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10 IMPACT CAPITAL REGIONAL CENTER LLC;
EB5 IMPACT ADVISORS LLC; ROBERT W.
11 DZIUBLA; JON FLEMING; and LINDA
STANWOOD

12
13 DISTRICT COURT
14 CLARK COUNTY, NEVADA

15 FRONT SIGHT MANAGEMENT LLC, a
Nevada Limited Liability Company,

16 Plaintiff,

17 vs.

18 LAS VEGAS DEVELOPMENT FUND LLC, a
19 Nevada Limited Liability Company; et al.,

20 Defendants.

Case No. A-18-781084-B
Dept. No. XVI

**LAS VEGAS DEVELOPMENT FUND,
LLC’S OPPOSITION TO
COUNTERDEFENDANT MICHAEL
MEACHER’S MOTION TO DISMISS
FIRST AMENDED COUNTERCLAIM**

**Hearing Date: September 9, 2020
Hearing Time: 9:00 a.m.**

21
22 AND ALL RELATED COUNTERCLAIMS.
23

24 **MEMORANDUM OF POINTS AND AUTHORITIES**

25 **I. INTRODUCTION**

26 In moving to dismiss LVD Fund¹’s fraud and civil conspiracy claims, Michael Meacher
27

28 ¹ “LVD Fund” refers to Counterclaimant Las Vegas Development Fund, LLC.

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1 (Front Sight²'s Vice President and Chief Operating Officer) recycles the same arguments made by
2 his employer (Front Sight) in opposing LVD Fund's Motion for Leave to Amend. The Court
3 rejected Front Sight's arguments then and should reject Mr. Meacher's arguments now. Indeed,
4 none of Mr. Meacher's contentions have any merit. Specifically:

- 5 • LVD Fund has pled its fraud claim with particularity by identifying the "who, what, when,
6 and how" of the Counter Defendants' fraud to induce LVD Fund to continue working with
7 Front Sight to market the Project and to accept Front Sight's fictitious \$36 million Line of
8 Credit as "senior debt" under the CLA;
- 9 • LVD Fund has sufficiently alleged that Mr. Meacher's representations about the \$36 million
10 Line of Credit were false and intended to induce LVD Fund to release additional EB-5 funds
11 (that it was holding pursuant to § 3.1 of the CLA) and to solicit additional EB-5 investors for
12 the Project;
- 13 • LVD Fund has sufficiently stated a claim for damages related to its fraud claim
14 (notwithstanding its separate and stand-alone claim for judicial foreclosure); and
- 15 • LVD Fund's factual allegations support Mr. Meacher being named as a defendant in its civil
16 conspiracy claim.

17 If anything, Mr. Meacher's Motion is a continuation of his employer's scorched-earth policy
18 designed to cause LVD Fund to waste time and effort in an attempt to prevail through attrition
19 because it cannot on the merits. As this Court has already determined in connection with the motion
20 for leave to amend, LVD Fund has stated claims upon which relief can be granted. Like Front
21 Sight's arguments, Mr. Meacher's arguments fail. The Motion to Dismiss ("Motion") should be
22 denied.

23 **II. RELEVANT FACTS AND PROCEDURAL HISTORY**

24 This case involves a loan of EB-5 funds from LVD Fund to Front Sight to fund construction
25 of the Front Sight Resort & Vacation Club, and an expansion of the facilities and infrastructure of
26 the Front Sight Firearms Training Institute (the "Project"). Counterdefendant Mr. Meacher is Front
27

28 ² "Front Sight" refers to Plaintiff and Counter Defendant Front Sight Management, Inc.

1 Sight's Vice President and Chief Operating Officer. Defs.' Ans. to Pl.'s Second Am. Compl.; and
 2 First Am. Countercl. ("Am. Countercl."), filed June 4, 2020, at ¶ 13. The parties initially hoped
 3 LVD Fund would be able to raise enough EB-5 money to finance the entire Project. However, when
 4 it became clear that the Project was not getting the traction with the EB-5 investors as the parties had
 5 hoped, LVD Fund gave Front Sight three options: (1) to part ways (and return the EB-5 investors'
 6 money); (2) to buy out LVD Fund and continue with the EB-5 raise itself; or (3) to obtain senior
 7 debt to ensure that the Project was completed regardless of whether or not additional EB-5 funds
 8 were raised (although LVD Fund would continue to attempt to raise money). Front Sight chose to
 9 obtain senior debt, fully aware that LVD Fund would likely be unable to finance the entire Project
 10 through EB-5 investors.

11 By October 2017, Front Sight was in breach of the CLA. Am. Countercl., at ¶ 58. Among
 12 other things, Front Sight had failed to obtain senior debt within the time frame required by the
 13 parties' agreement (a failure Mr. Meacher was well aware of and had discussed with LVD Fund).
 14 *See id.* Thereafter, Front Sight (including Ignatius Piazza, the owner of Front Sight, and Mr.
 15 Meacher) concocted a scheme to further defraud LVD Fund and to convince LVD Fund to continue
 16 working with Front Sight to fund the project. *Id.*

17 In October 2017, Front Sight, Mr. Piazza, Mr. Meacher, Efrain Rene Morales-Moreno,
 18 Morales Construction, Inc., Top Rank Builders, Inc., and All American Concrete & Masonry, Inc.³
 19 entered into a comprehensive scheme to further defraud LVD Fund.⁴ *Id.* at ¶ 59. The scheme
 20 involved Front Sight purportedly arranging a \$36 million construction line of credit with Morales
 21 Construction (the "Line of Credit"). *Id.* In fact, the Line of Credit was a "fictitious [] agreement
 22 [intended] to give the false appearance that Front Sight had access to enough credit to complete the
 23 Project." *Id.*

24 ///

25 ///

26 ³ Mr. Morales, Morales Construction, Inc., Top Rank Builders, Inc., and All American Concrete & Masonry, Inc. are
 27 hereinafter referred to, collectively, as the "Morales Parties." Morales Construction, Inc., Top Rank Builders, Inc., and
 All American Concrete & Masonry, Inc., are hereinafter referred to, collectively, as the "Morales Entities."

28 ⁴ Front Sight had hired the Morales Parties as the general contractor to build the Project.

1 Front Sight attempted to convince LVD Fund to accept the Line of Credit as “senior debt”
2 and to release additional EB-5 funds once it had the Line of Credit in hand. Specifically, LVD Fund
3 has alleged:

4 Counter Defendants [Front Sight, Mr. Piazza, Mr. Meacher, Mr.
5 Morales, and the Morales Entities] carried out the fraudulent scheme
6 with the intent that LVD Fund would rely on this false appearance of
7 access to credit and believe that the credit would in fact be utilized for
8 construction of the Project. Counter Defendants further intended that
9 the fictitious loan agreement would give LVD Fund a false sense of
10 security so that it would release funds it was withholding from Front
11 Sight (pursuant to § 3.1 of the CLA), and facilitate continued
12 solicitation of additional EB-5 investors by using the loan agreement
13 to give an appearance that Front Sight was putting more money into
14 construction than it really was.

11 *Id.* at ¶ 60. On October 31, 2017, in response to LVD Fund’s repeated inquiries about Front Sight’s
12 failure under the CLA to secure senior debt and the importance of needing senior debt to get
13 additional EB-5 investors interested in the Project, and in furtherance of the Counterdefendants’
14 scheme, Mr. Meacher represented to LVD Fund that Morales Construction had extended a \$36
15 million Line of Credit to Front Sight *even though he knew that Front Sight and the Morales Parties*
16 *had agreed that Front Sight would not utilize the Line of Credit as “senior debt” to complete the*
17 *project. Id.* at ¶ 62-63.

18 LVD Fund confirmed, through discovery in this case, that Front Sight and Mr. Morales had a
19 secret side agreement whereby Front Sight would not utilize the Line of Credit to finance the
20 remainder of the Project. Rather, the Line of Credit was always intended to induce LVD Fund to
21 release EB-5 funds it was holding pursuant to the CLA, to dupe LVD Fund into not declaring Front
22 Sight in breach of the CLA, and to induce LVD Fund to continue raising EB-5 funds for a project
23 that Front Sight was determined to have fail for purported lack of financing (and therefore put the
24 EB-5 investors at risk). *See id.* at ¶ 60, 62, 65.

25 Mr. Morales specifically testified in his deposition that *before* agreeing to provide the Line of
26 Credit, he spoke to Mr. Piazza because he “wanted to know where [his] money was going to be
27 coming from” and Mr. Piazza told him that the money would come directly from EB-5 money. Ex.
28 1, a true and correct copy of excerpts from Mr. Morales’ 30(b)(6) deposition, at 42:3-8. Mr. Morales

1 further testified that he told Mr. Piazza that Front Sight could not draw on the Line of Credit if the
 2 EB-5 money was not already in hand. *Id.* at 25:7-12 (“And I asked him point blank, I said, if your
 3 money’s not there, I said, I don’t want to move forward.”). Only with this understanding did Front
 4 Sight and Morales enter into the \$36 million Line of Credit.

5 With this backdrop, on April 3, 2020, LVD Fund moved to amend its Counterclaim to add
 6 the Morales Entities and Mr. Meacher as parties to this case, and to assert a fraud claim against Front
 7 Sight, Piazza, Mr. Meacher, Mr. Morales, and the Morales Entities for entering into, and then
 8 misrepresenting, the fictitious \$36 million Line of Credit. *See gen. Am. Countercl.* In doing so,
 9 LVD Fund specifically alleged that “Counter Defendants Front Sight, Mr. Piazza, Mr. Meacher, Mr.
 10 Morales, and the Morales Entities caused th[e \$36 million] ‘Loan Agreement’ to be executed with no
 11 intent to ever utilize the credit line, and with the knowledge that the Morales Entities were not
 12 capable of extending or carrying the amount of credit purportedly available under the agreement’s
 13 terms.” *Id.* at ¶ 62.

14 On April 17, 2020, Mr. Meacher’s employer, Front Sight, through their shared counsel,
 15 objected to LVD Fund’s request to amend the Counterclaim. In doing so, Front Sight made the *very*
 16 *arguments Mr. Meacher now makes in this Motion* in challenging LVD Fund’s fraud claim (with
 17 very little variation). As the Court rejected Front Sight’s arguments then, it should reject Mr.
 18 Meacher’s arguments now and deny the Motion.

19 **III. LEGAL ANALYSIS**

20 **A. Legal Standard.**

21 It bears repeating the appropriate standard of review for a motion to dismiss because while
 22 Mr. Meacher cites the correct legal standard in his Motion, he fails to apply this standard of review
 23 properly.

24 A court may dismiss a plaintiff’s complaint for “failure to state a claim upon which relief can
 25 be granted.” NRC P 12(b)(6). “The standard of review for dismissal . . . is rigorous as this court
 26 ‘must construe the pleadings liberally and draw every fair intendment in favor of the [non-moving]
 27 party.’” *Squires v. Sierra Nev. Educ. Found.*, 107 Nev. 902, 905, 823 P.2d 256, 257 (1991)
 28 (citations omitted). All factual allegations of the complaint must be accepted as true. *Capital Mort.*

1 *Holding v. Hahn*, 101 Nev. 314, 315, 705 P.2d 126, 126 (1985). A complaint will only be dismissed
 2 “if it appears beyond a doubt that [the plaintiff] could prove no set of facts, which, if true, would
 3 entitle it to relief.” *Buzz Stew, LLC*, 124 Nev. at 228, 181 P.3d at 672; *see also Morris v. Bank of*
 4 *Am. Nev.*, 110 Nev. 1274, 1276, 886 P.2d 454, 456 (1994) (providing that dismissal under N.R.C.P.
 5 12(b) is appropriate only where the allegations “fail to state a cognizable claim for relief”).

6 **B. Mr. Meacher Should Not Be Dismissed From LVD Fund’s Fraud Claim.**

7 Mr. Meacher asks this Court to dismiss him from LVD Fund’s fraud claim (its first
 8 counterclaim for relief) because he claims: (1) LVD Fund’s fraud claim is not pled with
 9 particularity; (2) his statements about the Line of Credit were “true in every respect” and therefore
 10 cannot sustain a fraud claim; and (3) that LVD Fund’s fraud claim fails for a lack of damages. Each
 11 argument is without merit.

12 **1. *LVD Fund’s Claim is Pled with Particularity.***

13 LVD Fund recognizes that fraud claims must be pled with particularity pursuant to NRCF
 14 9(b). Specifically, a plaintiff’s complaint must give a defendant to a fraud claim adequate notice of
 15 the circumstances constituting fraud in order to adequately prepare the defendant’s defense. *See*
 16 *Rocker v. KPMG, LLP*, 122 Nev. 1185, 1192, 148 P.3d 703, 707-09 (2006), overruled in part on
 17 other grounds by *Buzz Stew, LLC v. City of North Las Vegas*, 124 Nev. 224, 228 n. 6, 181 P.3d 670,
 18 672, n. 6 (2008). “A complaint alleging fraud must provide ‘the who, what, where, and how.’”
 19 *Borsellino v. Goldman Sachs Group, Inc.*, 477 F.3d 502, 507 (7th Cir. 2007). However, the plaintiff
 20 need not identify every single fact of the fraud (that is what discovery is for), rather “the
 21 circumstances that must be detailed include averments to the time, the place, the identity of the
 22 parties involved, and the nature of the fraud or mistake.” *Brown v. Kellar*, 97 Nev. 582, 583-84, 636
 23 P.2d 874, 874 (1981).

24 Mr. Meacher concedes in his Motion that LVD Fund has identified “the time, the place, the
 25 identity of the parties involved, and the nature of the fraud”—he recognizes that LVD Fund has
 26 alleged that he entered into a scheme with Front Sight, Mr. Piazza, and the Morales Entities for Front
 27 Sight to execute a sham Line of Credit, and that LVD Fund has alleged that his October 2017
 28 representations about the Line of Credit (specifically his October 31, 2017 email to Jon Fleming)

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1 was false and intended to induce LVD Fund to continue under the CLA (and to continue to market to
2 potential EB-5 investors). Nonetheless, Mr. Meacher contends that *even more* is needed for LVD
3 Fund’s fraud claim to survive a motion to dismiss.

4 Mr. Meacher claims—without citing any authority whatsoever—that LVD Fund needed to
5 also detail “other specifics regarding when Mr. Meacher learned about the Morales LOC, whether or
6 when Mr. Meacher participated in the alleged fraudulent scheme to negotiate the Morales LOC, and
7 whether or when Mr. Meacher received orders from Mr. Piazza to notify Fleming of the Morales
8 LOC.” Mtn. at 7:4-7. Rule 9 imposes no such obligation. While LVD Fund must plead fraud with
9 particularity (which it has), it need not allege each and every minute detail about the fraudulent
10 scheme with particularity in order to survive a motion to dismiss. In fact, NRCP 9(b) expressly
11 states that you not need plead “[m]alice, intent, knowledge, and other conditions of a person’s mind
12 with specificity.” General allegations are sufficient.

13 Moreover, the entire purpose of discovery is to obtain such information. Absent discovery, a
14 claimant such as LVD Fund could not know when the scheming parties decided to defraud the
15 claimant, whose idea it was, and how they perpetrated the fraud. Such facts are within Mr.
16 Meacher’s and his co-conspirators’ sole possession. “Rule 9(b)’s particularity requirement mandates
17 *only that the circumstances constituting fraud be identified to the extent that the defendants will*
18 *find sufficient information in the allegations to be able to prepare an adequate answer.” Fondren*
19 *v. Schmidt*, 626 F. Supp. 892, 898 (D. Nev. 1986) (citing *Riley v. Brazeau*, 612 F.Supp.674 (D. Or.
20 1985) (emphasis added).

21 Put simply, LVD Fund has satisfied the requirements of NRCP 9(b). LVD Fund’s fraud
22 claim is pled with particularity because it has identified the “averments to the time, the place, the
23 identity of the parties involved, and the nature of the fraud.” *See Brown*, 97 Nev. at 583-85; *see also*
24 *Fondren*, 626 F. Supp. At 898.

25 ///
26 ///
27 ///
28 ///

1 2. *LVD Fund Has Sufficiently Alleged That Mr. Meacher’s Statements Were*
 2 *False and Intended to Induce LVD Fund to Release EB-5 Funds it Was*
 3 *Holding Pursuant to the CLA and to Continue to Market the Project.*

3 Mr. Meacher’s next argument, that his representations to LVD Fund were “true in every
 4 respect” ignores the standard on a motion to dismiss, ignores LVD Fund’s specific allegations in the
 5 Amended Counterclaim regarding the Line of Credit, and ignores the context in which he made the
 6 statements made to LVD Fund.

7 In deciding this Motion, the Court must accept all factual allegations as true. *See Capital*
 8 *Mort. Holding*, 101 Nev. at 315. LVD Fund has specifically alleged that in October 2017, Front
 9 Sight was in violation of the CLA because it had failed to obtain senior debt. Am. Countercl. at ¶
 10 58. In this context (and in response to LVD Fund’s multiple inquiries about Front Sight’s attempts
 11 to secure senior debt), Mr. Meacher represented to LVD Fund that Front Sight had secured a \$36
 12 million Line of Credit from Morales Construction “*pursuant to the terms of the agreements*” (i.e.,
 13 pursuant to the CLA’s senior debt requirements). *Id.* at ¶ 63 (emphasis added). Yet, as LVD Fund
 14 has specifically alleged, the Line of Credit was “fictitious” from the inception; Counter Defendants
 15 Front Sight, Mr. Piazza, Mr. Meacher, Mr. Morales, and the Morales Entities’ intended that the Line
 16 of Credit would give the “false appearance of access to credit” despite Counter Defendants’ side
 17 agreement that the Line of Credit was executed “with no intent to ever utilize the credit line, and
 18 with the knowledge that the Morales Entities were not capable of extending or carrying the amount
 19 of credit purportedly available under the agreement’s terms.” *Id.* at ¶ 59-62. Mr. Meacher
 20 essentially asks this Court to consider materials outside the pleadings, requests that the Court make a
 21 factual determination that the Line of Credit in fact extended a \$36 million Line of Credit to Front
 22 Sight, and find LVD Fund’s specific factual allegations as untrue. This is not only contrary to the
 23 well-established standards for motions to dismiss, but it also ignores Mr. Morales’ testimony and the
 24 whole premise of LVD Fund’s claim (i.e., that the Counter Defendants executed a fictitious \$36
 25 million Line of Credit). Even if Mr. Meacher accurately represented the \$36 million Line of Credit
 26 (which LVD Fund has alleged he did not), the misleading nature of Mr. Meacher’s statement is still
 27 actionable. *See Epperson v. Roloff*, 102 Nev. 206, 212 (1986) (“[W]e also note that a defendant may
 28 be found liable for misrepresentation even when the defendant does not make an express

1 misrepresentation, but instead makes a representation which is misleading because it partially
 2 suppresses or conceals information.”⁵; *see also*, *Sullivan v. Helbing*, 66 Cal. App. 478, 483 (Cal.
 3 Ct. App. 1924) (“Fraudulent representations may consist of halftruths calculated to deceive. Thus
 4 a representation literally true is actionable if used to create an impression substantially false.”);
 5 *American Trust Co. v. California Western States Life Ins. Co.*, 15 Cal. 2d 42, 65 (1940) (“Regardless
 6 of whether one is under a duty to speak or disclose facts, one who does speak must speak the whole
 7 truth, and not by partial suppression or concealment make the utterance untruthful and misleading.
 8 This doctrine . . . is everywhere recognized as a sound rule of law.”).

