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13
14 **UNITED STATES BANKRUPTCY COURT**
15 **DISTRICT OF NEVADA**

16 In re:
17 FRONT SIGHT MANAGEMENT, LLC
18 Debtor.

Case No. BK-S-22-11824-ABL
Chapter 11

Adversary Case No. 22-01116-ABL

19
20 FRONT SIGHT MANAGEMENT, LLC, A
NEVADA LIMITED LIABILITY
21 COMPANY

**OPPOSITION TO AMENDED MOTION FOR
ENTRY OF AN ORDER CONFIRMING
TERMINATING SANCTIONS ORDER IS VOID
AS A VIOLATION OF THE
AUTOMATIC STAY OR, IN THE
ALTERNATIVE, MOTION FOR RELIEF
FROM ORDER PURSUANT TO FEDERAL
RULE OF CIVIL PROCEDURE 60(b)**

22 v.
23 LAS VEGAS DEVELOPMENT FUND LLC,
24 A NEVADA LIMITED LIABILITY
25 COMPANY, et al.

26 Las Vegas Development Fund, LLC ("**LVDF**") and Jones Lovelock ("**JL**"), by and through
27 their attorneys Brian D. Shapiro, Esq., of the Law Office of Brian D. Shapiro, LLC, and Andrea M.
28 Champion, Esq., of Jones Lovelock PLLC, hereby submit their OPPOSITION TO THE DEBTOR'S

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1 AMENDED MOTION FOR ENTRY OF AN ORDER CONFIRMING TERMINATING
2 SANCTIONS ORDER IS VOID AS A VIOLATION OF THE AUTOMATIC STAY OR, IN THE
3 ALTERNATIVE, MOTION FOR RELIEF FROM ORDER PURSUANT TO FEDERAL RULE OF
4 CIVIL PROCEDURE 60(b) (“**Opposition**”). This Opposition is based upon the attached points and
5 authorities, the Declarations in Support, and any oral argument that this Court may permit.¹

6 **MEMORANDUM OF POINTS AND AUTHORITES**

7 **I. INTRODUCTION**

8 Debtor asks this Court to set aside the State Court’s order entering liability in LVDF’s favor,
9 and against the Piazzas², on a number of LVDF’s counterclaims for a claimed violation of the
10 automatic stay (“**Sanctions Order**”). However, the Sanctions Order specifically stated: “Because
11 Front Sight Management LLC (‘Front Sight’) filed a petition for bankruptcy on May 24, 2022, the
12 Court did not hear argument on, or consider, that portion of the Motion that relates to Front Sight or
13 that is otherwise stayed based on Front Sight’s bankruptcy petition.” Sanctions Order, attached hereto
14 as **Exhibit 1**, at 2:4-7.

15 Debtor’s Motion is premised on the Debtor’s contention that LVDF proceeded with its Motion
16 for Sanctions on claims that are subject of the bankruptcy estate and that doing so was a violation of
17 the automatic stay. Debtor ignores the fact that the Sanctions Order specifically states that it does not
18 apply to Debtor, the portion of the action that is “otherwise stayed based on Front Sight’s bankruptcy
19 petition,” or the claims that are property of the bankruptcy estate.

20 Despite the title of the Motion, the Debtor is requesting relief in the form of an order (i)
21 confirming that LVDF, JL, and the Law Office of Brian D. Shapiro violated the automatic stay by
22 proceeding postpetition with the hearing on the Terminating Sanctions Motion and with entry of the
23

24 ¹ All references to “ECF No.” are to the number assigned to the documents filed in the above-captioned bankruptcy case
25 as they appear on the docket maintained by the clerk of court. All references to “AECF No” are to the number assigned to
26 the documents filed in adversary case number 22-ap-01116. All references to “Section” or “§§ 101-1532” are to the
27 provisions of the Bankruptcy Code. All references to “FRCP” are to the Federal Rules of Civil Procedure. All references
28 to “FRE” are to the Federal Rules of Evidence. All references to “FRBP” are to the Federal Rules of Bankruptcy
Procedure.

² “Piazzas” refers to Ignatius Piazza, Jennifer Piazza, the VNV Dynasty Trust I, and the VNV Dynasty Trust II,
collectively.