9 **3. LVD Fund Has Sufficiently Alleged That It Was Damaged.**

10 Mr. Meacher’s third argument is particularly specious. Mr. Meacher parrots the very same
 11 arguments Front Sight previously made to this Court (and that this Court rightly rejected) that LVD
 12 Fund’s fraud claim fails for a purported lack of damages. *Compare* Mot. at 9:14-19 (“Even if this
 13 allegation is true, LVDF is not damaged by the alleged false statements for three reasons: (1) LVDF
 14 is entitled to repayment of any funds loaned; (2) LVDF has collected interest on the funds loaned;
 15 and (3) LVDF has a security interest in land that is worth far more than the total amount of the funds
 16 LVDF loaned Front Sight. Moreover, LVDF is currently seeking to foreclose on its security interest
 17 in that land.”) *with* Front Sight’s Opp. to Mot. for Leave to Am. Countercl., filed April 17, 2020, at
 18 12-13 (arguing that “even if Front Sight’s representations regarding the Morales Line of credit were
 19 false,” LVD Fund’s fraud claim failed for lack of damages). LVD Fund has sufficiently alleged,
 20 pursuant to NRC 8(a)(4) that it has been damaged in excess of fifteen thousand dollars (\$15,000) as
 21 a result of the Counter Defendants’ fraudulent acts. Am. Countercl. at ¶ 71. In addition, LVD Fund
 22 contends that it is entitled to an award of punitive damages pursuant to NRS 42.005 and attorney’s
 23 fees pursuant to § 8.2 of the CLA. *Id.* at ¶ 72-73. Mr. Meacher simply ignores those allegations.

24
 25 ⁵ The Nevada Supreme Court recognized in *Epperson* that a party may be held liable for misrepresentation “where he
 26 communicates misinformation to his agent, intending or having reason to believe that the agent would communicate the
 27 information to a third party.” 102 Nev. at 212. Mr. Meacher implies, in passing, in his Motion that he may not have
 28 been aware that the Line of Credit was a sham and that he may have just “received orders from Ignatius Piazza to notify
 Fleming of the [Line of Credit].” Mot. at 7:4-13. If that is true, then Mr. Meacher may have his own claim against Front
 Sight and Mr. Piazza, and Mr. Aldrich may have an unwaivable conflict that prevents him from representing Mr.
 Meacher, Front Sight, and Mr. Piazza.

1 This Court previously decided to reject Front Sight’s argument that LVDF’s counterclaim suffered
2 from a lack of damages (and thus was futile). Mr. Meacher has given this Court no reason to depart
3 from its prior ruling.

4 C. **Mr. Meacher Should Not Be Dismissed From LVD Fund’s Civil Conspiracy**
5 **Claim.**

6 Mr. Meacher also asks this Court to dismiss him from LVD Fund’s civil conspiracy claim
7 because paragraphs 101-107 of the Amended Counterclaim do not specifically mention him. But
8 Mr. Meacher’s argument ignores the factual allegations of paragraphs fifty-eight through sixty-five,
9 which are incorporated by reference into LVD Fund’s civil conspiracy claim, that detail Mr.
10 Meacher’s personal involvement in the Counter Defendants’ conspiracy to enter into the fictitious
11 Line of Credit in order to defraud LVD Fund and to convince LVD Fund to continue working with
12 Front Sight to fund the Project. *See* Am. Countercl. at ¶¶ 58-65, 101. Those factual allegations
13 justify Mr. Meacher’s inclusion in the civil conspiracy claim and, if the Court believes that Mr.
14 Meacher’s name needs to be included within the civil conspiracy cause of action, LVD Fund can
15 easily file another amended counterclaim including Mr. Meacher by name in the civil conspiracy
16 claim.

17 Finally, Mr. Meacher attacks LVD Fund’s civil conspiracy claim for failing to “articulate a
18 motive for the alleged civil conspiracy.” Mr. Meacher cannot succeed on dismissing LVD Fund’s
19 civil conspiracy claim by simply making up new pleading requirements. Motive is not a requisite
20 element of a civil conspiracy claim (neither is an underlying tort as Mr. Meacher also claims). *See*
21 *Collins v. United Fed. S&&L Ass’n*, 99 Nev. 284, 303 (1983) (“An actionable civil conspiracy is a
22 combination of two or more persons who, by some concerted action, intend to accomplish some
23 unlawful objective for the purpose of harming another which results in damage.”) (internal citations
24 omitted); *see also* NRPC 9(b) (“Malice, intent, knowledge, and other conditions of a person’s mind
25 may be alleged generally.”); *Cadle Co. v. Woods & Erickson, LLP*, 131 Nev. 114, 117-118 (2015)
26 (“In Nevada, however, civil conspiracy liability may attach where two or more persons undertake
27 some concerted action with the intent to commit an unlawful objection, not necessarily a tort.”).
28 Nonetheless, Mr. Meacher’s motive is clear: to aid his employer in defrauding LVD Fund in order to

1 obtain additional EB-5 funds and to avoid being declared in breach of the CLA. Therefore, Mr.
2 Meacher must remain a party to LVD Fund’s civil conspiracy claim.

3 **IV. CONCLUSION**

4 Mr. Meacher’s Motion is, in large part, duplicative of Front Sight’s Opposition to LVD
5 Fund’s Motion for Leave to Amend (made through the same counsel) which was ultimately rejected
6 by this Court. Mr. Meacher gives this Court no reason to depart from its prior ruling. LVD Fund’s
7 fraud claim is sufficiently pled under NRCP 9(b), the Counter Defendants’ representations about the
8 Line of Credit were false, and LVD Fund has sufficiently alleged that it was damaged by the Counter
9 Defendants’ fraudulent misrepresentations. Moreover, LVD Fund has sufficiently alleged that Mr.
10 Meacher entered into a conspiracy with his employer and the Morales Parties for the fictitious Line
11 of Credit and to defraud LVD Fund. For all of these reasons, Mr. Meacher’s Motion must be denied
12 in its entirety.

13 DATED this 17th day of August, 2020.

14 BAILEY ❖ KENNEDY

15
16 By: /s/ Andrea M. Champion
17 JOHN R. BAILEY
18 JOSHUA M. DICKEY
19 ANDREA M. CHAMPION

20 *Attorneys for Defendants*
21 LAS VEGAS DEVELOPMENT FUND
22 LLC; EB5 IMPACT CAPITAL
23 REGIONAL CENTER LLC; EB5 IMPACT
24 ADVISORS LLC; ROBERT W.
25 DZIUBLA; JON FLEMING; and LINDA
26 STANWOOD
27
28

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CERTIFICATE OF SERVICE

I certify that I am an employee of BAILEY ❖ KENNEDY and that on the 17th day of August, 2020, service of the foregoing **LAS VEGAS DEVELOPMENT FUND, LLC’S OPPOSITION TO COUNTERDEFENDANT MICHAEL MEACHER’S MOTION TO DISMISS FIRST AMENDED COUNTERCLAIM** was made by mandatory electronic service through the Eighth Judicial District Court’s electronic filing system and/or by depositing a true and correct copy in the U.S. Mail, first class postage prepaid, and addressed to the following at their last known address:

JOHN P. ALDRICH
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PIAZZA; VNV DYNASTY TRUST I;
VNV DYNASTY TRUST II; MICHAEL
MEACHER; TOP RANK BUILDERS
INC.; ALL AMERICAN CONCRETE &
MASONRY INC.; MORALES
CONSTRUCTION, INC.; AND EFRAIN
RENE MORALES-MORENO

/s/ Angelique Mattox
Employee of BAILEY ❖ KENNEDY

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Exhibit 1

Exhibit 1

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EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, STATE OF NEVADA

FRONT SIGHT MANAGEMENT, LLC, a)
Nevada Limited Liability Company,)
)
Plaintiff,)
)
vs.) Case No.
) A-18-781084-B
LAS VEGAS DEVELOPMENT FUND LLC,)
a Nevada Limited Liability Company,)
et al.,)
)
Defendants.)
)
<hr/> and related Cross-Claims. <hr/>)
)

DEPOSITION OF
30(b)(6) WITNESS OF ALL AMERICAN CONCRETE,
MORALES CONSTRUCTION, AND TOP RANK BUILDERS - RENE MORALES
PAHRUMP, NEVADA
MONDAY, MARCH 16, 2020

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EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, STATE OF NEVADA

FRONT SIGHT MANAGEMENT, LLC, a)	
Nevada Limited Liability Company,)	
)	
Plaintiff,)	
)	
vs.)	Case No.
)	A-18-781084-B
LAS VEGAS DEVELOPMENT FUND LLC,)	
a Nevada Limited Liability Company,)	
et al.,)	
)	
Defendants.)	
)	
<hr/> and related Cross-Claims. <hr/>)	
)	

Deposition of 30 (b)(6) witness Rene Morales, taken on behalf of Defendants, at 861 S. Highway 160, Pahrump, Nevada, commencing at 10:28 a.m. Monday, March 16, 2020 before Deborah Ann Hines, Nevada CCR No. 473, California CSR No. 11691, RPR.

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A P P E A R A N C E S

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I N D E X

WITNESS: RENE MORALES

EXAMINATION	PAGE
BY MR. GREER	5

EXHIBITS

PLAINTIFF'S NUMBER	DESCRIPTION	PAGE
	(None)	

DEFENDANT'S NUMBER	DESCRIPTION	PAGE
1	Subpoena Duces Tecum to All American Concrete and Masonry, Inc.	14
2	Subpoena Duces Tecum to Morales Construction, Inc.	14
3	Subpoena Duces Tecum to Top Rank Builders, Inc.	14
4	Loan Agreement	27

QUESTIONS WITNESS WAS INSTRUCTED NOT TO ANSWER:

PAGE	LINE
	(NONE)

INFORMATION TO BE SUPPLIED:

(NONE)

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1 any property. And if I go and, you know, pick up a
2 shovel and turn the dirt over, you know, my 90 days
3 kick in. I got more attorneys than friends. I know
4 my rights.

5 Q. So is it your testimony then that you were
6 going to do all of the work for the Front Sight
7 project from grading to putting the roofs on?

8 A. Yes, sir.

9 Q. And which company would build the villas
10 themselves?

11 A. Top Rank.

12 Q. So you stood to make a lot of money if this
13 contract was actually performed, right? If you built
14 all those villas, if you did all that work, you would
15 stand to make a lot of money, right?

16 A. Not really. You know, it's ten percent
17 profit margin. It's not that much money.

18 Q. And so why wouldn't you persuade Mr. Piazza
19 to let you build it? You're building yourself,
20 you're fronting the money, you make money doing that.
21 There's no downside to them. They don't have to make
22 any payments until the project is over, so why didn't
23 you talk to Piazza about getting this done?

24 A. Well, not necessary. That's like \$60
25 million project, that what he wants done out there.

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1 I don't have that much money. The \$36 million you
2 see there, I probably going to come out of pocket,
3 you know, 18 million to 20 million my cost. Probably
4 the other \$16 million is my profit. I mean, without
5 BS. You know that. I mean, me, as an investor, or a
6 builder, I have to make money.

7 But his financing didn't come through so we
8 didn't do anything. I mean, we have done a lot of
9 work. We move like a million yards of dirt already,
10 but he doesn't have the rest of the money. And I
11 asked him point blank, I said, if your money's not
12 there, I said, I don't want to move forward.

13 Q. So this wasn't for the purpose of financing
14 the project, he was looking to get other financing;
15 is that what you're saying?

16 A. That I don't know. I don't know. He says
17 he had \$50 million coming, or 60 million. It's been
18 a long time since I had the conversation with that
19 guy. I think I only met him in my life like three
20 times, Mr. Piazza. I normally deal with Mike
21 Meacher. And but he says his money didn't come
22 through. That's all I know. I don't know that guy,
23 you know. I don't --

24 Q. Did that make sense, I mean, did that make
25 sense to you as to why he wouldn't build the project

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1 was Sean Wilson and myself, my office. It's mutual.

2 Q. Did you have an agreement with Front Sight
3 that you would not serve notices of intent to file
4 liens on the project?

5 A. No. We never talk about it.

6 Q. But if -- this is a valid document, right?
7 This is --

8 A. Yes.

9 Q. -- a valid contract? So if Front Sight,
10 Ignatius Piazza, Mike Meacher, decided they wanted to
11 build a project and use this whole \$36 million to do
12 it, could they?

13 A. Yes.

14 Q. Okay. You could provide all the work, you
15 could carry the debt financing up to \$36 million?

16 A. Yes, sir.

17 Q. Okay.

18 A. Otherwise I never would have.

19 Q. I'm going to hand you Exhibit 4. That's the
20 line of credit. And look at definition 1.1.3, Senior
21 Debt. It says, "Means the additional loan that will
22 be sought by Borrower, and which Borrower will use
23 its best efforts to obtain, from a traditional
24 financial institution specializing in financing
25 projects such as the Project." Do you recall having

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1 discussions with anyone at Front Sight regarding them
2 getting senior debt?

3 A. Well, before this agreement I had a
4 conversation with Mr. Piazza, because I wanted to
5 know where my money was going to be coming from. And
6 he says he got a great program going through some
7 visa EB5, whatever that is, and he got like \$50
8 million coming. That's what I was told.

9 Q. So when this definition of senior debt
10 refers to money from a traditional financial
11 institution specializing in financing projects such
12 as the project?

13 A. You know, I don't -- those words and you're
14 talking about, I don't comprehend. All I'm saying in
15 like such the project, I mean the project is villas,
16 we're going to build a lot of villas.

17 Q. When you think of a traditional financial
18 institution, what do you think of?

19 A. Any lender is traditional.

20 Q. Did you have discussions with anyone at
21 Front Sight about them getting traditional financing?

22 A. Yeah. Mr. Piazza, he says he was getting
23 financing from EB5 people. Don't know who they are.

24 Q. That's not traditional financing, correct?

25 A. Don't know. When you say "traditional," I

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Case Number: A-18-781084-B

Case Style: Front Sight Management LLC,
 Plaintiff(s)vs.Las Vegas Development Fund LLC,
 Defendant(s)

**Filing Details**

Court	Eighth Judicial District Court
Date/Time Submitted	8/17/2020 4:51 PM PST
Filing Type	Opposition to Motion to Dismiss - OMD (CIV)
Filing Description	Las Vegas Development Fund, LLC's Opposition to Counterdefendant Michael Meacher's Motion to Dismiss First Amended Counterclaim
Type of Filing	EFileAndServe
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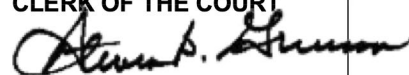
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STANWOOD

13 DISTRICT COURT

14 CLARK COUNTY, NEVADA

15 FRONT SIGHT MANAGEMENT LLC, a
Nevada Limited Liability Company,

16 Plaintiff,

17 vs.

18 LAS VEGAS DEVELOPMENT FUND LLC, a
19 Nevada Limited Liability Company; et al.,

20 Defendants.

21 _____
22 AND ALL RELATED COUNTERCLAIMS.

Case No. A-18-781084-B
Dept. No. XVI

**LAS VEGAS DEVELOPMENT FUND,
LLC’S OPPOSITION TO
COUNTERDEFENDANTS EFRAIN
RENE MORALES-MORENO,
MORALES CONSTRUCTION, INC.,
TOP RANK BUILDERS, INC., AND ALL
AMERICAN CONCRETE & MASONRY
INC.’S MOTION TO DISMISS FIRST
AMENDED COUNTERCLAIM**

**Hearing Date: September 9, 2020
Hearing Time: 9:00 a.m.**

23
24 **MEMORANDUM OF POINTS AND AUTHORITIES**

25 **I. INTRODUCTION**

26 There is absolutely no merit to the Morales Parties’ Motion to Dismiss. Most of the attacks
27 the Morales Parties levy against LVD Fund’s Counterclaim have already been addressed, and
28 denied, by this Court. The remainder are based on the wrong standard of proof, half-truths, or both.

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1 Specifically:

- 2 • LVD Fund has pled its fraud claim with particularity by identifying the “who, what, when,
3 and how” of the Counter Defendants’ fraud to induce LVD Fund to continue working with
4 Front Sight to market the Project, and to accept Front Sight’s fictitious \$36 million Line of
5 Credit as “senior debt” under the CLA;
- 6 • LVD Fund has sufficiently alleged that Mr. Meacher’s representations about the \$36 million
7 Line of Credit were false and intended by all of the Counterdefendants (including the
8 Morales Parties) to induce LVD Fund to release additional EB-5 funds (that it was holding
9 pursuant to § 3.1 of the CLA) and to solicit additional EB-5 investors for the Project;
- 10 • LVD Fund has sufficiently stated a claim for damages related to its fraud claim
11 (notwithstanding its separate and stand-alone claim for judicial foreclosure);
- 12 • LVD Fund does need to demonstrate that it was in privity of contract with the Morales
13 Parties to sustain a fraud claim against them; and
- 14 • LVD Fund’s factual allegations support the Morales Parties being named as defendants in its
15 civil conspiracy claim.

16 If anything, the Morales Parties, who are represented by the same counsel as Front Sight, join
17 in Front Sight’s efforts to cause LVD Fund to waste time and effort in an attempt to prevail through
18 attrition because they cannot on the merits. As this Court is already aware, the Morales Parties
19 previously forced LVD Fund to expend substantial costs in serving them because Mr. Aldrich
20 refused to accept service on their behalf, and then Mr. Morales repeatedly (and intentionally)
21 attempted to skip service only to turn around and retain Mr. Aldrich. Separately, this Court will
22 consider on August 26, 2020, the Morales Parties’ flagrant refusal to produce a single document per
23 LVD Fund’s Subpoena Duces Tecum that was served on them in February 2020—six months ago.
24 Now, the Morales Parties have brought this unmeritorious Motion to Dismiss (the “Motion”) to force
25 LVD Fund to incur additional costs. The Motion should be denied in its entirety.

26 ///

27 ///

28

II. RELEVANT FACTS AND PROCEDURAL HISTORY

As this Court is aware, LVD Fund initially hoped that it would be able to raise enough EB-5 money to finance the entire Front Sight Project. However, when it became clear that the Project was not getting the traction with the EB-5 investors as the parties had hoped, LVD Fund gave Front Sight three options: (1) to part ways (and return the EB-5 investors' money); (2) buy out LVD Fund and continue with the EB-5 raise itself; or (3) to obtain senior debt to ensure that the Project was completed regardless of whether or not additional EB-5 funds were raised (although LVD Fund would continue to attempt to raise money). Front Sight chose to obtain senior debt, fully aware that LVD Fund would likely be unable to finance the entire Project through EB-5 investors.

By October 2017, Front Sight was in breach of the CLA. Defs.' Ans. to Pl.'s Second Am. Compl.; and First Am. Countercl. ("Am. Counterclaim."), filed June 4, 2020, at ¶ 58. Among other things, Front Sight had failed to obtain senior debt within the time frame required by the parties' agreement. *Id.* Thereafter, Front Sight concocted a scheme to further defraud LVD Fund and to convince LVD Fund to continue working with Front Sight to fund the project. *Id.*

This is when Mr. Morales and the Morales Entities entered the picture. While Front Sight had previously hired the Morales Entities to do construction work on the Project, in October 2017, Counter Defendants Front Sight, Ignatius Piazza, Michael Meacher, Mr. Morales, and the Morales Entities entered into a comprehensive scheme to further defraud LVD Fund. *Id.* at ¶ 59. The scheme involved Front Sight purportedly arranging a \$36 million construction line of credit with Morales Construction. *Id.* In fact, the construction line of credit was a "fictitious [] agreement [intended] to give the false appearance that Front Sight had access to enough credit to complete the Project." *Id.*

Front Sight attempted to convince LVD Fund to accept the construction line of credit as "senior debt." LVD Fund refused because it did not comply with the parties' definition of senior debt. Front Sight then attempted to convince LVD Fund to release additional EB-5 funds once it had the construction line of credit in hand. Specifically, LVD Fund has alleged:

Counter Defendants [Front Sight, Mr. Piazza, Mr. Meacher, Mr. Morales, and the Morales Entities] carried out the fraudulent scheme with the intent that LVD Fund would rely on this false appearance of

1 access to credit and believe that the credit would in fact be utilized for
2 construction of the Project. Counter Defendants further intended that
3 the fictitious loan agreement would give LVD Fund a false sense of
4 security so that it would release funds it was withholding from Front
5 Sight (pursuant to § 3.1 of the CLA), and facilitate continued solicitation
6 of additional EB-5 investors by using the loan agreement to give an
7 appearance that Front Sight was putting more money into construction
8 than it really was.

9 *Id.* at ¶ 60.

10 LVD Fund has since discovered, through discovery in this case, that Front Sight and Mr.
11 Morales had a secret side agreement whereby Front Sight would not utilize the construction line of
12 credit to finance the remainder of the Project. Rather, the construction line of credit was always
13 intended to induce LVD Fund to continue raising EB-5 funds for a project that Front Sight was
14 determined to have fail for purported lack of financing (and therefore put the EB-5 investors at risk).

15 Mr. Morales specifically testified in his deposition that *before* agreeing to provide the line of
16 credit, he spoke to Mr. Piazza because he “wanted to know where [his] money was going to be
17 coming from” and Mr. Piazza told him that the money would come directly from EB-5 money. Ex.
18 1, a true and correct copy of excerpts from Mr. Morales’ 30(b)(6) deposition, at 42:3-8. Mr. Morales
19 further testified that he told Mr. Piazza that Front Sight could not draw on the line of credit if the
20 EB-5 money was not already in hand. *Id.* at 25:7-12 (“And I asked him point blank, I said, if your
21 money’s not there, I said, I don’t want to move forward.”). Only with this understanding did Front
22 Sight and Mr. Morales enter into the \$36 million construction line of credit.

23 With this backdrop, on April 3, 2020, LVD Fund moved to amend its Counterclaim to add
24 the Morales Entities as parties to this case and to assert a fraud claim against Front Sight, Mr. Piazza,
25 Mr. Meacher, Mr. Morales, and the Morales Entities for entering into, and then misrepresenting, the
26 fictitious \$36 million construction line of credit and a civil conspiracy claim against all Counter
27 Defendants. (*See generally* Am. Countercl.) In doing so, LVD Fund specifically alleged that
28 “Counter Defendants Front Sight, Mr. Piazza, Mr. Meacher, Mr. Morales, and the Morales Entities
caused th[e \$36 million construction] ‘Loan Agreement’ to be executed with no intent to ever utilize
the credit line, and with the knowledge that the Morales Entities were not capable of extending or
carrying the amount of credit purportedly available under the agreement’s terms.” *Id.* at ¶ 62.

1 On April 17, 2020, Front Sight, through its counsel John Aldrich (who also represents the
 2 Morales Parties), objected to LVD Fund’s request to amend the Counterclaim and in doing so, made
 3 a number of the same arguments the Morales Parties make now. Specifically, Front Sight argued
 4 that the Court should deny LVD Fund’s request to amend its Counterclaim because, among other
 5 arguments, the proposed new claims against the Counter Defendants (including the Morales Parties)
 6 were futile because: (i) Front Sight actually utilized the Line of Credit, (ii) the Morales Parties
 7 intended to perform under the Line of Credit, (iii) LVD Fund’s fraud claim fails for lack of damages,
 8 and (iv) Mr. Meacher’s statements regarding the Morales Line of Credit were not false. *See*
 9 *generally* Opp. to Mot. for Leave to Amend Countercl., filed April 17, 2020. The Court ultimately
 10 found no merit to any of these arguments and granted LVD Fund’s Motion for Leave to Amend, and
 11 LVD Fund filed its Amended Counterclaim on June 4, 2020. *See* Order Granting Def. and
 12 Countercl. LVD Fund’s Notice of Mot. and Mot. for Leave to Am. the Countercompl., filed June 4,
 13 2020; *see also generally* Am. Countercl.

14 The Morales Parties now bring this unmeritorious Motion to Dismiss, regurgitating many of
 15 the same arguments already rejected by the Court. The Morales Parties’ Motion should be denied.

16 **III. LEGAL ANALYSIS**

17 **A. Legal Standard.**

18 It bears repeating the appropriate standard of review for a motion to dismiss because while
 19 the Morales Parties cite the right legal standard in their Motion, they fail to apply this standard of
 20 review properly.

21 A court may dismiss a plaintiff’s complaint for “failure to state a claim upon which relief can
 22 be granted.” NRCPC 12(b)(6). “The standard of review for dismissal . . . is rigorous as this court
 23 ‘must construe the pleadings liberally and draw every fair intendment in favor of the [non-moving]
 24 party.’” *Squires v. Sierra Nev. Educ. Found.*, 107 Nev. 902, 905, 823 P.2d 256, 257 (1991)
 25 (citations omitted). All factual allegations of the complaint must be accepted as true. *Capital Mort.*
 26 *Holding v. Hahn*, 101 Nev. 314, 315, 705 P.2 126, 126 (1985). A complaint will only be dismissed
 27 “if it appears beyond a doubt that [the plaintiff] could prove no set of facts, which, if true, would
 28 entitle it to relief.” *Buzz Stew, LLC*, 124 Nev. at 228, 181 P.3d at 672; *see also Morris v. Bank of*

1 *Am. Nev.*, 110 Nev. 1274, 1276, 886 P.2d 454, 456 (1994) (providing that dismissal under N.R.C.P.
2 12(b) is appropriate only where the allegations “fail to state a cognizable claim for relief”).

3 In deciding a motion to dismiss, the court may consider materials outside the pleadings if
4 those materials are attached to the complaint, *Hal Roach Studios v. Richard Feiner & Co.*, 896 F.2d
5 1542, 1555 (9th Cir. 1990), or are referenced by the complaint, *Durning v. First Boston Corp.*, 815
6 F.2d 1265, 1267 (9th Cir. 1987), or are properly subject to judicial notice, *Sprewell v. Golden State*
7 *Warriors*, 266 F.3d 979, 988 (9th Cir. 2001).

8 **B. LVD Fund’s Fraud Claim Against the Morales Parties Should Not Be Dismissed.**

9 1. *LVD Fund’s Fraud Claim is Pled with Particularity.*

10 LVD Fund recognizes that fraud claims must be pled with particularity pursuant to NRCF
11 9(b). Specifically, a plaintiff’s complaint must give a defendant to a fraud claim adequate notice of
12 the circumstances constituting fraud in order to adequately prepare the defendant’s defense. *See*
13 *Rocker v. KPMG, LLP*, 122 Nev. 1185, 1192, 148 P.3d 703, 707-09 (2006), overruled in part on
14 other grounds by *Buzz Stew, LLC v. City of No. Las Vegas*, 124 Nev. 224, 228 n. 6, 181 P.3d 670,
15 672, n. 6 (2008). “A complaint alleging fraud must provide ‘the who, what, where, and how.’”
16 *Borsellino v. Goldman Sachs Group, Inc.*, 477 F.3d 502, 507 (7th Cir. 2007). However, the plaintiff
17 need not identify every single fact of the fraud (that is what discovery is for), rather “the
18 circumstances that must be detailed include averments to the time, the place, the identity of the
19 parties involved, and the nature of the fraud or mistake.” *Brown v. Kellar*, 97 Nev. 582, 583-84, 636
20 P.2d 874, 874 (1981).

21 The Morales Parties intentionally misconstrue LVD Fund’s fraud claim in an attempt to
22 manufacture an argument that it is insufficiently pled. The Morales Parties claim that “*the only*
23 *allegations* in the Amended Counterclaim against Mr. Morales or the Morales Entities involve an
24 extension of the Morales [Line of Credit] to Front Sight” and that “[t]here is no mention of any
25 contract whatsoever between Mr. Morales or the Morales Entities and LVDF, or any other
26 Defendant for that matter”—which the Morales Parties contend justifies their dismissal from LVD
27 Fund’s fraud claim. Mot. at 7:17-21. In fact, LVD Fund has specifically alleged that the Morales
28 Parties were intimately involved with Front Sight and Mr. Meacher to defraud LVD Fund.

1 Specifically, LVD Fund has alleged:

- 2 • In or about October 2017, the Morales Parties “entered into a comprehensive scheme” with
3 Front Sight and Mr. Meacher to defraud LVD Fund. Am. Countercl. at ¶ 59.
- 4 • “The scheme involved Front Sight and the Morales Entities entering into a fictitious \$36
5 million loan agreement to give the false appearance that Front Sight had access to enough
6 credit to complete the Project.” *Id.*
- 7 • The Counter Defendants entered into their scheme with the intent to give LVD Fund a “false
8 appearance of access to credit” and to make LVD Fund “believe that the credit would in fact
9 be utilized [by Front Sight] for construction of the Project” pursuant to the CLA’s senior debt
10 requirement. *Id.* at ¶ 60.
- 11 • *After* the Counter Defendants entered into this scheme, the Morales Parties and Front Sight
12 entered into a Line of Credit. *See id.* at ¶ 61. They did so with the understanding, and
13 agreement, that Front Sight would never utilize the Line of Credit to act as “senior debt” as
14 contemplated under the CLA and to finance the remainder of the project. They further did so
15 knowing that the Morales Entities were not capable of extending or carrying the amount of
16 credit purportedly available under the Line of Credit (i.e., \$36 million). *See id.* at ¶ 62.
- 17 • In furtherance of the Counter Defendants fraudulent scheme, the Counter Defendants agreed
18 to have Mr. Meacher falsely represent to LVD Fund that the Morales Parties had extended
19 the \$36 million Line of Credit to Front Sight and that it was executed “pursuant to the terms
20 of the agreements” (i.e., the CLA). *See id.* at ¶ 63.

21 LVD Fund has therefore identified “the time, the place, the identity of the parties involved,
22 and the nature of the fraud” as required by NRCP 9(b).

23 However, the Morales Parties contend that *even more* is needed for LVD Fund’s fraud claim
24 to survive a motion to dismiss. They claim—without citing any authority whatsoever—that LVD
25 Fund needed to also detail: (i) whether Mr. Morales knew of Front Sight’s dealings with LVD Fund,¹

27 ¹ This argument is specious at best because Mr. Morales already testified in this case that he was well aware of Front
28 Sight’s dealings with LVD Fund and, *before* agreeing to provide the line of credit, he spoke to Mr. Piazza to confirm that
the Line of Credit would only be utilized to the extent Front Sight could repay Morales directly from the EB-5 money
coming from LVD Fund. Ex. 1. at 25:7-12; 42:3-8.

1 (ii) that the Line of Credit was “intended to finance the entire Front Sight Project,”² (iii) “how
 2 Morales knew that offering credit to Front Sight would persuade LVDF to release funds,” and “how
 3 Mr. Morales could possibly benefit from this alleged scheme other than to secure construction
 4 contract from Front Sight.” Mot. at 7:7-8:7. Rule 9 imposes no such obligation. While LVD Fund
 5 must plead fraud with particularity (which it has), it need not allege each and every minute detail
 6 about the fraudulent scheme particularity in order to survive a motion to dismiss. In fact, NRC 9(b)
 7 expressly states that you not need plead “[m]alice, intent, knowledge, and other conditions of a
 8 person’s mind with specificity.” General allegations are sufficient.

9 Moreover, the entire purpose of discovery is to obtain such information. Absent discovery, a
 10 claimant such as LVD Fund could not know when the scheming parties decided to defraud the
 11 claimant, whose idea it was, and how they perpetrated the fraud. Such facts are within the Morales
 12 Parties’ and their co-conspirators’ sole possession. “Rule 9(b)’s particularity requirement mandates
 13 *only that the circumstances constituting fraud be identified to the extent that the defendants will*
 14 *find sufficient information in the allegations to be able to prepare an adequate answer.” Fondren*
 15 *v. Schmidt*, 626 F. Supp. 892, 898 (D. Nev. 1986) (citing *Riley v. Brazeau*, 612 F.Supp.674 (D. Or.
 16 1985) (emphasis added)).

17 Put simply, LVD Fund has satisfied the requirements of NRC 9(b). LVD Fund’s fraud
 18 claim is pled with particularity because it has identified the “averments to the time, the place, the
 19 identity of the parties involved, and the nature of the fraud.” *See Brown*, 97 Nev. at 583-85; *see also*
 20 *Fondren*, 626 F. Supp. At 898.

21 2. *LVD Fund Has Sufficiently Alleged that the Representations about the Line of*
 22 *Credit Were False.*

23 The Morales Parties contend that Mr. Meacher’s representations to LVD Fund were “true in
 24 every respect” and that “Morales performed on his Line of Credit,” therefore, LVD Fund’s fraud
 25

26 ² LVD Fund does not have to allege that the Line of Credit “was intended to finance the entire Front Sight Project”
 27 because that would be inconsistent with the LVD Fund’s fraud claim, as alleged. Rather, LVD Fund has specifically
 28 alleged that the Counter Defendants entered into their scheme to misrepresent the Line of Credit as “senior debt” as
 defined by the CLA in order to induce LVD Fund to release additional EB-5 funds, to continue to market the Project, and
 to not declare Front Sight in breach of the CLA (therefore, foreclosing on the property, taking over the Project, and likely
 hiring another construction company).

1 claim fails as a matter of law. Mot. at 8-10, 11-13. The Morales Parties ignore the standard on a
2 motion to dismiss, LVD Fund’s specific allegations in the Amended Counterclaim regarding the
3 Line of Credit, and the context in which Mr. Meacher’s statements were made to LVD Fund.

4 In deciding this Motion, the Court must accept all factual allegations as true. *See Capital*
5 *Mort. Holding*, 101 Nev. at 315. LVD Fund has specifically alleged that in October 2017, Front
6 Sight was in violation of the CLA because it had failed to obtain senior debt. Am. Countercl. at ¶
7 58. In this context (and in response to LVD Fund’s multiple inquiries about Front Sight’s attempts
8 to secure senior debt), Mr. Meacher represented to LVD Fund that Front Sight had secured a \$36
9 million Line of Credit from Morales Construction “*pursuant to the terms of the agreements*” (i.e.,
10 pursuant to the CLA’s senior debt requirements). *Id.* at ¶ 63 (emphasis added). Yet, as LVD Fund
11 has specifically alleged, the Line of Credit was “fictitious” from the inception; Counter Defendants
12 Front Sight, Mr. Piazza, Mr. Meacher, Mr. Morales, and the Morales Entities’ intended that the Line
13 of Credit would give the “false appearance of access to credit” despite Counter Defendants’ secret
14 side agreement that the Line of Credit was executed “with no intent to ever utilize the credit line, and
15 with the knowledge that the Morales Entities were not capable of extending or carrying the amount
16 of credit purportedly available under the agreement’s terms.” *Id.* at ¶ 59-62.

17 The Morales Parties essentially asks this Court to consider materials outside the pleadings,
18 request that the Court make a factual determination that the Line of Credit in fact extended a \$36
19 million Line of Credit to Front Sight, and that Mr. Morales extended some portion of the Line of
20 Credit to “mitigate cash flow” before EB-5 funds were released from LVD Fund. Put another way,
21 the Morales Parties ask this Court to make a factual finding that LVD Fund’s allegations about the
22 \$36 million Line of Credit, the Morales Parties’ ability to extend a \$36 million Line of Credit, and
23 the Counter Defendants intent in executing the Line of Credit are all untrue. This is not only
24 contrary to the well-established standards for motions to dismiss, but it also ignores Mr. Morales’
25 testimony and the whole premise of LVD Fund’s claim (i.e., that the Counter Defendants executed a
26 fictitious \$36 million Line of Credit). *Even if* Mr. Meacher accurately represented the \$36 million
27 Line of Credit (which LVD Fund has alleged he did not), the misleading nature of Mr. Meacher’s
28 statement is still actionable. *See Epperson v. Roloff*, 102 Nev. 206, 212 (1986) (“[W]e also note that

1 a defendant may be found liable for misrepresentation even when the defendant does not make an
 2 express misrepresentation, but instead makes a representation which is misleading because it
 3 partially suppresses or conceals information.”); *see also Sullivan v. Helbing*, 66 Cal. App. 478, 483
 4 (Cal. Ct. App. 1924) (“Fraudulent representations may consist of halftruths calculated to deceive.
 5 Thus a representation literally true is actionable if used to create an impression substantially false.”);
 6 *Am. Trust Co. v. Cal. Western States Life Ins. Co.*, 15 Cal. 2d 42, 65 (1940) (“Regardless of whether
 7 one is under a duty to speak or disclose facts, one who does speak must speak the whole truth, and
 8 not by partial suppression or concealment make the utterance untruthful and misleading. This
 9 doctrine . . . is everywhere recognized as a sound rule of law.”).

10 3. *The Morales Parties Are Properly Named as a Party to LVD Fund’s Fraud*
 11 *Claim Even Though the Misrepresentations About the Line of Credit Were*
 12 *Made by Mr. Meacher and Front Sight.*

13 The Morales Parties also contend that they cannot be named as a party to the Counterclaim
 14 because they “never communicated with Defendants” and that Mr. Meacher was the only party
 15 making statements to LVD Fund. The Morales Parties’ argument ignores the very heart of LVD
 16 Fund’s fraud claim: that Front Sight, Mr. Piazza, Mr. Meacher, and the Morales Parties conspired to
 17 enter into a fictitious Line of Credit and misrepresented the Line of Credit to LVD Fund. In
 18 addition, their argument overlooks the established principle that “[e]very participant in a fraud and
 19 each one who assists another in the perpetration of the fraud is liable to the injured party.” *Tucek v.*
 20 *Mueller*, 511 N.W.2d 832, 836 (1994) (collecting cases).

21 In *Tucek*, the plaintiff was severely injured in a car accident. *See id.* at 833-834. Her father,
 22 without her permission, quickly settled her personal injury claim with the insurer, forged her
 23 signature on the settlement agreement, and then spent thousands of dollars of her money, via counter
 24 checks. *See id.* at 834. The plaintiff sued not only her father but also the insurer, the notary who
 25 notarized the forged settlement agreement, and the banks that cashed the counter checks. *See*
 26 *generally id.* The insurer, the notary, and the banks brought motions for summary judgment, arguing
 27 that plaintiff’s fraud claims against them must be decided in their favor because only the father could
 28 be liable for his fraudulent actions. *See id.* at 836-837. The District Court granted their request and
 entered summary judgment in their favor. *Id.* at 833. The Supreme Court of South Dakota reversed

1 and remanded, noting: “*We reiterate that every participant in a fraud and each one who assists*
 2 *another in the perpetration of the fraud is liable to the injured party.*” *Id.* at 837 (emphasis added).
 3 Ultimately, the Court found there was a factual issue to be resolved by a jury as to whether the
 4 moving defendants participated in the father’s agreement to settle the claim. *Id.* (“What role, if any,
 5 did these appellees have in assisting the father in the fraud committed against the daughter? This
 6 burning question presents a genuine issue of material fact which precludes a summary judgment
 7 against Tucek on her cause of action for fraud and deceit against these appellees. A jury should sort
 8 out the facts.”).

9 The Court’s reasoning in *Tucek* applies here: LVD Fund has sufficiently alleged, pursuant to
 10 NRCPC 9(b) that the Morales Parties were an active part of the scheme to defraud LVD Fund.
 11 Therefore, they are equally liable to LVD Fund. A jury will ultimately have to sort out the Morales
 12 Parties’ role in the fraud. Dismissal of such claims at this point in the case is improper. *See Tucek*,
 13 511 N.W.2d at 837.

14 4. *LVD Fund Has Sufficiently Alleged That It Was Damaged.*

15 The Morales Parties’ argument that LVD Fund’s fraud claim fails for lack of damages is
 16 particularly specious. The Morales Parties parrot the very same arguments Front Sight previously
 17 made to this Court (and that this Court rightly rejected) that LVD Fund’s fraud claim fails for a
 18 purported lack of damages. *Compare* Mot. at 13:7-21 (“Even if this allegation is true, LVDF is not
 19 damaged by the alleged false statements for three reasons: (1) LVDF is entitled to repayment of any
 20 funds loaned; (2) LVDF has collected interest on the funds loaned; and (3) LVDF has a security
 21 interest in land that is worth far more than the total amount of the funds LVDF loaned Front Sight.
 22 Moreover, LVDF is currently seeking to foreclose on its security interest in that land.”) *with* Front
 23 Sight’s Opp. to Mot. for Leave to Am. Countercl., filed April 17, 2020, at 12-13 (arguing that “even
 24 if Front Sight’s representations regarding the Morales Line of credit were false,” LVD Fund’s fraud
 25 claim failed for lack of damages). LVD Fund has sufficiently alleged, pursuant to NRCPC 8(a)(4) that
 26 it has been damaged in excess of fifteen thousand dollars (\$15,000) as a result of the Counter
 27 Defendants’ fraudulent acts. Am. Countercl. at ¶ 71. In addition, LVD Fund contends that it is
 28 entitled to an award of punitive damages pursuant to NRS 42.005 and attorney’s fees pursuant to §

1 8.2 of the CLA. *Id.* at ¶ 72-73. The Morales Parties simply ignore those allegations.