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1 Terminating Sanctions Order; (ii) confirming that entry of the Terminating Sanctions Order violated
2 the automatic stay; and (iii) that the Terminating Sanctions Order is void ab initio. Alternatively, the
3 Debtor requests relief from the Terminating Sanctions Order pursuant to Civil Rule 60(b)(4) and
4 (b)(6).

5 The Debtor’s request should be summarily denied because there was no violation of the stay
6 and the order is not void. Moreover, to the extent that the Court does not remand the case back to the
7 State Court, the Debtor’s request for relief under Rule 60(b)(4) and (b)(6) should be denied. LVDF
8 and its counsel reserve any further remedies that they may have for defending this Motion.

9 **II. RELEVANT BACKGROUND**

10 **A. The Piazzas Knew, For Months, that LVDF Intended to Seek Case Dispositive Sanctions**
11 **if They Failed to Appear for Depositions and the Piazzas Failed to Appear, Likely**
12 **Knowing That Debtor Would File a Bankruptcy Petition.**

13 The Piazzas (and Debtor) refused to appear for their depositions for over a year before
14 ultimately failing to appear on duly noticed depositions that were scheduled pursuant to a Court order.
15 As a result of the Piazzas’ refusal to be deposed, and in light of the State Court’s numerous warnings
16 that sanctions might be issued if the Piazzas failed to appear for their depositions, on May 12, 2022
17 LVDF filed its Motion for Sanctions.

18 **B. The Piazzas Did Not Object to the State Court Proceeding With the Motion for**
19 **Sanctions Until *After* the State Court Ruled Against Them on the Motion for Sanctions.**

20 At the time LVDF filed its Motion for Sanctions and at the time the Piazzas (and the Debtor)
21 failed to appear for their depositions, the Piazzas and Debtor were represented by both state counsel
22 (John Aldrich, Esq. of Aldrich Law Firm, Ltd.) and bankruptcy counsel (Steven Gubner, Esq. and
23 Susan Seflin, Esq. of BG Law LLP).³

24 The Motion for Sanctions was scheduled to be heard on May 25, 2022. Despite having
25 retained bankruptcy counsel more than a month prior (on April 12, 2022) and being aware for weeks
26 that the Motion for Sanctions would be heard on May 25, 2022, Debtor waited until May 24, 2022—
27

28 ³ BG Law LLP was retained by Debtor as bankruptcy counsel on April 12, 2022. ECF No. 42 at 4:7.

1 the day before the Motion for Sanctions was scheduled to be heard—to file its voluntary petition for
2 Chapter 11 bankruptcy. *See* ECF No. 1. Debtor then waited an additional three hours (until 3:45
3 p.m.) on May 24, 2022 to inform LVDF or the State Court that Debtor had filed its voluntary petition
4 for Chapter 11 bankruptcy. *Compare* ECF No. 1 with Suggestion of Bankruptcy, attached hereto as
5 **Exhibit 2**. Debtor’s Suggestion of Bankruptcy and Notice of Bankruptcy Filing and Notice of
6 Bankruptcy Stay did request that the hearing on LVDF’s Motion for Sanctions “be placed off
7 calendar to avoid unnecessary appearance there at” but did not take the position that an appearance
8 at the hearing, even as to the non-bankrupt parties (i.e., the Piazzas), would violate the automatic
9 stay. *See* Ex. 2.

10 Upon receipt of Debtor’s Suggestion of Bankruptcy, LVDF emailed state counsel for Debtor
11 and the Piazzas to confirm that the parties would still appear at the hearing the following morning
12 and that LVDF intended to proceed only as to the Piazza Parties (and not Debtor). *See* **Exhibit 3**,
13 May 24, 2022 e-mail correspondence. Counsel for Debtor and the Piazzas did not respond to that
14 email at all. Declaration of Andrea M. Champion (“Champion Decl.”), at ¶¶ 5-7.