2 5. *LVD Fund Has Standing to Bring its Fraud Claim.*

3 Finally, the Morales Parties’ claim—without any supporting legal authority—that LVD Fund
 4 “lacks standing to sue either Morales or the Morales Entities for fraud *where LVD Fund is not in*
 5 *privity of contract with the Morales Entities.*” Mot. at 13:22-23 (emphasis added). The Morales
 6 Parties repeatedly make it a point—throughout their Motion—to say that they were not parties to the
 7 CLA as though that somehow absolves them of any liability. Mot. at 13:17 (“Neither Mr. Morales
 8 nor the Morales Entities are parties to the CLA.”); 13:22-23 (“Defendants’ fraud claim fails against
 9 Morales because LVDF lacks standing to sue either Morales or the Morales Entities for fraud where
 10 LVDF is not in privity of contract with the Morales Parties”); 14:4-5 (“There is no contract between
 11 Morales or the Morales Entities.”); 14:16-17 (“Without a contract or any dealings between Morales
 12 and/or the Morales Entities and LVDF, there can be no fraud as to LVDF.”)

13 The Morales Parties’ argument may have merit if LVD Fund had asserted a breach of
 14 contract claim against the Morales Parties. However, it did not. Rather it asserted a fraud claim
 15 against the Morales Parties. The lack of any contractual relationship between the Morales Parties
 16 and LVD Fund does not preclude LVD Fund from stating fraud (and civil conspiracy) claims against
 17 the Morales Parties. Under the Morales Parties’ position, no party could be named as a defendant to
 18 a fraud claim without a corresponding breach of contract claim. That is just not the law (neither in
 19 Nevada nor anywhere else).

20 “Although state courts do not have constitutional Article III standing, ‘Nevada has a long
 21 history of requiring an actual justiciable controversy as a predicate to judicial relief.’” *In re*
 22 *AMERCO Derivative Litig.*, 127 Nev. 196, 213 (2011). The doctrine of standing asks “whether the
 23 plaintiff incurred an injury sufficiently severe, and of a type acknowledged as legally cognizable,
 24 such that there is any kind of suit to be brought at all.” *Schulte v. Fafaleos*, Case Nos. 68685 and
 25 69304, 2017 Nev. App. Unpub. LEXIS 381, *6-7 (June 9, 2017); *Schwartz v. Lopez*, 132 Nev. 732,
 26 743, 382 P.3d 886, 894 (2016) (to establish standing, a party must show the occurrence of an injury
 27 that is “special,” “peculiar,” or “personal” to him and not merely a generalized grievance shared by
 28 all members of the public). In this case, LVD Fund has shown that it suffered a personal injury—it

1 released EB-5 funds that it would not have released but for the Counter Defendants' entering into the
 2 fictitious Line of Credit, it continued to market the Front Sight Project to potential EB-5 investors to
 3 its detriment, and it did not declare Front Sight in breach of the CLA in October 2017 (and
 4 consequently was damaged in excess of \$15,000). The Counter Defendants' actions, collectively,
 5 were the cause of that injury, and a ruling in favor of LVD Fund will redress its injury. *Tucek*, 511
 6 N.W.2d at 837 ("We reiterate that every participant in a fraud and each one who assists another in
 7 the perpetration of the fraud is liable to the injured party."). Therefore, LVD Fund certainly has
 8 standing to assert its fraud claim against the Counter Defendants. *See Schwartz*, 132 Nev. at 743.

9 **C. The Morales Parties Should Not Be Dismissed From LVD Fund's Civil**
 10 **Conspiracy Claim.**

11 The Morales Parties also ask this Court to dismiss them from LVD Fund's civil conspiracy
 12 claim because paragraphs 101-107 of the Amended Counterclaim do not specifically mention them.
 13 But the Morales Parties' argument ignores the factual allegations of paragraphs fifty-eight through
 14 sixty-five, which are incorporated by reference into LVD Fund's civil conspiracy claim, that detail
 15 the Morales Parties' involvement in the Counter Defendants' conspiracy to enter into the fictitious
 16 Line of Credit in order to defraud LVD Fund and to convince LVD Fund to continue working with
 17 Front Sight to fund the Project. *See Am. Countercl.* at ¶¶ 58-65, 101. Those factual allegations
 18 justify the Morales Parties' inclusion in the civil conspiracy claim and, if the Court believes that the
 19 Morales Parties need to be named within the civil conspiracy cause of action, LVD Fund can easily
 20 file another amended counterclaim including the Morales Parties by name in the civil conspiracy
 21 claim.

22 Finally, the Morales Parties attack LVD Fund's civil conspiracy claim for failing to articulate
 23 an underlying tort or to detail "how Front Sight and/or the other 'counterdefendants' joined and
 24 participated in the alleged conspiracy.'" *Mot.* at 15:7-19. LVD Fund does not need to plead that an
 25 underlying tort was committed for its civil conspiracy claim to survive. *See Collins v. United Fed.*
 26 *S&&L Ass'n*, 99 Nev. 284, 303 (1983) ("An actionable civil conspiracy is a combination of two or
 27 more persons who, by some concerted action, intend to accomplish some unlawful objective for the
 28 purpose of harming another which results in damage.") (internal citations omitted); *see also Cadle*

1 *Co. v. Woods & Erickson, LLP*, 131 Nev. 114, 117-118 (2015) (“In Nevada, however, civil
2 conspiracy liability may attach where two or more persons undertake some concerted action with the
3 intent to commit an unlawful objection, not necessarily a tort.”). Moreover, as discussed above,
4 Rule 9 does not require that LVD Fund allege each and every minute detail about the fraudulent
5 scheme with particularity (including how Front Sight and/or the Morales Parties joined the alleged
6 conspiracy) in order to survive a motion to dismiss. *See Fondren*, 626 F. Supp. at 898 (“Rule 9(b)’s
7 particularity requirement mandates ***only that the circumstances constituting fraud be identified to***
8 ***the extent that the defendants will find sufficient information in the allegations to be able to***
9 ***prepare an adequate answer.***”) (emphasis added).

10 **IV. CONCLUSION**

11 The Morales Parties’ Motion is, in large part, duplicative of Front Sight’s Opposition to LVD
12 Fund’s Motion for Leave to Amend (made through the same counsel) which was ultimately rejected
13 by this Court. The Morales Parties give this Court no reason to depart from its prior ruling. LVD
14 Fund sufficiently pleaded its fraud claim in accord with NRCP 9(b), the Counter Defendants’
15 representations about the Line of Credit were false, and LVD Fund has sufficiently alleged that it
16 was damaged by the Counter Defendants’ fraudulent misrepresentations. Moreover, LVD Fund has
17 sufficiently alleged that the Morales Parties entered into a conspiracy with Front Sight, Mr. Piazza,
18 and Mr. Meacher to execute the fictitious Line of Credit and to defraud LVD Fund.

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1 Moreover, the Morales' Parties arguments about their lack of privity of contract with LVD
2 Fund completely miss the mark. LVD Fund has sued them for fraud; not breach of contract. For all
3 of these reasons, the Morales Parties' Motion must be denied in its entirety.

4 DATED this 17th day of August, 2020.

5 BAILEY ❖ KENNEDY

6
7 By: /s/ Andrea M. Champion

8 JOHN R. BAILEY

9 JOSHUA M. DICKEY

10 ANDREA M. CHAMPION

11 *Attorneys for Defendants*

12 LAS VEGAS DEVELOPMENT FUND

13 LLC; EB5 IMPACT CAPITAL

14 REGIONAL CENTER LLC; EB5 IMPACT

15 ADVISORS LLC; ROBERT W.

16 DZIUBLA; JON FLEMING; and LINDA

17 STANWOOD

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CERTIFICATE OF SERVICE

I certify that I am an employee of BAILEY ❖ KENNEDY and that on the 17th day of August, 2020, service of the foregoing **LAS VEGAS DEVELOPMENT FUND, LLC’S OPPOSITION TO COUNTERDEFENDANTS EFRAIN RENE MORALES-MORENO, MORALES CONSTRUCTION, INC., TOP RANK BUILDERS, INC., AND ALL AMERICAN CONCRETE & MASONRY INC.’S MOTION TO DISMISS FIRST AMENDED COUNTERCLAIM** was made by mandatory electronic service through the Eighth Judicial District Court’s electronic filing system and/or by depositing a true and correct copy in the U.S. Mail, first class postage prepaid, and addressed to the following at their last known address:

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IGNATIUS A. PIAZZA II; JENNIFER
PIAZZA; VNV DYNASTY TRUST I;
VNV DYNASTY TRUST II; MICHAEL
MEACHER; TOP RANK BUILDERS
INC.; ALL AMERICAN CONCRETE &
MASONRY INC.; MORALES
CONSTRUCTION, INC.; AND EFRAIN
RENE MORALES-MORENO

/s/ Angelique Mattox
Employee of BAILEY ❖ KENNEDY

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Exhibit 1

Exhibit 1

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EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, STATE OF NEVADA

FRONT SIGHT MANAGEMENT, LLC, a)
Nevada Limited Liability Company,)
)
Plaintiff,)
)
vs.) Case No.
) A-18-781084-B
LAS VEGAS DEVELOPMENT FUND LLC,)
a Nevada Limited Liability Company,)
et al.,)
)
Defendants.)
)
<hr/> and related Cross-Claims. <hr/>)
)

DEPOSITION OF
30(b)(6) WITNESS OF ALL AMERICAN CONCRETE,
MORALES CONSTRUCTION, AND TOP RANK BUILDERS - RENE MORALES
PAHRUMP, NEVADA
MONDAY, MARCH 16, 2020

ATKINSON-BAKER, INC.
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FILE NO: AE02A9F

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EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, STATE OF NEVADA

FRONT SIGHT MANAGEMENT, LLC, a)	
Nevada Limited Liability Company,)	
)	
Plaintiff,)	
)	
vs.)	Case No.
)	A-18-781084-B
LAS VEGAS DEVELOPMENT FUND LLC,)	
a Nevada Limited Liability Company,)	
et al.,)	
)	
Defendants.)	
)	
<hr/> and related Cross-Claims. <hr/>)	
)	

Deposition of 30 (b)(6) witness Rene Morales, taken on behalf of Defendants, at 861 S. Highway 160, Pahrump, Nevada, commencing at 10:28 a.m. Monday, March 16, 2020 before Deborah Ann Hines, Nevada CCR No. 473, California CSR No. 11691, RPR.

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A P P E A R A N C E S

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Also Present:

ROBERT DZIUBLA

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I N D E X

WITNESS: RENE MORALES

EXAMINATION	PAGE
BY MR. GREER	5

EXHIBITS

PLAINTIFF'S NUMBER	DESCRIPTION	PAGE
	(None)	

DEFENDANT'S NUMBER	DESCRIPTION	PAGE
1	Subpoena Duces Tecum to All American Concrete and Masonry, Inc.	14
2	Subpoena Duces Tecum to Morales Construction, Inc.	14
3	Subpoena Duces Tecum to Top Rank Builders, Inc.	14
4	Loan Agreement	27

QUESTIONS WITNESS WAS INSTRUCTED NOT TO ANSWER:

PAGE	LINE
	(NONE)

INFORMATION TO BE SUPPLIED:

(NONE)

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1 any property. And if I go and, you know, pick up a
2 shovel and turn the dirt over, you know, my 90 days
3 kick in. I got more attorneys than friends. I know
4 my rights.

5 Q. So is it your testimony then that you were
6 going to do all of the work for the Front Sight
7 project from grading to putting the roofs on?

8 A. Yes, sir.

9 Q. And which company would build the villas
10 themselves?

11 A. Top Rank.

12 Q. So you stood to make a lot of money if this
13 contract was actually performed, right? If you built
14 all those villas, if you did all that work, you would
15 stand to make a lot of money, right?

16 A. Not really. You know, it's ten percent
17 profit margin. It's not that much money.

18 Q. And so why wouldn't you persuade Mr. Piazza
19 to let you build it? You're building yourself,
20 you're fronting the money, you make money doing that.
21 There's no downside to them. They don't have to make
22 any payments until the project is over, so why didn't
23 you talk to Piazza about getting this done?

24 A. Well, not necessary. That's like \$60
25 million project, that what he wants done out there.

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1 I don't have that much money. The \$36 million you
2 see there, I probably going to come out of pocket,
3 you know, 18 million to 20 million my cost. Probably
4 the other \$16 million is my profit. I mean, without
5 BS. You know that. I mean, me, as an investor, or a
6 builder, I have to make money.

7 But his financing didn't come through so we
8 didn't do anything. I mean, we have done a lot of
9 work. We move like a million yards of dirt already,
10 but he doesn't have the rest of the money. And I
11 asked him point blank, I said, if your money's not
12 there, I said, I don't want to move forward.

13 Q. So this wasn't for the purpose of financing
14 the project, he was looking to get other financing;
15 is that what you're saying?

16 A. That I don't know. I don't know. He says
17 he had \$50 million coming, or 60 million. It's been
18 a long time since I had the conversation with that
19 guy. I think I only met him in my life like three
20 times, Mr. Piazza. I normally deal with Mike
21 Meacher. And but he says his money didn't come
22 through. That's all I know. I don't know that guy,
23 you know. I don't --

24 Q. Did that make sense, I mean, did that make
25 sense to you as to why he wouldn't build the project

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1 was Sean Wilson and myself, my office. It's mutual.

2 Q. Did you have an agreement with Front Sight
3 that you would not serve notices of intent to file
4 liens on the project?

5 A. No. We never talk about it.

6 Q. But if -- this is a valid document, right?
7 This is --

8 A. Yes.

9 Q. -- a valid contract? So if Front Sight,
10 Ignatius Piazza, Mike Meacher, decided they wanted to
11 build a project and use this whole \$36 million to do
12 it, could they?

13 A. Yes.

14 Q. Okay. You could provide all the work, you
15 could carry the debt financing up to \$36 million?

16 A. Yes, sir.

17 Q. Okay.

18 A. Otherwise I never would have.

19 Q. I'm going to hand you Exhibit 4. That's the
20 line of credit. And look at definition 1.1.3, Senior
21 Debt. It says, "Means the additional loan that will
22 be sought by Borrower, and which Borrower will use
23 its best efforts to obtain, from a traditional
24 financial institution specializing in financing
25 projects such as the Project." Do you recall having

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1 discussions with anyone at Front Sight regarding them
2 getting senior debt?

3 A. Well, before this agreement I had a
4 conversation with Mr. Piazza, because I wanted to
5 know where my money was going to be coming from. And
6 he says he got a great program going through some
7 visa EB5, whatever that is, and he got like \$50
8 million coming. That's what I was told.

9 Q. So when this definition of senior debt
10 refers to money from a traditional financial
11 institution specializing in financing projects such
12 as the project?

13 A. You know, I don't -- those words and you're
14 talking about, I don't comprehend. All I'm saying in
15 like such the project, I mean the project is villas,
16 we're going to build a lot of villas.

17 Q. When you think of a traditional financial
18 institution, what do you think of?

19 A. Any lender is traditional.

20 Q. Did you have discussions with anyone at
21 Front Sight about them getting traditional financing?

22 A. Yeah. Mr. Piazza, he says he was getting
23 financing from EB5 people. Don't know who they are.

24 Q. That's not traditional financing, correct?

25 A. Don't know. When you say "traditional," I

Reception

From: efilngmail@tylerhost.net
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Filing Submitted

Envelope Number: 6483480

Case Number: A-18-781084-B

Case Style: Front Sight Management LLC,
 Plaintiff(s)vs.Las Vegas Development Fund LLC,
 Defendant(s)

**Filing Details**

Court	Eighth Judicial District Court
Date/Time Submitted	8/17/2020 4:51 PM PST
Filing Type	Opposition to Motion to Dismiss - OMD (CIV)
Filing Description	Las Vegas Development Fund, LLC's Opposition to Counterdefendants Efrain Rene Morales-Moreno, Morales Construction, Inc., Top Rank Builders, Inc., and All American Concrete & Masonry Inc.'s Motion to Dismiss First Amended Counterclaim
Type of Filing	EFileAndServe
Filed By	Angelique Mattox
Filing Attorney	Andrea Champion

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EXHIBIT 9

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13 W. DZIUBLA; JON FLEMING; and
14 LINDA STANWOOD

DISTRICT COURT
CLARK COUNTY, NEVADA

15 FRONT SIGHT MANAGEMENT LLC, a
16 Nevada Limited Liability Company,
17
18 Plaintiff,

17 vs.

18 LAS VEGAS DEVELOPMENT FUND LLC, a
19 Nevada Limited Liability Company; et al.,
20
21 Defendants.

Case No. A-18-781084-B
Dept. No. XVI

**ORDER DENYING
COUNTERDEFENDANT MICHAEL
MEACHER’S MOTION TO DISMISS
FIRST AMENDED COUNTERCLAIM**

**Hearing Date: September 9, 2020
Hearing Time: 9:00 a.m.**

21 _____
22 AND ALL RELATED COUNTERCLAIMS.
23

24 This matter came before the Court on September 9, 2020, at 9:00 a.m. on Counterdefendant
25 Michael Meacher’s Motion to Dismiss First Amended Counterclaim (the “Motion”). John P.
26 Aldrich appeared on behalf of Counterdefendant Michael Meacher (“Meacher”) and Andrea M.
27 Champion appeared on behalf of Counterclaimant Las Vegas Development Fund, LLC. The Court
28 having reviewed the pleadings on file herein, having heard oral argument by the parties, and for

1 good cause appearing therefore,

2 **IT IS HEREBY ORDERED** that Meacher’s Motion be DENIED.

3 Dated this 17th day of September, 2020.

4
5 
6 HONORABLE TIMOTHY C. WILLIAMS
DISTRICT COURT JUDGE ZJ

7
8 Respectfully submitted by:

Approved as to form and content:

9 **BAILEY KENNEDY, LLP**

ALDRICH LAW FIRM, LTD.

10
11 /s/ Andrea M. Champion

/s/ John P. Aldrich

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MEACHER; TOP RANK BUILDERS INC.;
ALL AMERICAN CONCRETE & MASONRY
INC.; MORALES CONSTRUCTION INC.;
and EFRAIN RENE MORALES-MORENO

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Angie Mattox

From: John Aldrich <jaldrich@johnaldrichlawfirm.com>
Sent: Monday, September 14, 2020 3:01 PM
To: Andrea Champion; Traci Bixenmann
Cc: Joshua Dickey; John Bailey; Rebecca Crooker; Angie Mattox
Subject: RE: Front Sight v. LVDF

Andi,

You have authority to use my e-signature on the Meacher and Morales orders. Thank you.

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Cc: Joshua Dickey <JDickey@baileykennedy.com>; John Bailey <JBailey@baileykennedy.com>; Rebecca Crooker <RCrooker@baileykennedy.com>; Angie Mattox <AMattox@baileykennedy.com>
Subject: Front Sight v. LVDF

John,

Attached are the draft orders denying Meacher and the Morales Parties' respective motions to dismiss. Please let me know if you have any proposed revisions or if we have your approval to e-sign each on your behalf.

Thanks,
Andi

Andrea Champion
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Reception

From: efilimgmail@tylerhost.net
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Subject: Notification of Service for Case: A-18-781084-B, Front Sight Management LLC, Plaintiff(s)vs.Las Vegas Development Fund LLC, Defendant(s) for filing Order Denying Motion - ODM (CIV), Envelope Number: 6644541

Notification of Service

Case Number: A-18-781084-B
 Case Style: Front Sight Management LLC, Plaintiff(s)vs.Las Vegas Development Fund LLC, Defendant(s)
 Envelope Number: 6644541



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Case Number	A-18-781084-B
Case Style	Front Sight Management LLC, Plaintiff(s)vs.Las Vegas Development Fund LLC, Defendant(s)
Date/Time Submitted	9/18/2020 10:06 AM PST
Filing Type	Order Denying Motion - ODM (CIV)
Filing Description	ORDER DENYING COUNTERDEFENDANT MICHAEL MEACHER'S MOTION TO DISMISS FIRST AMENDED COUNTERCLAIM
Filed By	Lynn Berkheimer
Service Contacts	Front Sight Management LLC: Traci Bixenmann (traci@johnaldrichlawfirm.com) John Aldrich (jaldrich@johnaldrichlawfirm.com) Las Vegas Development Fund LLC: Joshua Dickey (jdickey@baileykennedy.com) John Bailey (jbailey@baileykennedy.com) Bailey Kennedy, LLP (bkfederaldownloads@baileykennedy.com)

	<p>Kathryn Holbert (kholbert@farmercase.com)</p> <p>Andrea Champion (achampion@baileykennedy.com)</p> <p>Keith Greer (keith.greer@greerlaw.biz)</p> <p>Dianne Lyman (dianne.lyman@greerlaw.biz)</p> <p>Mona Gantos (mona.gantos@greerlaw.biz)</p>
--	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

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EXHIBIT 10

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LAS VEGAS, NEVADA 89148-1302
702.562.8820

1 **ORDR**
2 JOHN R. BAILEY
3 Nevada Bar No. 0137
4 JOSHUA M. DICKEY
5 Nevada Bar No. 6621
6 ANDREA M. CHAMPION
7 Nevada Bar No. 13461
8 **BAILEY ❖ KENNEDY**
9 8984 Spanish Ridge Avenue
10 Las Vegas, Nevada 89148-1302
11 Telephone: 702.562.8820
12 Facsimile: 702.562.8821
13 JBailey@BaileyKennedy.com
14 JDickey@BaileyKennedy.com
15 AChampion@BaileyKennedy.com

9 *Attorneys for Defendants*
10 LAS VEGAS DEVELOPMENT FUND LLC;
11 EB5 IMPACT CAPITAL REGIONAL CENTER
12 LLC; EB5 IMPACT ADVISORS LLC; ROBERT
13 W. DZIUBLA; JON FLEMING; and
14 LINDA STANWOOD

DISTRICT COURT
CLARK COUNTY, NEVADA

15 FRONT SIGHT MANAGEMENT LLC, a
16 Nevada Limited Liability Company,
17
18 Plaintiff,

17 vs.

18 LAS VEGAS DEVELOPMENT FUND LLC, a
19 Nevada Limited Liability Company; et al.,
20
21 Defendants.

Case No. A-18-781084-B
Dept. No. XVI

**ORDER DENYING
COUNTERDEFENDANTS EFRAIN
RENE MORALES-MORENO,
MORALES CONSTRUCTION, INC.,
TOP RANK BUILDERS, INC., AND ALL
AMERICAN CONCRETE & MASONRY,
INC.'S MOTION TO DISMISS FIRST
AMENDED COUNTERCLAIM**

**Hearing Date: September 9, 2020
Hearing Time: 9:00 a.m.**

22 AND ALL RELATED COUNTERCLAIMS.
23

24 This matter came before the Court on September 9, 2020, at 9:00 a.m. on Counterdefendants
25 Efrain Rene Morales-Moreno, Morales Construction, Inc., Top Rank Builders, Inc., and All
26 American Concrete & Masonry, Inc.'s (collectively, the "Morales Parties") Motion to Dismiss First
27 Amended Counterclaim (the "Motion"). John P. Aldrich appeared on behalf of the Morales Parties
28 and Andrea M. Champion appeared on behalf of Counterclaimant Las Vegas Development Fund,

1 LLC. The Court having reviewed the pleadings on file herein, having heard oral argument by the
2 parties, and for good cause appearing therefore,

3 **IT IS HEREBY ORDERED** that the Morales Parties' Motion be DENIED.

4 Dated this 17th day of September, 2020.

5
6 
7 HONORABLE TIMOTHY C. WILLIAMS
8 DISTRICT COURT JUDGE ZJ

9 Respectfully submitted by:

Approved as to form and content:

10 **BAILEY KENNEDY, LLP**

ALDRICH LAW FIRM, LTD.

11
12 /s/ Andrea M. Champion
13 JOHN R. BAILEY
14 Nevada Bar No. 0137
15 JOSHUA M. DICKEY
16 Nevada Bar No. 6621
17 ANDREA M. CHAMPION
18 Nevada Bar No. 13461
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12 /s/ John P. Aldrich
13 JOHN P. ALDRICH
14 Nevada Bar No. 6877
15 CATHERINE HERNANDEZ
16 Nevada Bar No. 8410
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18 Nevada Bar No. 12770
19 7866 West Sahara Avenue
20 Las Vegas, Nevada 89117
21 Tel: 702.853.5490
22 Fax: 702.227.1975
23 jaldrich@johnaldrichlawfirm.com
24 chernandez@johnaldrichlawfirm.com

20 *Attorneys for Defendants/Counterclaimant*
21 LAS VEGAS DEVELOPMENT FUND LLC;
22 EB5 IMPACT CAPITAL REGIONAL
23 CENTER LLC; EB5 IMPACT ADVISORS
24 LLC; ROBERT W. DZIUBLA; JON
25 FLEMING; and
26 LINDA STANWOOD

20 *Attorneys for Plaintiff/Counterdefendants*
21 FRONT SIGHT MANAGEMENT LLC;
22 IGNATIUS A. PIAZZA II; JENNIFER
23 PIAZZA; VNV DYNASTY TRUST I; VNV
24 DYNASTY TRUST II; MICHAEL
25 MEACHER; TOP RANK BUILDERS INC.;
26 ALL AMERICAN CONCRETE & MASONRY
27 INC.; MORALES CONSTRUCTION INC.;
28 and EFRAIN RENE MORALES-MORENO

BAILEY KENNEDY
8984 SPANISH RIDGE AVENUE
LAS VEGAS, NEVADA 89148-1302
702.562.8820

Angie Mattox

From: John Aldrich <jaldrich@johnaldrichlawfirm.com>
Sent: Monday, September 14, 2020 3:01 PM
To: Andrea Champion; Traci Bixenmann
Cc: Joshua Dickey; John Bailey; Rebecca Crooker; Angie Mattox
Subject: RE: Front Sight v. LVDF

Andi,

You have authority to use my e-signature on the Meacher and Morales orders. Thank you.

John P. Aldrich, Esq.
ALDRICH LAW FIRM, LTD.
7866 West Sahara Avenue
Las Vegas, Nevada 89117
jaldrich@johnaldrichlawfirm.com
Tel (702) 853-5490
Fax (702) 227-1975
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From: Andrea Champion <AChampion@baileykennedy.com>
Sent: Thursday, September 10, 2020 1:27 PM
To: John Aldrich <jaldrich@johnaldrichlawfirm.com>; Traci Bixenmann <traci@johnaldrichlawfirm.com>
Cc: Joshua Dickey <JDickey@baileykennedy.com>; John Bailey <JBailey@baileykennedy.com>; Rebecca Crooker <RCrooker@baileykennedy.com>; Angie Mattox <AMattox@baileykennedy.com>
Subject: Front Sight v. LVDF

John,

Attached are the draft orders denying Meacher and the Morales Parties' respective motions to dismiss. Please let me know if you have any proposed revisions or if we have your approval to e-sign each on your behalf.

Thanks,
Andi

Andrea Champion
BAILEY ❖ KENNEDY
8984 SPANISH RIDGE AVENUE
LAS VEGAS, NV 89148-1302
702.562.8820 (MAIN)

Reception

From: efilingsmail@tylerhost.net
Sent: Friday, September 18, 2020 10:01 AM
To: BKfederaldownloads
Subject: Notification of Service for Case: A-18-781084-B, Front Sight Management LLC, Plaintiff(s)vs.Las Vegas Development Fund LLC, Defendant(s) for filing Order Denying Motion - ODM (CIV), Envelope Number: 6644510

Notification of Service

Case Number: A-18-781084-B
 Case Style: Front Sight Management LLC, Plaintiff(s)vs.Las Vegas Development Fund LLC, Defendant(s)
 Envelope Number: 6644510



This is a notification of service for the filing listed. Please click the link below to retrieve the submitted document.

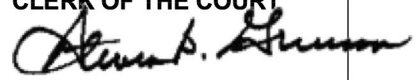
Filing Details	
Case Number	A-18-781084-B
Case Style	Front Sight Management LLC, Plaintiff(s)vs.Las Vegas Development Fund LLC, Defendant(s)
Date/Time Submitted	9/18/2020 10:00 AM PST
Filing Type	Order Denying Motion - ODM (CIV)
Filing Description	ORDER DENYING COUNTERDEFENDANTS EFRAIN RENE MORALES-MORENO, MORALES CONSTRUCTION, INC., TOP RANK BUILDERS, INC., AND ALL AMERICAN CONCRETE & MASONRY, INC.'S MOTION TO DISMISS FIRST AMENDED COUNTERCLAIM
Filed By	Lynn Berkheimer
Service Contacts	Front Sight Management LLC: Traci Bixenmann (traci@johnaldrichlawfirm.com) John Aldrich (jaldrich@johnaldrichlawfirm.com) Las Vegas Development Fund LLC: Joshua Dickey (jdickey@baileykennedy.com) John Bailey (jbailey@baileykennedy.com)

	Bailey Kennedy, LLP (bkfederaldownloads@baileykennedy.com) Kathryn Holbert (kholbert@farmercase.com) Andrea Champion (achampion@baileykennedy.com) Keith Greer (keith.greer@greerlaw.biz) Dianne Lyman (dianne.lyman@greerlaw.biz) Mona Gantos (mona.gantos@greerlaw.biz)
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EXHIBIT 11

Electronically Filed
9/29/2020 2:46 PM
Steven D. Grierson
CLERK OF THE COURT



1 **ORDR**
JOHN R. BAILEY
2 Nevada Bar No. 0137
JOSHUA M. DICKEY
3 Nevada Bar No. 6621
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4 Nevada Bar No. 13461
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9 *Attorneys for Defendants*
LAS VEGAS DEVELOPMENT FUND LLC;
10 EB5 IMPACT CAPITAL REGIONAL CENTER
LLC; EB5 IMPACT ADVISORS LLC; ROBERT
11 W. DZIUBLA; JON FLEMING; and
LINDA STANWOOD

DISTRICT COURT
CLARK COUNTY, NEVADA

14 FRONT SIGHT MANAGEMENT LLC, a
15 Nevada Limited Liability Company,
16 Plaintiff,

17 vs.

18 LAS VEGAS DEVELOPMENT FUND LLC, a
19 Nevada Limited Liability Company; et al.,
20 Defendants.

Case No. A-18-781084-B
Dept. No. XVI

**ORDER DENYING
COUNTERDEFENDANT FRONT
SIGHT MANAGEMENT LLC'S
MOTION TO DISMISS FIRST
AMENDED COUNTERCLAIM**

**Hearing Date: September 23, 2020
Hearing Time: 9:30 a.m.**

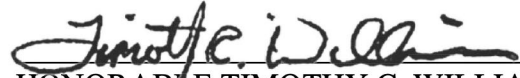
21 _____
22 AND ALL RELATED COUNTERCLAIMS.
23

24 This matter came before the Court on September 23, 2020, at 9:30 a.m. on Counterdefendant
25 Front Sight Management, LLC's Motion to Dismiss First Amended Counterclaim (the "Motion").
26 John P. Aldrich appeared on behalf of Counterdefendant Front Sight Management, LLC ("Front
27 Sight") and Joshua M. Dickey appeared on behalf of Counterclaimant Las Vegas Development
28 Fund, LLC. The Court having reviewed the pleadings on file herein, having heard oral argument by

1 the parties, and for good cause appearing therefore,

2 **IT IS HEREBY ORDERED** that Front Sight’s Motion be DENIED.

3 Dated this 29th day of September, 2020.

4
5 
6 HONORABLE TIMOTHY C. WILLIAMS
7 DISTRICT COURT JUDGE ZJ

8 Respectfully submitted by:

Approved as to form and content:

9 **BAILEY KENNEDY, LLP**

ALDRICH LAW FIRM, LTD.

10
11 /s/ Andrea M. Champion
12 JOHN R. BAILEY
13 Nevada Bar No. 0137
14 JOSHUA M. DICKEY
15 Nevada Bar No. 6621
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Attorneys for Defendants/Counterclaimant
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CENTER LLC; EB5 IMPACT ADVISORS
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FLEMING; and
LINDA STANWOOD

Attorneys for Plaintiff/Counterdefendants
FRONT SIGHT MANAGEMENT LLC;
IGNATIUS A. PIAZZA II; JENNIFER
PIAZZA; VNV DYNASTY TRUST I; VNV
DYNASTY TRUST II; MICHAEL
MEACHER; TOP RANK BUILDERS INC.;
ALL AMERICAN CONCRETE & MASONRY
INC.; MORALES CONSTRUCTION INC.;
and EFRAIN RENE MORALES-MORENO

BAILEY KENNEDY
8984 SPANISH RIDGE AVENUE
LAS VEGAS, NEVADA 89148-1302
702.562.8820

Angie Mattox

From: John Aldrich <jaldrich@johnaldrichlawfirm.com>
Sent: Monday, September 28, 2020 11:25 AM
To: Andrea Champion; Traci Bixenmann
Cc: Joshua Dickey; Rebecca Crooker; Angie Mattox
Subject: RE: Front Sight v. LVDF

Andi,

These orders are fine. You may affix my e-signature and submit them. Thank you.

John P. Aldrich, Esq.
ALDRICH LAW FIRM, LTD.
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Visit us online at <http://www.johnaldrichlawfirm.com>

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From: Andrea Champion <AChampion@baileykennedy.com>
Sent: Friday, September 25, 2020 7:08 AM
To: John Aldrich <jaldrich@johnaldrichlawfirm.com>; Traci Bixenmann <traci@johnaldrichlawfirm.com>
Cc: Joshua Dickey <JDickey@baileykennedy.com>; Rebecca Crooker <RCrooker@baileykennedy.com>; Angie Mattox <AMattox@baileykennedy.com>
Subject: Front Sight v. LVDF

John,

Attached are the draft orders for the motions to dismiss that were heard this week. Please let us know if we have your approval to affix your e-signature to each or if you have suggested revisions to the draft orders.

Thanks,
Andi

Andrea Champion
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8984 SPANISH RIDGE AVENUE
LAS VEGAS, NV 89148-1302
702.562.8820 (MAIN)

702.562.8821 (FAX)

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From: efilngmail@tylerhost.net
Sent: Tuesday, September 29, 2020 2:47 PM
To: BKfederaldownloads
Subject: Notification of Service for Case: A-18-781084-B, Front Sight Management LLC, Plaintiff(s)vs.Las Vegas Development Fund LLC, Defendant(s) for filing Order - ORDR (CIV), Envelope Number: 6699593

Notification of Service

Case Number: A-18-781084-B
 Case Style: Front Sight Management LLC, Plaintiff(s)vs.Las Vegas Development Fund LLC, Defendant(s)
 Envelope Number: 6699593



This is a notification of service for the filing listed. Please click the link below to retrieve the submitted document.

Filing Details	
Case Number	A-18-781084-B
Case Style	Front Sight Management LLC, Plaintiff(s)vs.Las Vegas Development Fund LLC, Defendant(s)
Date/Time Submitted	9/29/2020 2:46 PM PST
Filing Type	Order - ORDR (CIV)
Filing Description	ORDER DENYING COUNTERDEFENDANT FRONT SIGHT MANAGEMENT LLC'S MOTION TO DISMISS FIRST AMENDED COUNTERCLAIM
Filed By	Lynn Berkheimer
Service Contacts	Front Sight Management LLC: Traci Bixenmann (traci@johnaldrichlawfirm.com) John Aldrich (jaldrich@johnaldrichlawfirm.com) Las Vegas Development Fund LLC: Joshua Dickey (jdickey@baileykennedy.com) John Bailey (jbailey@baileykennedy.com) Bailey Kennedy, LLP (bkfederaldownloads@baileykennedy.com)

	<p>Kathryn Holbert (kholbert@farmercase.com)</p> <p>Andrea Champion (achampion@baileykennedy.com)</p> <p>Keith Greer (keith.greer@greerlaw.biz)</p> <p>Dianne Lyman (dianne.lyman@greerlaw.biz)</p> <p>Mona Gantos (mona.gantos@greerlaw.biz)</p>
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EXHIBIT 12

BAILEY ❖ KENNEDY
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1 **ORDER**
2 JOHN R. BAILEY
3 Nevada Bar No. 0137
4 JOSHUA M. DICKEY
5 Nevada Bar No. 6621
6 ANDREA M. CHAMPION
7 Nevada Bar No. 13461
8 **BAILEY ❖ KENNEDY**
9 8984 Spanish Ridge Avenue
10 Las Vegas, Nevada 89148-1302
11 Telephone: 702.562.8820
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13 JBailey@BaileyKennedy.com
14 JDickey@BaileyKennedy.com
15 AChampion@BaileyKennedy.com

9 *Attorneys for Defendants*
10 LAS VEGAS DEVELOPMENT FUND LLC;
11 EB5 IMPACT CAPITAL REGIONAL CENTER
12 LLC; EB5 IMPACT ADVISORS LLC; ROBERT
13 W. DZIUBLA; JON FLEMING; and
14 LINDA STANWOOD

DISTRICT COURT

CLARK COUNTY, NEVADA

15 FRONT SIGHT MANAGEMENT LLC, a
16 Nevada Limited Liability Company,

16 Plaintiff,

17 vs.

18 LAS VEGAS DEVELOPMENT FUND LLC, a
19 Nevada Limited Liability Company; et al.,

20 Defendants.

Case No. A-18-781084-B
Dept. No. XVI

**ORDER DENYING
COUNTERDEFENDANT IGNATIUS
PIAZZA’S MOTION TO DISMISS
FIRST AMENDED COUNTERCLAIM**

**Hearing Date: September 23, 2020
Hearing Time: 9:30 a.m.**

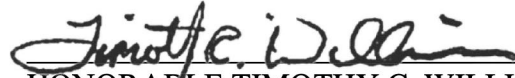
21 _____
22 AND ALL RELATED COUNTERCLAIMS.
23 _____

24 This matter came before the Court on September 23, 2020, at 9:30 a.m. on Counterdefendant
25 Ignatius Piazza’s Motion to Dismiss First Amended Counterclaim (the “Motion”). John P. Aldrich
26 appeared on behalf of Counterdefendant Ignatius Piazza (“Piazza”) and Joshua M. Dickey appeared
27 on behalf of Counterclaimant Las Vegas Development Fund, LLC. The Court having reviewed the
28 pleadings on file herein, having heard oral argument by the parties, and for good cause appearing

1 therefore,

2 **IT IS HEREBY ORDERED** that Piazza’s Motion be DENIED.

3 Dated this 29th day of September, 2020.

4
5 
6 HONORABLE TIMOTHY C. WILLIAMS
7 DISTRICT COURT JUDGE ZJ

8 Respectfully submitted by:

Approved as to form and content:

9 **BAILEY KENNEDY, LLP**

ALDRICH LAW FIRM, LTD.

10
11 /s/ Andrea M. Champion
12 JOHN R. BAILEY
13 Nevada Bar No. 0137
14 JOSHUA M. DICKEY
15 Nevada Bar No. 6621
16 ANDREA M. CHAMPION
17 Nevada Bar No. 13461
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21 Facsimile: 702.562.8821
22 JBailey@BaileyKennedy.com
23 JDickey@BaileyKennedy.com
24 AChampion@BaileyKennedy.com

/s/ JOHN P. ALDRICH
JOHN P. ALDRICH
Nevada Bar No. 6877
CATHERINE HERNANDEZ
Nevada Bar No. 8410
JAMIE S. HENDRICKSON
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chernandez@johnaldrichlawfirm.com

Attorneys for Defendants/Counterclaimant
LAS VEGAS DEVELOPMENT FUND LLC;
EB5 IMPACT CAPITAL REGIONAL
CENTER LLC; EB5 IMPACT ADVISORS
LLC; ROBERT W. DZIUBLA; JON
FLEMING; and
LINDA STANWOOD

Attorneys for Plaintiff/Counterdefendants
FRONT SIGHT MANAGEMENT LLC;
IGNATIUS A. PIAZZA II; JENNIFER
PIAZZA; VNV DYNASTY TRUST I; VNV
DYNASTY TRUST II; MICHAEL
MEACHER; TOP RANK BUILDERS INC.;
ALL AMERICAN CONCRETE & MASONRY
INC.; MORALES CONSTRUCTION INC.;
and EFRAIN RENE MORALES-MORENO

BAILEY KENNEDY
8984 SPANISH RIDGE AVENUE
LAS VEGAS, NEVADA 89148-1302
702.562.8820

Angie Mattox

From: John Aldrich <jaldrich@johnaldrichlawfirm.com>
Sent: Monday, September 28, 2020 11:25 AM
To: Andrea Champion; Traci Bixenmann
Cc: Joshua Dickey; Rebecca Crooker; Angie Mattox
Subject: RE: Front Sight v. LVDF

Andi,

These orders are fine. You may affix my e-signature and submit them. Thank you.