15 When the parties appeared at the May 25, 2022 hearing, counsel for the Debtor and the
16 Piazzas did not object to the hearing going forward. Instead, counsel merely passed along the
17 Piazzas’ “request” that the hearing not proceed. May 25, 2022 Hr’g Tr., attached hereto as **Exhibit**
18 **4**, at 3:20-4:6. In doing so, counsel did refer to the fraudulent transfer action but did not argue that
19 the hearing should not proceed. *Id.* Moreover, Counsel specifically conceded that the automatic stay
20 would *not* apply to the Piazzas: “I certainly understand that an automatic stay does not come in play
21 except for the entities or people who are in bankruptcy. But I’m making that request on behalf of my
22 clients just based on the fact that those are the allegations that are related to these alleged fraudulent
23 transfers from Front Sight.” *Id.* Based on JL’s communications with Mr. Gubner the following day,
24 it is also LVDF’s understanding that Debtor’s bankruptcy counsel was present (either by telephone
25 or videoconferencing) at the May 25, 2022 hearing. Debtor’s bankruptcy counsel also failed to make
26 a record as to which claims Debtor (and/or the Piazzas) claimed were the property of the bankruptcy
27 estate or subject to the automatic stay. Champion Decl. at ¶¶ 11-12.

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1 Accordingly, *without objection* to the Court’s decision to proceed as to the motion as it related
 2 to the non-bankrupt parties and non-estate claims, LVDF confirmed that it was present and ready to
 3 proceed against the Piazzas alone due to their own individual failures to appear for depositions as
 4 they were non-bankrupt parties. *Id.* at 4:9-20. After this exchange, the State Court proceeded with
 5 the hearing only as to the Piazzas. *Id.* at 4:21-23 (“[W]hat we’re going to do, we’re going to hear
 6 them because there’s no stay in place as it relates to the individual defendants.”). During argument,
 7 neither LVDF nor counsel for the Debtor and the Piazzas further addressed the fraudulent transfer
 8 claim or any other claim, specifically as this was a request to strike their answers. *See generally id.*

9 On May 31, 2022, the Debtor asserted, for the first time, that it believed the State Court’s
 10 decision to proceed with the May 25, 2022 hearing was a violation of the automatic stay because
 11 some of LVDF’s counterclaims are property of the Debtor’s estate. *See Ex. 7 to Mot.* LVDF did not
 12 agree that there was a violation of the stay but agreed that the fraudulent transfer, conversion, waste
 13 claims and alter ego remedy are not part of the Sanctions Order and LVDF further agreed that the
 14 proposed order would reflect the same. *See Exs. 8 and 10 to Mot.*

15 **C. The State Court Written Order.**

16 Pursuant to EDCR 7.21, counsel for the prevailing party (if requested by the Court) must
 17 furnish a proposed order to the court within 14 days of the ruling. Pursuant to the State Court’s
 18 Department Guidelines, a copy of which is attached hereto as **Exhibit 5**, Judge Williams (the State
 19 Court judge who heard the Motion for Sanctions) requires proposed orders be submitted within 10
 20 days of the ruling after the opposing counsel is given “reasonable opportunity for review and
 21 comment.”

22 In this case, LVDF drafted the proposed order with care and ensured that that the fraudulent
 23 transfer, conversion, and waste claims would not be part of the order and submitted the draft proposed
 24 order to the Piazza’s counsel for review and comment on June 6, 2022. *See, Exhibit 6*, a true and
 25 correct copy of counsel’s June 6, 2022 through June 16, 2022 correspondence; *see also* Champion
 26 Decl. at ¶¶ 13-16. The Piazzas’ counsel informed LVDF that it intended to provide comments (or
 27 proposed revisions) to the proposed order before it was submitted to the State Court but then failed
 28 to do so (despite LVDF’s multiple requests that they do so). *Champion Decl.* at ¶¶ 17-21.

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1 Accordingly, pursuant to the State Court’s guidelines, LVDF submitted the proposed order to the
2 Court on June 16, 2022, including the Piazzas’ counsel on the correspondence so that they had a final
3 opportunity to address the order should they chose to do so. *Id.* at ¶ 23; *see also Exhibit 7.* They did
4 not.

5 Because the Piazzas did not object to the order, the language of the order, or the entry of the
6 order, the State Court entered the Sanctions Order on June 6, 2022. The Sanctions Order specifically
7 states at the outset of the order:

8 Because Front Sight Management LLC (“Front Sight”) filed a petition for
9 bankruptcy on May 24, 2022, the Court did not hear argument on, or consider, that
10 portion of the Motion that relates to Front Sight or that is otherwise stayed based
11 on Front Sight’s bankruptcy petition.

11 Sanctions Order at 2:4-7. The Court went on to note:

12 The Court’s ruling does not apply to LVDF’s second cause of action for fraudulent
13 transfers because such action is property of the bankruptcy estate of Front Sight
14 Management, LLC. While the parties disagree as to whether the Court’s ruling
15 applies to LVDF’s fourth cause of action for conversion and seventh cause of action
16 for waste, LVDF has agreed not to take any action on those claims pending
17 clarification from the bankruptcy court.