John P. Aldrich, Esq.
ALDRICH LAW FIRM, LTD.
7866 West Sahara Avenue
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From: Andrea Champion <AChampion@baileykennedy.com>
Sent: Friday, September 25, 2020 7:08 AM
To: John Aldrich <jaldrich@johnaldrichlawfirm.com>; Traci Bixenmann <traci@johnaldrichlawfirm.com>
Cc: Joshua Dickey <JDickey@baileykennedy.com>; Rebecca Crooker <RCrooker@baileykennedy.com>; Angie Mattox <AMattox@baileykennedy.com>
Subject: Front Sight v. LVDF

John,

Attached are the draft orders for the motions to dismiss that were heard this week. Please let us know if we have your approval to affix your e-signature to each or if you have suggested revisions to the draft orders.

Thanks,
Andi

Andrea Champion
BAILEY ❖ KENNEDY
8984 SPANISH RIDGE AVENUE
LAS VEGAS, NV 89148-1302
702.562.8820 (MAIN)

702.562.8821 (FAX)

702.789.4551 (DIRECT)

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Reception

From: efilngmail@tylerhost.net
Sent: Tuesday, September 29, 2020 2:45 PM
To: BKfederaldownloads
Subject: Notification of Service for Case: A-18-781084-B, Front Sight Management LLC, Plaintiff(s)vs.Las Vegas Development Fund LLC, Defendant(s) for filing Order - ORDR (CIV), Envelope Number: 6699560

Notification of Service

Case Number: A-18-781084-B
 Case Style: Front Sight Management LLC, Plaintiff(s)vs.Las Vegas Development Fund LLC, Defendant(s)
 Envelope Number: 6699560



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Filing Details	
Case Number	A-18-781084-B
Case Style	Front Sight Management LLC, Plaintiff(s)vs.Las Vegas Development Fund LLC, Defendant(s)
Date/Time Submitted	9/29/2020 2:44 PM PST
Filing Type	Order - ORDR (CIV)
Filing Description	ORDER DENYING COUNTERDEFENDANT IGNATIUS PIAZZA'S MOTION TO DISMISS FIRST AMENDED COUNTERCLAIM
Filed By	Lynn Berkheimer
Service Contacts	Front Sight Management LLC: Traci Bixenmann (traci@johnaldrichlawfirm.com) John Aldrich (jaldrich@johnaldrichlawfirm.com) Las Vegas Development Fund LLC: Joshua Dickey (jdickey@baileykennedy.com) John Bailey (jbailey@baileykennedy.com) Bailey Kennedy, LLP (bkfederaldownloads@baileykennedy.com)

	<p>Kathryn Holbert (kholbert@farmercase.com)</p> <p>Andrea Champion (achampion@baileykennedy.com)</p> <p>Keith Greer (keith.greer@greerlaw.biz)</p> <p>Dianne Lyman (dianne.lyman@greerlaw.biz)</p> <p>Mona Gantos (mona.gantos@greerlaw.biz)</p>
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Document Details

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EXHIBIT 13

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1 **ORDER**
2 JOHN R. BAILEY
3 Nevada Bar No. 0137
4 JOSHUA M. DICKEY
5 Nevada Bar No. 6621
6 ANDREA M. CHAMPION
7 Nevada Bar No. 13461
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12 LLC; EB5 IMPACT ADVISORS LLC; ROBERT
13 W. DZIUBLA; JON FLEMING; and
14 LINDA STANWOOD

DISTRICT COURT

CLARK COUNTY, NEVADA

15 FRONT SIGHT MANAGEMENT LLC, a
16 Nevada Limited Liability Company,

16 Plaintiff,

17 vs.

18 LAS VEGAS DEVELOPMENT FUND LLC, a
19 Nevada Limited Liability Company; et al.,

20 Defendants.

Case No. A-18-781084-B
Dept. No. XVI

**ORDER DENYING
COUNTERDEFENDANTS VNV
DYNASTY TRUST I AND VNV
DYNASTY TRUST II'S MOTION TO
DISMISS FIRST AMENDED
COUNTERCLAIM**

**Hearing Date: September 23, 2020
Hearing Time: 9:30 a.m.**

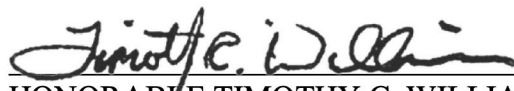
21 _____
22 AND ALL RELATED COUNTERCLAIMS.
23

24 This matter came before the Court on September 23, 2020, at 9:30 a.m. on
25 Counterdefendants VNV Dynasty Trust I and VNV Dynasty Trust II's Motion to Dismiss First
26 Amended Counterclaim (the "Motion"). John P. Aldrich appeared on behalf of Counterdefendants
27 VNV Dynasty Trust I and VNV Dynasty Trust II ("VNV Trusts") and Joshua M. Dickey appeared
28 on behalf of Counterclaimant Las Vegas Development Fund, LLC. The Court having reviewed the

1 pleadings on file herein, having heard oral argument by the parties, and for good cause appearing
2 therefore,

3 **IT IS HEREBY ORDERED** that VNV Trusts' Motion be DENIED.

4 Dated this 29th day of September, 2020.

5
6 
7 HONORABLE TIMOTHY C. WILLIAMS
8 DISTRICT COURT JUDGE zj

9 Respectfully submitted by:

Approved as to form and content:

10 **BAILEY KENNEDY, LLP**

ALDRICH LAW FIRM, LTD.

11
12 /s/ Andrea M. Champion
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23 CENTER LLC; EB5 IMPACT ADVISORS
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25 FLEMING; and
26 LINDA STANWOOD

20 *Attorneys for Plaintiff/Counterdefendants*
21 FRONT SIGHT MANAGEMENT LLC;
22 IGNATIUS A. PIAZZA II; JENNIFER
23 PIAZZA; VNV DYNASTY TRUST I; VNV
24 DYNASTY TRUST II; MICHAEL
25 MEACHER; TOP RANK BUILDERS INC.;
26 ALL AMERICAN CONCRETE & MASONRY
27 INC.; MORALES CONSTRUCTION INC.;
28 and EFRAIN RENE MORALES-MORENO

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Angie Mattox

From: John Aldrich <jaldrich@johnaldrichlawfirm.com>
Sent: Monday, September 28, 2020 11:25 AM
To: Andrea Champion; Traci Bixenmann
Cc: Joshua Dickey; Rebecca Crooker; Angie Mattox
Subject: RE: Front Sight v. LVDF

Andi,

These orders are fine. You may affix my e-signature and submit them. Thank you.

John P. Aldrich, Esq.
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From: Andrea Champion <AChampion@baileykennedy.com>
Sent: Friday, September 25, 2020 7:08 AM
To: John Aldrich <jaldrich@johnaldrichlawfirm.com>; Traci Bixenmann <traci@johnaldrichlawfirm.com>
Cc: Joshua Dickey <JDickey@baileykennedy.com>; Rebecca Crooker <RCrooker@baileykennedy.com>; Angie Mattox <AMattox@baileykennedy.com>
Subject: Front Sight v. LVDF

John,

Attached are the draft orders for the motions to dismiss that were heard this week. Please let us know if we have your approval to affix your e-signature to each or if you have suggested revisions to the draft orders.

Thanks,
Andi

Andrea Champion
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Reception

From: efilinmail@tylerhost.net
Sent: Tuesday, September 29, 2020 2:43 PM
To: BKfederaldownloads
Subject: Notification of Service for Case: A-18-781084-B, Front Sight Management LLC, Plaintiff(s)vs.Las Vegas Development Fund LLC, Defendant(s) for filing Order - ORDR (CIV), Envelope Number: 6699512

Notification of Service

Case Number: A-18-781084-B
 Case Style: Front Sight Management LLC, Plaintiff(s)vs.Las Vegas Development Fund LLC, Defendant(s)
 Envelope Number: 6699512



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Filing Details	
Case Number	A-18-781084-B
Case Style	Front Sight Management LLC, Plaintiff(s)vs.Las Vegas Development Fund LLC, Defendant(s)
Date/Time Submitted	9/29/2020 2:42 PM PST
Filing Type	Order - ORDR (CIV)
Filing Description	ORDER DENYING COUNTERDEFENDANTS VNV DYNASTY TRUST I AND VNV DYNASTY TRUST II'S MOTION TO DISMISS FIRST AMENDED COUNTERCLAIM
Filed By	Lynn Berkheimer
Service Contacts	Front Sight Management LLC: Traci Bixenmann (traci@johnaldrichlawfirm.com) John Aldrich (jaldrich@johnaldrichlawfirm.com) Las Vegas Development Fund LLC: Joshua Dickey (jdickey@baileykennedy.com) John Bailey (jbailey@baileykennedy.com) Bailey Kennedy, LLP (bkfederaldownloads@baileykennedy.com)

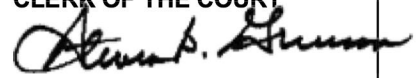
	<p>Kathryn Holbert (kholbert@farmercase.com)</p> <p>Andrea Champion (achampion@baileykennedy.com)</p> <p>Keith Greer (keith.greer@greerlaw.biz)</p> <p>Dianne Lyman (dianne.lyman@greerlaw.biz)</p> <p>Mona Gantos (mona.gantos@greerlaw.biz)</p>
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EXHIBIT 14

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6/22/2022 2:40 PM
Steven D. Grierson
CLERK OF THE COURT



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*Attorneys for Las Vegas Development
Fund, LLC, EB5 Impact Capital Regional
Center, LLC, EB5 Impact Advisors, LLC,
Robert W. Dziubla, Jon Fleming and Linda Stanwood*

DISTRICT COURT

CLARK COUNTY, NEVADA

19 FRONT SIGHT MANAGEMENT LLC, a
Nevada Limited Liability Company,

CASE NO.: A-18-781084-B
DEPT NO.: XVI

21 Plaintiff,
22 vs.

**NOTICE OF ENTRY OF ORDER
GRANTING IN PART DEFENDANTS' AND
COUNTERCLAIMANT'S MOTION FOR
CASE DISPOSITIVE SANCTIONS**

23 LAS VEGAS DEVELOPMENT FUND LLC,
a Nevada Limited Liability Company; et al.,

24 Defendants.

25
26 **AND ALL RELATED COUNTERCLAIMS**

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6600 Amelia Earhart Ct., Suite C
Las Vegas, Nevada 89119

1 PLEASE TAKE NOTICE that the *Order Granting In Part Defendants' and*
2 *Counterclaimant's Motion for Case Dispositive Sanctions* was filed on the 22nd day of June 2022, a
3 true and correct copy of which is attached hereto.

4 DATED this 22nd day of June 2022.

5
6 **JONES LOVELOCK**

7 /s/ Andrea M. Champion, Esq.
8 Nicole Lovelock
9 Nevada Bar No. 11187
10 Sue T. Cavaco
11 Nevada State Bar No. 6150
12 Andrea M. Champion
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26 *Robert W. Dziubla, Jon Fleming and Linda Stanwood*
27
28

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 22nd day of June 2022, a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER GRANTING IN PART DEFENDANTS' AND COUNTERCLAIMANT'S MOTION FOR CASE DISPOSITIVE SANCTIONS** was served by electronically submitting with the Clerk of the Court using electronic system and serving all parties with an email on record.

/s/ Lorraine Rillera
An employee of JONES LOVELOCK

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Stewart L. Smith
CLERK OF THE COURT

1 **ORDER**

2 Andrea M. Champion, Esq.
3 Nevada State Bar No. 13461
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5 Nevada State Bar No. 11187
6 Sue Trazig Cavaco, Esq.
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17 *Fund, LLC, EB5 Impact Capital Regional*
18 *Center, LLC, EB5 Impact Advisors, LLC,*
19 *Robert W. Dziubla, Jon Fleming and Linda Stanwood*

20 **DISTRICT COURT**

21 **CLARK COUNTY, NEVADA**

22 FRONT SIGHT MANAGEMENT LLC, a
23 Nevada Limited Liability Company,

24 Plaintiff,

25 vs.

26 LAS VEGAS DEVELOPMENT FUND LLC,
27 a Nevada Limited Liability Company; et al.,

28 Defendants.

CASE NO.: A-18-781084-B
DEPT NO.: XVI

**ORDER GRANTING IN PART
DEFENDANTS AND
COUNTERCLAIMANT’S MOTION FOR
CASE DISPOSITIVE SANCTIONS**

AND ALL RELATED COUNTERCLAIMS

This matter came before the Court on May 25, 2022, at 10:30 a.m., on Defendants and Counterclaimant’s Motion for Case Dispositive Sanctions and Supplement to Defendant and Counterclaimants’ Motion for Case Dispositive Sanctions (collectively, the “Motion”), with John P. Aldrich, Esq. appearing on behalf of Counterdefendants Jennifer Piazza (“Mrs. Piazza”), Ignatius Piazza (“Mr. Piazza”), VNV Dynasty Trust I (“VNV I”), and VNV Dynasty Trust II (“VNV II”) (collectively, the “Counterdefendants”), and Andrea M. Champion, Esq. appearing on behalf of

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1 Defendant/Counterclaimant Las Vegas Development Fund, LLC (“LVDF”), Defendant Robert W.
2 Dziubla, Defendant Jon Fleming, Defendant Linda Stanwood, Defendant EB Impact Capital
3 Regional Center, LLC (“EB5IC”), Defendant EB5 Impact Advisors, LLC (“EB5IA”) (collectively,
4 the “Lender Parties”). Because Front Sight Management LLC (“Front Sight”) filed a petition for
5 bankruptcy on May 24, 2022, the Court did not hear argument on, or consider, that portion of the
6 Motion that relates to Front Sight or that is otherwise stayed based on Front Sight’s bankruptcy
7 petition.¹ Having considered the briefing and having heard oral argument of the parties through their
8 respective counsel with regard to the Counterdefendants, the Court now makes the following
9 Findings of Fact and Conclusions of Law.

10 Insofar as any conclusions of law is deemed to have been or include a finding of fact, such a
11 finding of fact is hereby included as a factual finding. Insofar as any finding of fact is deemed to
12 have been or to include a conclusion of law, such is included as a conclusion of law herein.

FINDINGS OF FACT

14 1. Since March 2021, the Lender Parties have attempted to depose the
15 Counterdefendants.

16 2. The Lender Parties repeatedly requested available dates for the Counterdefendants
17 from March 2021 through May 2022.

18 3. In response to those requests, the Counterdefendants sometimes ignored the Lender
19 Parties’ requests and failed to provide available dates for their depositions or sometimes provided
20 available dates (sometimes, months farther out than what was requested by the Lender Parties).

21 4. By the end of 2021, and after the Lender Parties repeatedly re-noticed the
22 Counterdefendants’ depositions at their request and/or after Counterdefendants’ motions for
23 protective orders to continue their deposition(s) were granted, the parties agreed that the Lender
24 Parties would depose the Counterdefendants the week of January 17, 2022—dates the

25
26
27 ¹ The Court’s ruling does not apply to LVDF’s second cause of action for fraudulent transfers because such
28 action is property of the bankruptcy estate of Front Sight Management, LLC. While the parties disagree as to whether
the Court’s ruling applies to LVDF’s fourth cause of action for conversion and seventh cause of action for waste, LVDF
has agreed not to take any action on those claims pending clarification from the bankruptcy court.

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1 Counterdefendants provided.

2 5. In December 2021, the Counterdefendants informed the Lender Parties that they did
3 not intend to appear for their depositions. The Lender Parties made clear that the Counterdefendants
4 did not have the option of simply failing to appear for depositions and informed the
5 Counterdefendants if they did not provide alternative dates, and simply failed to appear for
6 depositions, they would seek case dispositive sanctions.

7 6. At the January 12, 2022 hearing before the Court, the Lender Parties informed the
8 Court that the parties were having an issue with the depositions set for the week of January 17, 2022,
9 and the Court indicated that it could, and would, set an order to show cause hearing on January 24,
10 2022 if the parties could not resolve the issue.

11 7. Following the hearing, the parties agreed that the Lender Parties would re-notice the
12 Counterdefendants' depositions and, to allow the parties the time needed to complete depositions, to
13 extend discovery.

14 8. On January 21, 2022, the parties executed and submitted a Stipulation and Order to
15 the Court wherein the parties represented to the Court that they would work together to find "**firm**"
16 deposition dates for the Counterdefendants, Front Sight, and each of Front Sight's experts. The Court
17 relied on the parties' representations in granting their request to extend discovery and signed the
18 order to extend discovery and continue trial.

19 9. The parties subsequently agreed that the Lender Parties would re-notice the
20 Counterdefendants' depositions on the week of March 14, 2022—dates the Counterdefendants
21 provided.

22 10. A day before the Lender Parties' depositions of the Counterdefendants was to
23 commence, the parties reached a tentative settlement agreement.

24 11. On March 17, 2022, the parties appeared for a status check before the Court. At that
25 hearing, the parties agreed that they would work towards a final settlement, including working
26 through EB-5 issues, and the parties further represented that if they could not reach a final settlement,
27 the parties would proceed with the Counterdefendants' depositions.

28 12. That tentative settlement agreement was never formalized. The parties dispute the

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1 reason that settlement agreement was not reached.

2 13. On April 6, 2022, the parties executed and submitted a Stipulation and Order
3 Extending Discovery and Continuing Trial to the Court wherein the parties represented to the Court
4 discovery needed to be extended so that the Lender Parties could complete depositions and that the
5 depositions of Mrs. Piazza, Mr. Piazza, VNV I and VNV II had been set on “**firm**” settings of April
6 25, 2022, April 26, 2022, April 28, 2022, and May 11, 2022, respectively. The Court relied on the
7 parties’ representations in granting their request to extend discovery and signed the order to extend
8 discovery and continue trial.

9 14. Due to a scheduling conflict, the parties subsequently agreed that the Lender Parties
10 would depose VNV II on May 16, 2022—a date which the parties mutually agreed to.

11 15. Pursuant to the parties’ agreement, the Lender Parties subsequently re-noticed the
12 Counterdefendants depositions on April 25, 2022, Mrs. Piazza; April 26, 2022, Mr. Piazza; April 28,
13 2022 VNV I; and May 16, 2022, VNV II—the dates that the Counterdefendants provided and the
14 Lender Parties agreed to.

15 16. On April 22, 2022, the parties appeared before the Court for a status check. Counsel
16 for the Counterdefendants did not advise the Court or the Lender Parties during that hearing that Mrs.
17 Piazza (or any other party) would be unavailable for their duly noticed depositions that week.

18 17. Mrs. Piazza, Mr. Piazza, the Trustee(s) of VNV I, and the Trustee(s) of VNV II all
19 failed to appear for their duly noticed depositions.

20 18. At no point before the duly noticed depositions of the Counterdefendants did the
21 Counterdefendants ever provide the Lender Parties with a reason for their non-appearance, nor did
22 they advise the Lender Parties that something prevented them from appearing at their duly noticed
23 deposition.

24 19. Instead, each day of the Counterdefendants’ duly noticed depositions (and only with
25 the exception of VNV II), only minutes before the duly noticed depositions, counsel for the
26 Counterdefendants notified the Lender Parties, by email, that the Counterdefendants were not
27 appearing for their depositions. No explanation was provided for their failures to appear.