18 *Id.* at 2, n. 1. The State Court went on, within the Sanctions Order, to establish liability only as to
19 LVDF’s remaining Counterclaims against the Piazzas—i.e., as to Mr. Piazza on LVDF’s first cause
20 of action for fraud and as to all of the Piazzas on LVDF’s third and fifth causes of action for
21 intentional interference with contractual relationships and civil conspiracy, respectively—which are
22 not property of the bankruptcy estate. *Id.* at 8:18-9:1.

23 The State Court’s finding that the Piazzas’ failure to appear for depositions was willful and
24 intentional is supported by Mr. Piazza’s own declaration, submitted in support of the Piazzas’ motion
25 to reconsider the terminating sanctions. *See*, AECF No. 73, p. 2, l. 14-15. In that declaration, Mr.
26 Piazza stated “[n]either I, nor the other Movants, attended the scheduled depositions. We recognize
27 that, in hindsight, this may have been a mistake.” *id.*
28

D. Debtor’s Misstatement as to Binding Effect of January 23, 2020 Court Order

Throughout the main bankruptcy case, the Debtor has continuously flaunted the January 23, 2020 Order as though it were a final order on the merits of LVDF’s counterclaims and has done so again within the context of this Motion. *See generally*, Motion p. 5, l. 10-25. However, on June 8, 2020, the State Court entered two orders confirming that the January 23, 2020 order was a “preliminary finding related to the temporary restraining order” and that the January 23, 2020 order was “not intended to be and cannot be the basis of any final judgment in this case.” A copy of the June 5, 2020 Court Orders are attached hereto as **Exhibits 8 and 9**.

III. LEGAL ARGUMENT

A. Applicable Legal Standard on Stay Violations

Under Section 362(a), the automatic stay generally arises as soon as a bankruptcy petition is filed. The automatic stay applies to all entities with respect to “the commencement or continuation. . . of a judicial action or proceeding against the debtor that was or could have been commenced” before the bankruptcy was filed. 11 U.S.C. § 362(a)(1). It also applies to “any act to obtain possession of property of the estate . . . or to exercise control over property of the estate.” 11 U.S.C. § 362(a)(3). Because it arises “automatically” upon the filing of a bankruptcy petition, the stay applies regardless of whether a party has actual knowledge or even notice that the bankruptcy was filed. *See generally* 3 COLLIER ON BANKRUPTCY, ¶ 362.02 (Alan N. Resnick and Henry J. Sommer, eds., 16th ed. 2014). Actions taken in violation of the automatic stay are void as a matter of law. *See, Gruntz v. Cnty. of Los Angeles (In re Gruntz)*, 202 F.3d 1074, 1082 (9th Cir. 2000); *Eden Place, LLC v. Perl (In re Perl)*, 513 B.R. 566, 572 (B.A.P. 9th Cir. 2014). Judicial proceedings in violation of the automatic stay also are void. *See, Kalb v. Feuerstein*, 308 U.S. 433, 439 (1940); *Griffin v. Wardrobe (In re Wardrobe)*, 559 F.3d 932, 934 (9th Cir. 2009). Parties who violate the automatic stay have an affirmative duty to discontinue any actions, return any property, and otherwise undo any consequences of the violation. *See Sternberg v. Johnson (In re Sternberg)*, 595 F.3d 937, 943 (9th Cir. 2010).

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1 **1. The Terminating Sanctions Oral Argument was not a Violation of the Stay Nor is**
 2 **the Terminating Sanctions Order Void**

3 The crux of the Debtor's argument is that LVDF violated the stay by arguing for terminating
 4 sanctions on causes of action which belong exclusively to the Debtor. However, such argument is
 5 inconsistent with the actual record. The record reflects that (1) the Court did not proceed against the
 6 Debtor nor property of the estate; (2) the parties did not argue about the fraudulent transfer action;
 7 (3) LVDF did not request a finding that Mr. Piazza is the alter ego of the Debtor; and (4) by letter,
 8 LVDF reiterated to the Debtor that it was not proceeding on the fraudulent transfer action,
 9 conversion, waste claim and alter ego remedy. The actual court order memorializes the same.