28 20. On May 13, 2022, after the Motion had been filed with the Court, the parties appeared

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1 before the Court on LVDF’s Application for Temporary Restraining Order and Motion for
2 Preliminary Injunction to Prevent Transfer, Waste, and Destruction of LVDF’s Security and
3 Collateral. At that hearing, the Lender Parties noted that Mrs. Piazza, Mr. Piazza, Front Sight, and
4 VNV I had all failed to appear at their duly noticed deposition. When asked by the Court, the
5 Counterdefendants conceded they had no explanation for Mrs. Piazza, Mr. Piazza, Front Sight and
6 VNV I’s failures to appear.

7 21. At no point during that hearing did the Counterdefendants advise the Court or the
8 Lender Parties that the Trustee(s) of VNV II would be unavailable for its duly noticed deposition that
9 coming Monday, May 16, 2022.

10 22. On May 16, 2022, the Trustee(s) of VNV II also failed to appear for its duly noticed
11 deposition without explanation.

12 23. At no point did any of the Counterdefendants file a motion for protective order to
13 prevent their duly noticed depositions from going forward.

14 24. At the hearing on the Motion, the Court repeatedly asked why the Counterdefendants
15 failed to appear at their depositions. No explanation or reason was given.

16 25. The Counterdefendants’ Opposition to the Motion provides no explanation
17 whatsoever for their failures to appear at duly noticed “firm date” depositions.

18 **CONCLUSIONS OF LAW**

19 1. A deponent must attend the deposition as noticed unless the deponent obtains a
20 protective order from the Court. NRCP 26(c); *see also Nationstar Mortg., LLC v. Flamingo Trails*
21 *No. 7 Landscape Maint. Ass’n*, 316 F.R.D. 327, 336 (D. Nev. 2016) (stating that the duty to appear
22 at a deposition “is relieved only by obtaining either a protective order or an order staying the
23 deposition pending resolution of the motion for protective order).

24 2. The Nevada Supreme Court has recognized that the district courts have the power to
25 sanction bad behavior; both pursuant to NRCP 37 and within the court’s equitable power. *See* NRCP
26 37; *see also e.g., Bahena v. Goodyear Tire & Rubber Co.*, 126 Nev. 243, 235 P.3d 592 (2010).

27 3. NRCP 37(d)(1)(A) specifically provides that the Court may sanction a party if that
28 party fails to attend his own deposition. Sanctions for a party’s failure to attend their own deposition

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1 includes, but is not limited to, striking pleadings in whole or in part, dismissing the action or
2 proceeding in whole or in part, or rendering a default judgment against the disobedient party. NRC
3 37(d)(3); *see also* NRC 37(b)(1).

4 4. The Nevada Supreme Court has repeatedly upheld sanctions for extreme discovery
5 abuses including, but not limited to, parties failing to appear for deposition without first obtaining a
6 protective order. *See Foster v. Dingwall*, 126 Nev. 56, 61, 227 P.3d 1042, 1046 (Nev. 2010); *see*
7 *also Bahena*, 126 Nev. 243, 235 P.3d 592.

8 5. When considering what discovery sanctions should be imposed, the Court considers
9 the following non-exhaustive factors: the degree of willfulness of the offending party, the extent to
10 which the non-offending party would be prejudiced by a lesser sanction, the severity of the sanction
11 of dismissal relative to the severity of the discovery abuse, whether any evidence has been irreparably
12 lost, the feasibility and fairness of alternative, less severe sanctions, the policy favoring adjudication
13 on the merits, whether sanctions unfairly operate to penalize a party for the misconduct of his or her
14 attorney, and the need to deter both the parties and future litigants from similar abuses. *Young v.*
15 *Johnny Ribeiro Building*, 106 Nev. 88, 787 P.2d 777 (1990).

16 6. At the hearing on the Motion, the Court repeatedly asked the Counterdefendants why
17 they did not appear for their duly noticed depositions and the Counterdefendants provided no
18 justification for the failures to appear. The Court finds that the Counterdefendants' failure to appear
19 for duly noticed depositions was willful and intentional.

20 7. Had the Counterdefendants had a justification for their failure to appear, they would
21 have provided that justification either in advance of the deposition, at the time of the depositions, or
22 at the hearing on the Motion. No justification, whatsoever, was provided.

23 8. In addition, the Court finds it notable that each of the Counterdefendants—Mrs.
24 Piazza, Mr. Piazza, VNV I, and VNV II—failed to appear for duly noticed depositions set on different
25 dates. If, hypothetically, something prevented Mrs. Piazza from appearing from her duly noticed
26 deposition on April 25, 2022, that would not have impacted Mr. Piazza's ability to appear on April
27 26, 2022, VNV I's ability to appear on April 28, 2022, and so forth.

28 9. In light of the Counterdefendants' failure to provide any explanation, and the fact that

JONES LOVELOCK
6600 Amelia Earhart Ct., Suite C
Las Vegas, Nevada 89119

1 multiple parties failed to appear on different dates, the Court can only infer that the
2 Counterdefendants' failure to appear for duly noticed depositions was intentional and willful.

3 10. The Court, in granting the parties' previous extensions to extend discovery and
4 continue trial, relied on the parties' representations, presented in multiple Stipulations and Orders,
5 that the Counterdefendants depositions would be proceeding and that they were scheduled on
6 mutually agreeable dates. Yet, the Counterdefendants failed to appear on those very same dates.

7 11. The Counterdefendants' failures to appear at duly noticed depositions essentially halts
8 the adversarial process. The Lender Parties cannot prepare for trial, ascertain facts to the claims and
9 defenses in this litigation, or prepare for dispositive motions and motions *in limine* without the
10 testimony of the Counterdefendants.

11 12. Consequently, the Counterdefendants conduct is extremely severe and likewise,
12 warrants a serious sanction.

13 13. The Lender Parties have repeatedly re-noticed the Counterdefendants' depositions
14 and often, re-noticed the Counterdefendants' depositions on dates that the Counterdefendants
15 themselves agreed to or provided. In light of the circumstances and the history of the case, the Court
16 finds that case dispositive sanctions are warranted because a less severe sanction would not deter the
17 Counterdefendants' behavior nor can the case proceed to an adjudication on the merits in light of the
18 Counterdefendants' failure to appear for depositions.

19 14. A sanction against the Counterdefendants does not unfairly operate to penalize the
20 Counterdefendants for the misconduct of their counsel as it is the Counterdefendants themselves who
21 failed to appear for their duly noticed depositions.

22 15. The Court has been previously advised, on multiple occasions, by the Lender Parties
23 that they anticipated the Counterdefendants would not appear for depositions. On each of those
24 occasions, the Court, while never previously presented with a motion for sanctions, has advised the
25 Counterdefendants that a failure to appear for duly noticed depositions may result in potential
26 sanctions.

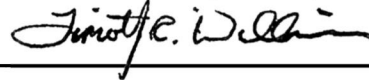
27 16. Despite those warnings, the Counterdefendants failed to appear at their duly noticed
28 depositions without justification.

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contractual relationships and fifth cause of action for civil conspiracy.

IT IS SO ORDERED.

Dated this 22nd day of June, 2022



MH

**489 490 FCCA 16DD
Timothy C. Williams
District Court Judge**

Respectfully submitted by:

Approved as to form and content:

JONES LOVELOCK

ALDRICH LAW FIRM, LTD.

/s/ Andrea M. Champion, Esq.

/s/ Circulated – No Response

Nicole E. Lovelock, Esq.
Nevada State Bar No. 11187
Sue Trazig Cavaco, Esq.
Nevada State Bar No. 6150
Andrea M. Champion, Esq.
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Las Vegas, Nevada 89117

Attorneys for Plaintiff/Counterdefendants

Attorneys for Defendants/Counterclaimants

JONES LOVELOCK
6600 Amelia Earhart Ct., Suite C
Las Vegas, Nevada 89119

From: [Andrea Champion](#)
To: [John Aldrich](#); [Traci Bixenmann](#)
Cc: [Nicole Lovelock](#); [Julie Linton](#); [Lorie Januskevicius](#)
Subject: RE: Front Sight Mgmt. LLC v. Las Vegas Development Fund LLC – Case No. A-18-781084-B
Date: Thursday, June 16, 2022 10:49:40 AM
Attachments: [image001.png](#)
[image003.png](#)
[2022-06-16 Order granting LVDF's Mot Case Dispositive Sanctions \(AMC v4 clean\).docx](#)
[2022-06-16 Order granting LVDF's Mot Case Dispositive Sanctions \(AMC v4\).docx](#)
Importance: High

John,

I am following up on the proposed order on the Motion for Case Dispositive Sanctions.

I am attaching an updated version of the proposed order here for your review (in both a redline and clean copy). In light of Mr. Shapiro's June 8, 2022 letter wherein LVDF agreed not to take further action in the State Court case on the fraudulent transfer, conversion and waste claim based upon Front Sight's contention that such claims are property of the Bankruptcy estate, despite LVDF's disagreement, you will see that we have added corresponding language to the first footnote and struck the latter two claims from the findings of liability. There are no additional changes made to the proposed order that was provided to your office for review on June 6, 2022.

When we spoke last week, it was my understanding that you intended to provide comments to the proposed order, but we have not received any to date. Because 10 days has passed since we provided the proposed order for your review, we intend to send the proposed order to the department. Because the updated version provided herein only includes revisions consistent with the requests of FSM's bankruptcy counsel, we do not believe additional time to review the order is necessary. If you have any proposed revisions, or will approve your e-signature to be affixed to the order as drafted, please let me know. Otherwise, it is our intent to submit the proposed order to the department at the end of the day, indicating that you declined to sign the order.

Finally, on June 6, 2022, I also provided a draft stipulation for your review reflecting the parties' agreement that the fraudulent transfer claim is subject to the bankruptcy estate for clarity of the record. Because we have not received any comments to that stipulation, and in light of our conversation last week, I presume that your clients are not requiring the stipulation at this time. If I am incorrect and you would like us to update the stipulation to include LVDF's subsequent agreement to not proceed on the conversion and waste claims—despite the fact that LVDF does not believe they are subject to the bankruptcy estate—please advise.

Thanks,
Andi

Andrea M. Champion, Esq.



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Las Vegas, NV 89119

P (702) 805-8450

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From: Andrea Champion

Sent: Monday, June 6, 2022 2:26 PM

To: John Aldrich <jaldrich@johnaldrichlawfirm.com>; Traci Bixenmann <traci@johnaldrichlawfirm.com>

Cc: Nicole Lovelock <nlovelock@joneslovelock.com>; Julie Linton <jlinton@joneslovelock.com>; Lorie Januskevicius <ljanuskevicius@joneslovelock.com>

Subject: RE: Front Sight Mgmt. LLC v. Las Vegas Development Fund LLC – Case No. A-18-781084-B and In re Front Sight Management Ch. 11 Bankruptcy Case No. 22-11824-abl.

John,

Per my letter of Friday, attached please find the draft Findings of Fact, Conclusions of Law and Order on the Motion for Case Dispositive Sanctions as well as a draft Stipulation regarding the fraudulent transfer claims. Please let us know if you have any suggested revisions to either or if we may affix your e-signature to both as drafted.

Thanks,

Andi

Andrea M. Champion, Esq.



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1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 Front Sight Management LLC,
7 Plaintiff(s)

CASE NO: A-18-781084-B

8 vs.

DEPT. NO. Department 16

9 Las Vegas Development Fund
10 LLC, Defendant(s)

11 **AUTOMATED CERTIFICATE OF SERVICE**

12
13 This automated certificate of service was generated by the Eighth Judicial District
14 Court. The foregoing Order was served via the court's electronic eFile system to all
recipients registered for e-Service on the above entitled case as listed below:

15 Service Date: 6/22/2022

16 Traci Bixenmann traci@johnaldrichlawfirm.com

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18 Kathryn Holbert kholbert@farmercase.com

19 Lorie Januskevicius ljanuskevicius@joneslovelock.com

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22 John Aldrich jaldrich@johnaldrichlawfirm.com

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24 Stephen Davis sdavis@joneslovelock.com

25
26 Kenneth Hogan ken@h2legal.com

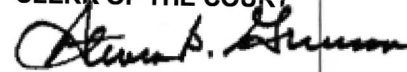
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Andrea Champion	achampion@joneslovelock.com
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EXHIBIT 15

Electronically Filed
6/8/2020 12:23 PM
Steven D. Grierson
CLERK OF THE COURT



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12 Attorneys for Defendants
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13 EB5 IMPACT CAPITAL REGIONAL CENTER, LLC,
EB6 IMPACT ADVISORS, LLC, ROBERT W. DZIUBLA,
14 JON FLEMING and LINDA STANWOOD

15 **EIGHTH JUDICIAL DISTRICT COURT**
16 **CLARK COUNTY, STATE OF NEVADA**

17 FRONT SIGHT MANAGEMENT, LLC., a)
18 Nevada Limited Liability Company,)

19 Plaintiff,)

20 v.)

21 LAS VEGAS DEVELOPMENT FUND LLC,)
a Nevada Limited Liability Company, EB5)
22 IMPACT CAPITAL REGIONAL CENTER)
LLC, a Nevada Limited Company, EB5)
23 IMPACT ADVISORS LLC, a Nevada)
Limited Liability Company; ROBERT W.)
24 DZIUBLA, individually and as President and)
CEO of LAS VEGAS DEVELOPMENT)
25 FUND LLC and EB5 IMPACT ADVISORS)
agent of LAS VEGAS DEVELOPMENT)
26 FUND LLC and EB5 IMPACT ADVISORS)

CASE NO.: A-18-781084-B

DEPT NO.: 16

NOTICE OF ENTRY OF
ORDER DENYING COUNTER
DEFENDANT JENNIFER PIAZZA'S
MOTION FOR SUMMARY JUDGMENT

27 *Front Sight Management LLC v. Las Vegas Development Fund LLC, et al.*, Case No.: A-18-781084-B Dept. No.: XVI

NOTICE OF ENTRY OF ORDER DENYING COUNTER DEFENDANT
JENNIFER PIAZZA'S MOTION FOR SUMMARY JUDGMENT

1 LLC; LINDA STANWOOD, individually and)
as Senior Vice President of LAS VEGAS)
2 DEVELOPMENT FUND LLC and EB5)
IMPACT ADVISORS LLC; CHICAGO)
3 TITLE COMPANY, a California corporation;)
DOES 1-10, inclusive; and ROE)
4 CORPORATIONS 1-10, inclusive,)
5 Defendants.)

6 _____)
and related Cross-Claims.)
7 _____)

8 **NOTICE OF ENTRY OF ORDER DENYING COUNTER DEFENDANT**
9 **JENNIFER PIAZZA'S MOTION FOR SUMMARY JUDGMENT**

10 PLEASE TAKE NOTICE THAT on the 5th day of June, 2020, an Order Denying Counter
11 Defendant Jennifer Piazza's Motion for Summary Judgment was entered on the Court docket
12 regarding the above referenced case.

13 A copy of said Order is attached hereto as Exhibit A.

14 DATED this 5th day of June, 2020.

FARMER CASE & FEDOR

15
16 

17 KATHRYN HOLBERT, ESQ.
18 Nevada Bar No. 10084
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21 LAS VEGAS DEVELOPMENT FUND
22 LLC., EB5 IMPACT CAPITAL REGIONAL
23 CENTER, LLC, EB6 IMPACT ADVISORS,
24 LLC, ROBERT W. DZIUBLA, JON
25 FLEMING and LINDA STANWOOD

1 **CERTIFICATE OF SERVICE and/or MAILING**

2 Pursuant to NRCP 5(b), I hereby certify that I am an employee of Farmer Case & Fedor,
3 and that on this date, I caused true and correct copies of the following document(s):

4 **NOTICE OF ENTRY OF ORDER DENYING COUNTER DEFENDANT**
5 **JENNIFER PIAZZA'S MOTION FOR SUMMARY JUDGMENT**

6 to be served on the following individuals/entities, in the following manner,

7
8 John P. Aldrich, Esq. Attorneys for Plaintiff
9 Catherine Hernandez, Esq. FRONT SIGHT MANAGEMENT, LLC
10 ALDRICH LAW FIRM, LTD.
1601 S. Rainbow Blvd., Suite 160
Las Vegas, Nevada 89146


11 By:

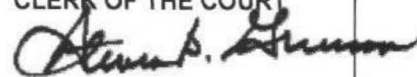
12 ■ **ELECTRONIC SERVICE:** Said document(s) was served electronically upon all eligible
13 electronic recipients pursuant to the electronic filing and service order of the Court (NECRF 9).

14 ■ **U.S. MAIL:** I deposited a true and correct copy of said document(s) in a sealed, postage
15 prepaid envelope, in the United States Mail, to those parties and/or above named individuals
which were not on the Court's electronic service list.

16 □ **FACSIMILE:** I caused said document(s) to be transmitted by facsimile transmission. The
17 sending facsimile machine properly issued a transmission report confirming that the transmission
was complete and without error.

18 Dated: June 8, 2020

19
20 
21 An Employee of FARMER CASE & FEDOR
22
23
24
25
26



1 **ORDR**
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3 KATHRYN HOLBERT, ESQ.
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8 C. KEITH GREER, ESQ.
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9 **GREER & ASSOCIATES, A.P.C.**
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12 Attorneys for Defendants
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13 EB5 IMPACT CAPITAL REGIONAL CENTER, LLC,
EB6 IMPACT ADVISORS, LLC, ROBERT W. DZIUBLA,
14 JON FLEMING and LINDA STANWOOD

15 **EIGHTH JUDICIAL DISTRICT COURT**

16 **CLARK COUNTY, STATE OF NEVADA**

17 FRONT SIGHT MANAGEMENT, LLC., a)
18 Nevada Limited Liability Company,)

CASE NO.: A-18-781084-B

19 Plaintiff,)

DEPT NO.: XVI

20 v.)

ORDER DENYING COUNTER

21 LAS VEGAS DEVELOPMENT FUND LLC,)
a Nevada Limited Liability Company, EB5)
22 IMPACT CAPITAL REGIONAL CENTER)
LLC, a Nevada Limited Company, EB5)
23 IMPACT ADVISORS LLC, a Nevada)
Limited Liability Company; ROBERT W.)
24 DZIUBLA, individually and as President and)
CEO of LAS VEGAS DEVELOPMENT)
25 FUND LLC and EB5 IMPACT ADVISORS)
LLC; JON FLEMING, individually and as an)
26 agent of LAS VEGAS DEVELOPMENT)
FUND LLC and EB5 IMPACT ADVISORS)

DEFENDANT JENNIFER
PIAZZA'S MOTION FOR
SUMMARY JUDGMENT

Hearing Date: March 12, 2020

Hearing Time: 1:15 p.m.

27 *Front Sight Management LLC v. Las Vegas Development Fund LLC, et al.*, Case No.: A-18-781084-B Dept. No.: XVI

ORDER DENYING COUNTER DEFENDANT JENNIFER PIAZZA'S
MOTION FOR SUMMARY JUDGMENT

1 LLC; LINDA STANWOOD, individually and)
as Senior Vice President of LAS VEGAS)
2 DEVELOPMENT FUND LLC and EB5)
IMPACT ADVISORS LLC; CHICAGO)
3 TITLE COMPANY, a California corporation;)
DOES 1-10, inclusive; and ROE)
4 CORPORATIONS 1-10, inclusive,)
5 Defendants.)

6 _____)
and related Counter-Claims.)
7 _____)

8 **ORDER DENYING COUNTER DEFENDANT JENNIFER PIAZZA’S**
9 **MOTION FOR SUMMARY JUDGMENT**

10 This matter having come before the Court on March 12, 2020 at 1:15 p.m. on Counter
11 Defendant Jennifer Piazza’s Motion for Summary Judgment. John Aldrich, Esq. with Aldrich
12 Law Firm personally appearing on behalf of Plaintiff; Keith Greer, Esq. with Greer and
13 Associates personally appearing on behalf of Defendants and Kathryn Holbert, Esq. with Farmer
14 Case and Fedor also personally appearing on behalf of Defendants; the Court having reviewed
15 the pleadings and having heard arguments by counsel and good cause appearing therefore,

16 This Court hereby finds and concludes that the findings of facts and conclusions of law
17 set forth in this Court’s Order dated January 23, 2020 were preliminary findings and while such
18 findings were the basis of the Court’s January 23, 2020 Order, in accordance with the U.S.
19 Supreme Court’s holding in *Univ. of Texas v. Camenisch*, 451 U.S. 390, 395, 101 S.Ct. 1830,
20 1834, 68 L. Ed. 2d 175 (1981), this Court’s preliminary findings related to the temporary
21 restraining order were not intended to be and cannot be the basis of any final judgment in this
22 case.

23 ///

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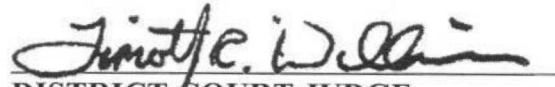
27 *Front Sight Management LLC v. Las Vegas Development Fund LLC, et al.*, Case No.: A-18-781084-B Dept. No.: XVI

28 **ORDER DENYING COUNTER DEFENDANT JENNIFER PIAZZA’S**
MOTION FOR SUMMARY JUDGMENT

1 Based upon the above findings of fact and conclusions of law, it is hereby ORDERED
2 that Counter Defendant Jennifer Piazza's Motion for Summary Judgment is DENIED.

3 **IT IS SO ORDERED.**

4 DATED this 5th day of June, 2020.


DISTRICT COURT JUDGE
A-18-781084-B CG
Dept 16

7 Respectfully submitted by:

8 **FARMER CASE & FEDOR**

9
10 /s/ Kathryn Holbert

11 Kathryn Holbert, Esq.
12 Nevada Bar No. 10084
2190 E. Pebble Rd., Suite #205
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14 *Attorneys for Defendants LAS VEGAS*
DEVELOPMENT FUND LLC, EB5 IMPACT
15 *CAPITAL REGIONAL CENTER LLC, EB5*
IMPACT ADVISORS LLC, ROBERT W.
16 *DZIUBLA, JON FLEMING and LINDA*
STANWOOD

Reception

From: efilngmail@tylerhost.net
Sent: Monday, June 8, 2020 12:26 PM
To: BKfederaldownloads
Subject: Notification of Service for Case: A-18-781084-B, Front Sight Management LLC, Plaintiff(s)vs.Las Vegas Development Fund LLC, Defendant(s) for filing Notice of Entry - NEO (CIV), Envelope Number: 6151225

Notification of Service

Case Number: A-18-781084-B
 Case Style: Front Sight Management LLC,
 Plaintiff(s)vs.Las Vegas Development Fund LLC,
 Defendant(s)
 Envelope Number: 6151225



This is a notification of service for the filing listed. Please click the link below to retrieve the submitted document.

Filing Details	
Case Number	A-18-781084-B
Case Style	Front Sight Management LLC, Plaintiff(s)vs.Las Vegas Development Fund LLC, Defendant(s)
Date/Time Submitted	6/8/2020 12:23 PM PST
Filing Type	Notice of Entry - NEO (CIV)
Filing Description	Notice of Entry of Order Denying Counter Defendant Jennifer Piazza's Motion for Summary Judgment
Filed By	Kathryn Holbert
Service Contacts	Las Vegas Development Fund LLC: John Bailey (jbailey@baileykennedy.com) Bailey Kennedy, LLP (bkfederaldownloads@baileykennedy.com) Kathryn Holbert (kholbert@farmercase.com) Andrea Champion (achampion@baileykennedy.com) Keith Greer (keith.greer@greerlaw.biz) Dianne Lyman (dianne.lyman@greerlaw.biz) Mona Gantos (mona.gantos@greerlaw.biz)

	<p>Joshua Dickey (jdickey@baileykennedy.com)</p> <p>Front Sight Management LLC:</p> <p>John Aldrich (jaldrich@johnaldrichlawfirm.com)</p> <p>Traci Bixenmann (traci@johnaldrichlawfirm.com)</p>
--	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

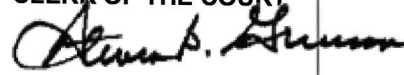
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EXHIBIT 16

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CLERK OF THE COURT



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2 ANTHONY T. CASE, ESQ.
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6 Nevada Bar No. 10084
7 kholbert@farmercase.com
8 **FARMER CASE & FEDOR**
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14 Cal. Bar. No. 135537 (*Pro Hac Vice*)
15 Keith.greer@greerlaw.biz
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17 16855 W. Bernardo Dr., Suite 255
18 San Diego, California 92127
19 Telephone: (858) 613-6677
20 Facsimile: (858) 613-6680

21 Attorneys for Defendants
22 LAS VEGAS DEVELOPMENT FUND LLC,
23 EB5 IMPACT CAPITAL REGIONAL CENTER, LLC,
24 EB6 IMPACT ADVISORS, LLC, ROBERT W. DZIUBLA,
25 JON FLEMING and LINDA STANWOOD

26 **EIGHTH JUDICIAL DISTRICT COURT**
27 **CLARK COUNTY, STATE OF NEVADA**

28 FRONT SIGHT MANAGEMENT, LLC., a)
Nevada Limited Liability Company,)
Plaintiff,)
v.)

CASE NO.: A-18-781084-B
DEPT NO.: 16

LAS VEGAS DEVELOPMENT FUND LLC,)
a Nevada Limited Liability Company, EB5)
IMPACT CAPITAL REGIONAL CENTER)
LLC, a Nevada Limited Company, EB5)
IMPACT ADVISORS LLC, a Nevada)
Limited Liability Company; ROBERT W.)
DZIUBLA, individually and as President and)
CEO of LAS VEGAS DEVELOPMENT)
FUND LLC and EB5 IMPACT ADVISORS)
LLC; JON FLEMING, individually and as an)
agent of LAS VEGAS DEVELOPMENT)
FUND LLC and EB5 IMPACT ADVISORS)

NOTICE OF ENTRY OF
ORDER DENYING COUNTER
DEFENDANTS VNV DYNASTY TRUST I
and VNV DYNASTY TRUST II'S
MOTION FOR SUMMARY JUDGMENT

Front Sight Management LLC v. Las Vegas Development Fund LLC, et al., Case No.: A-18-781084-B Dept. No.: XVI
**NOTICE OF ENTRY OF ORDER DENYING COUNTER DEFENDANTS VNV DYNASTY TRUST I and VNV
DYNASTY TRUST II'S MOTION FOR SUMMARY JUDGMENT**

1 LLC; LINDA STANWOOD, individually and)
as Senior Vice President of LAS VEGAS)
2 DEVELOPMENT FUND LLC and EB5)
IMPACT ADVISORS LLC; CHICAGO)
3 TITLE COMPANY, a California corporation;)
DOES 1-10, inclusive; and ROE)
4 CORPORATIONS 1-10, inclusive,)
5 Defendants.)

6 _____)
and related Cross-Claims.)
7 _____)

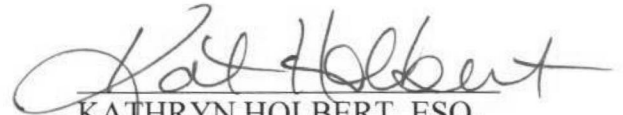
8 **NOTICE OF ENTRY OF ORDER DENYING COUNTER DEFENDANTS**
9 **VNV DYNASTY TRUST I and VNV DYNASTY TRUST II'S**
10 **MOTION FOR SUMMARY JUDGMENT**

11 PLEASE TAKE NOTICE THAT on the 5th day of June, 2020, an Order Denying Counter
12 Defendants VNV Dynasty Trust I and VNV Dynasty Trust II's Motion for Summary Judgment
13 was entered on the Court docket regarding the above referenced case.

14 A copy of said Order is attached hereto as Exhibit A.

15 DATED this 8th day of June, 2020.

FARMER CASE & FEDOR

17 

18 KATHRYN HOLBERT, ESQ.
19 Nevada Bar No. 10084
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kholbert@farmercase.com
22 Attorney for Defendants
LAS VEGAS DEVELOPMENT FUND
23 LLC., EB5 IMPACT CAPITAL REGIONAL
CENTER, LLC, EB6 IMPACT ADVISORS,
24 LLC, ROBERT W. DZIUBLA, JON
FLEMING and LINDA STANWOOD

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CERTIFICATE OF SERVICE and/or MAILING

Pursuant to NRCF 5(b), I hereby certify that I am an employee of Farmer Case & Fedor, and that on this date, I caused true and correct copies of the following document(s):

**NOTICE OF ENTRY OF ORDER DENYING COUNTER DEFENDANTS
VNV DYNASTY TRUST I and VNV DYNASTY TRUST II'S
MOTION FOR SUMMARY JUDGMENT**

to be served on the following individuals/entities, in the following manner,

John P. Aldrich, Esq.	Attorneys for Plaintiff
Catherine Hernandez, Esq.	FRONT SIGHT MANAGEMENT, LLC
ALDRICH LAW FIRM, LTD.	
1601 S. Rainbow Blvd., Suite 160	
Las Vegas, Nevada 89146	

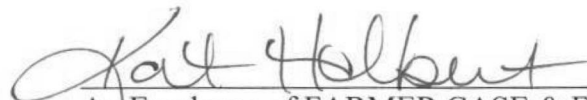
By:

■ **ELECTRONIC SERVICE:** Said document(s) was served electronically upon all eligible electronic recipients pursuant to the electronic filing and service order of the Court (NECRF 9).

■ **U.S. MAIL:** I deposited a true and correct copy of said document(s) in a sealed, postage prepaid envelope, in the United States Mail, to those parties and/or above named individuals which were not on the Court's electronic service list.

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Dated: June 8th, 2020


An Employee of FARMER CASE & FEDOR



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12 Attorneys for Defendants
LAS VEGAS DEVELOPMENT FUND LLC,
13 EB5 IMPACT CAPITAL REGIONAL CENTER, LLC,
EB6 IMPACT ADVISORS, LLC, ROBERT W. DZIUBLA,
14 JON FLEMING and LINDA STANWOOD

15 **EIGHTH JUDICIAL DISTRICT COURT**
16 **CLARK COUNTY, STATE OF NEVADA**

17 FRONT SIGHT MANAGEMENT, LLC., a)
18 Nevada Limited Liability Company,)
19 Plaintiff,)
20 v.)
21 LAS VEGAS DEVELOPMENT FUND LLC,)
a Nevada Limited Liability Company, EB5)
22 IMPACT CAPITAL REGIONAL CENTER)
LLC, a Nevada Limited Company, EB5)
23 IMPACT ADVISORS LLC, a Nevada)
Limited Liability Company; ROBERT W.)
24 DZIUBLA, individually and as President and)
CEO of LAS VEGAS DEVELOPMENT)
25 FUND LLC and EB5 IMPACT ADVISORS)
agent of LAS VEGAS DEVELOPMENT)
26 FUND LLC and EB5 IMPACT ADVISORS)

CASE NO.: A-18-781084-B
DEPT NO.: XVI

ORDER DENYING COUNTER
DEFENDANTS VNV DYNASTY
TRUST I and VNV DYNASTY
TRUST II'S MOTION FOR
SUMMARY JUDGMENT

Hearing Date: March 12, 2020
Hearing Time: 1:30 p.m.

27 *Front Sight Management LLC v. Las Vegas Development Fund LLC, et al.*, Case No.: A-18-781084-B Dept. No.: XVI

ORDER DENYING COUNTER DEFENDANTS VNV DYNASTY TRUST I and
VNV DYNASTY TRUST II'S MOTION FOR SUMMARY JUDGMENT

1 LLC; LINDA STANWOOD, individually and)
 as Senior Vice President of LAS VEGAS)
 2 DEVELOPMENT FUND LLC and EB5)
 IMPACT ADVISORS LLC; CHICAGO)
 3 TITLE COMPANY, a California corporation;)
 DOES 1-10, inclusive; and ROE)
 4 CORPORATIONS 1-10, inclusive,)
)
 5 Defendants.)
)
 6 _____)
 and related Counter-Claims.)
 7 _____)

8 **ORDER DENYING COUNTER DEFENDANTS VNV DYNASTY**
 9 **TRUST I and VNV DYNASTY TRUST II'S MOTION**
 10 **FOR SUMMARY JUDGMENT**

11 This matter having come before the Court on March 12, 2020 at 10:30 a.m. on Counter
 12 Defendants' VNV Dynasty Trust I and II's Motion for Summary Judgment. John Aldrich, Esq.
 13 with Aldrich Law Firm personally appearing on behalf of Plaintiff; Keith Greer, Esq. with Greer
 14 and Associates personally appearing on behalf of Defendants and Kathryn Holbert, Esq. with
 15 Farmer Case and Fedor also personally appearing on behalf of Defendants; the Court having
 16 reviewed the pleadings and having heard arguments by counsel and good cause appearing
 17 therefore,

18 This Court hereby finds and concludes that the findings of facts and conclusions of law
 19 set forth in this Court's Order dated January 23, 2020 were preliminary findings and while such
 20 findings were the basis of the Court's January 23, 2020 Order, in accordance with the U.S.
 21 Supreme Court's holding in *Univ. of Texas v. Camenisch*, 451 U.S. 390, 395, 101 S.Ct. 1830,
 22 1834, 68 L. Ed. 2d 175 (1981), this Court's preliminary findings related to the temporary
 23 restraining order were not intended to be and cannot be the basis of any final judgment in this
 24 case.

25 ///

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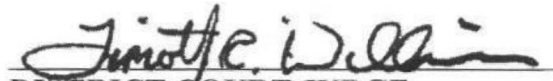
27 *Front Sight Management LLC v. Las Vegas Development Fund LLC, et al.*, Case No.: A-18-781084-B Dept. No.: XVI

28 **ORDER DENYING COUNTER DEFENDANTS VNV DYNASTY TRUST I and**
VNV DYNASTY TRUST II'S MOTION FOR SUMMARY JUDGMENT

1 Based upon the above findings of fact and conclusions of law, it is hereby ORDERED
2 that Counter Defendants' VNV Dynasty Trust I and II's Motion for Summary Judgment is
3 DENIED.

4 **IT IS SO ORDERED.**

5 DATED this 5th day of June, 2020.


6 **DISTRICT COURT JUDGE**
A-18-781084-B CG
7 Dept 16

8 Respectfully submitted by:

9 **FARMER CASE & FEDOR**

10 /s/ Kathryn Holbert

11 Kathryn Holbert, Esq.
12 Nevada Bar No. 10084
2190 E. Pebble Rd., Suite #205
13 Las Vegas, NV 89123
Tel: (702) 579-3900
14 *Attorneys for Defendants LAS VEGAS*
DEVELOPMENT FUND LLC, EB5 IMPACT
15 *CAPITAL REGIONAL CENTER LLC, EB5*
16 *IMPACT ADVISORS LLC, ROBERT W.*
DZIUBLA, JON FLEMING and LINDA
17 *STANWOOD*

Reception

From: efilngmail@tylerhost.net
Sent: Monday, June 8, 2020 12:25 PM
To: BKfederaldownloads
Subject: Notification of Service for Case: A-18-781084-B, Front Sight Management LLC, Plaintiff(s)vs.Las Vegas Development Fund LLC, Defendant(s) for filing Notice of Entry - NEO (CIV), Envelope Number: 6151225

Notification of Service

Case Number: A-18-781084-B
 Case Style: Front Sight Management LLC,
 Plaintiff(s)vs.Las Vegas Development Fund LLC,
 Defendant(s)
 Envelope Number: 6151225



This is a notification of service for the filing listed. Please click the link below to retrieve the submitted document.

Filing Details	
Case Number	A-18-781084-B
Case Style	Front Sight Management LLC, Plaintiff(s)vs.Las Vegas Development Fund LLC, Defendant(s)
Date/Time Submitted	6/8/2020 12:23 PM PST
Filing Type	Notice of Entry - NEO (CIV)
Filing Description	Notice of Entry of Order Denying Counter Defendants VNV Dynasty Trust I and VNV Dynasty Trust II's Motion for Summary Judgment
Filed By	Kathryn Holbert
Service Contacts	Front Sight Management LLC: John Aldrich (jaldrich@johnaldrichlawfirm.com) Traci Bixenmann (traci@johnaldrichlawfirm.com) Las Vegas Development Fund LLC: John Bailey (jbailey@baileykennedy.com) Bailey Kennedy, LLP (bkfederaldownloads@baileykennedy.com) Kathryn Holbert (kholbert@farmercase.com)

	Andrea Champion (achampion@baileykennedy.com) Keith Greer (keith.greer@greerlaw.biz) Dianne Lyman (dianne.lyman@greerlaw.biz) Mona Gantos (mona.gantos@greerlaw.biz) Joshua Dickey (jdickey@baileykennedy.com)
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Document Details

Served Document	Download Document
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EXHIBIT 17

Defendant	EB5 Impact Advisors LLC	Nicole E. Lovelock <i>Retained</i> 702-805-8450(W)
Defendant	EB5 Impact Capital Regional Center LLC	Nicole E. Lovelock <i>Retained</i> 702-805-8450(W)
Defendant	Fleming, Jon	Nicole E. Lovelock <i>Retained</i> 702-805-8450(W)
Defendant	Las Vegas Development Fund LLC	Nicole E. Lovelock <i>Retained</i> 702-805-8450(W)
Defendant	Stanwood, Linda	Nicole E. Lovelock <i>Retained</i> 702-805-8450(W)
Plaintiff	Front Sight Management LLC	John P. Aldrich <i>Retained</i> 702-863-5490(W)
Trustee	Piazza, Ignatius	John P. Aldrich <i>Retained</i> 702-863-5490(W)
Trustee	Piazza, Jennifer	John P. Aldrich <i>Retained</i> 702-863-5490(W)

EVENTS & ORDERS OF THE COURT

11/27/2019 **Minute Order** (9:42 AM) (Judicial Officer Williams, Timothy C.)
LVD Fund's Motion to Dissolve Temporary Restraining Order and to Appoint a Receiver

Minutes

11/27/2019 9:42 AM

- After review and consideration of the points and authorities on file herein, and oral argument of counsel, the Court determined as follows: The first allegation of breach focuses on the alleged misuse of loan proceeds by Plaintiff/Counter-Defendant, Front Sight Management, LLC (Front Sight). However, Front Sight, in opposition to Defendant/Counter-Claimant Las Vegas Development Fund, LLC s (LV Development) Motion to Dissolve the TRO and Appoint a Receiver, supplied exhibits to establish project cost and expenditures which exceed the loan amounts advanced by LV Development. In addition, four (4) paragraphs in the Construction Loan Agreement relate to loan proceeds and permit the borrower to utilize its best judgment and discretion to allocate loan proceeds based on real estate market conditions, pay off existing liens on the land, and reimbursement of the borrower for hard and soft costs related to construction, development and operation of the project. As to the second alleged default by Front Sight regarding the failure to provide government approved plans, there appears to be a question of fact as to what extent and for what purpose EB-5 loan proceeds may be applied towards a construction project, according to Front Sight expert Catherine DeBono Holmes. On the third allegation of default, there appears to be a question of fact as to whether material delays in construction or the failure to complete the project result in a default under the construction loan agreement. On the fourth alleged default, pertaining to the reduction in the size of the Patriot Pavillion, it appears that the size of the classroom was reduced but not the overall size of the facility and which creates an issue of fact as to breach. Additionally, the Court has considered the fifth through thirteenth allegations of breach and concluded there are additional material issues of fact that preclude the Court from ruling, as a matter of law, that Plaintiff is in breach of the construction Loan Agreement. Consequently, the court shall DENY Defendant/Counter- Claimant Las Vegas Development Fund LLC s Motion to Dissolve Temporary

Restraining Order and to Appoint a Receiver. Counsel for Plaintiff shall prepare a detailed Order, Findings of Facts, and Conclusions of Law, based not only on the foregoing Minute Order, but also on the record on file herein. This is to be submitted to adverse counsel for review and approval and/or submission of a competing Order or objections, prior to submitting to the Court for review and signature. CLERK S
NOTE: This Minute Order has been electronically served to the parties through Odyssey eFile.

[Return to Register of Actions](#)