10 Because the Debtor (who is being controlled by the Piazzas) did not want the Piazzas' answers
 11 stricken, the Debtor after the filing of the case, could have filed an adversary proceeding under
 12 Section 105(a). Section 105(a) allows a court to "issue any order, process, or judgment that is
 13 necessary or appropriate to carry out the provisions of [the Bankruptcy Code]." Section 105(a) is
 14 entirely discretionary. *See, In re Del Mission Ltd.*, 98 F.3d 1147, 1153 (9th Cir. 1996). Further, "the
 15 [c]ourt's broad injunctive power under [§ 105(a)] must be used sparingly." *In re Consol. Pioneer*
 16 *Mortg. Entities*, 205 B.R. 422, 425 (B.A.P. 9th Cir. 1997) (quoting *In re Nasco P.R., Inc.*, 117 B.R.
 17 35, 38 (Bankr. D.P.R. 1990)). The Debtor did not do so.

18 The oral arguments made by LVDF on behalf of the motion for sanctions and the Court's oral
 19 pronouncement of its decision was not a violation of the stay. Nevada law is clear that a district
 20 court's decision is not effective "until the district court enters it." *Div. of Child & Family Servs. v.*
 21 *Eighth Judicial Dist. Court*, 120 Nev. 445, 451, 92 P.3d 1239, 1243 (2004). "Before the court reduces
 22 its decision to writing, signs it, and files it with the clerk, the nature of the judicial decision is
 23 impermanent" and the court remains "free to reconsider the decision." *Id.* Put another way, a
 24 "court's oral pronouncement from the bench, the clerk's minute order, and even an unfiled written
 25 order are ineffective for any purpose." *Id.* Both Debtor and the Piazzas were entitled to make
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1 proposed revisions to the proposed order before it was submitted to the State Court. They chose not
 2 to. In addition, both Debtor and the Piazzas were entitled to inform the State Court that they believed
 3 the State Court’s decision was erroneous or a violation of the automatic stay. They also did not do
 4 that.⁴

5 Instead, the Debtor and the Piazzas chose to wait until the Sanctions Order was entered and
 6 became effective to assert that the actions by LVDF, on its own claims, against the Piazzas are
 7 property of the Bankruptcy Estate, that pursuing such actions is a violation of the stay, and the
 8 Sanctions Order is void. If LVDF violated the automatic stay, so too did Debtor and the Piazzas.
 9

10 However, the striking of the answers did not involve any asset of the bankruptcy estate.
 11 LVDF asserted Seven Causes of Action, but the terminating sanctions order was only applicable to
 12 three causes of action and only against Mr. Piazza, Jennifer Piazza, VNV Dynasty Trust I and II.
 13 Such causes of action and the party against are indicated below. A copy of the Counter-Claim is
 14 attached hereto as **Exhibit 10 (paragraphs referring to counter-claim)**.

Action	Party/Parties
Intentional Interference with Contractual Relationship	Mr. Piazza, Jennifer Piazza, VNV Dynasty Trust I and II
Civil Conspiracy	Mr. Piazza, Jennifer Piazza, VNV Dynasty Trust I and II
Fraud	Mr. Piazza

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⁴ Pursuant to RCP 3.3(a)(1), counsel for the Debtor and Piazzas had an ethical obligation of candor toward the tribunal to correct the record if they, in fact, believed that LVDF and the Court were mistaken that the automatic stay did not apply to the Piazzas. It is unclear whether the Piazzas’ counsel failed to advise the Court because he also believed the automatic stay did not apply to the Piazzas (as he implied) or because the Piazzas wanted to induce LVDF to violate the automatic stay (after Debtor intentionally sat on its bankruptcy petition). Either way, *if* there was any violation of the stay (which LVDF does not believe there was), it was by LVDF, the Piazzas, and the State Court, collectively; not just LVDF.

1 These 3 causes of action primarily rely upon the allegation pertaining to the Morales Line of
2 Credit. In particular, the Complaint alleged:

- 3 • that Defendants entering into a comprehensive scheme to defraud LVD Fund by falsely
4 representing that Counter Defendant Front Sight had entered into a legitimate and bona fide
5 \$36,000,000 “Loan Agreement – Construction Line of Credit” with Counter Defendant
6 Morales Construction, Inc. (“Morales Construction”), that would have provided sufficient
7 capital to make substantial progress toward completing the project. In reality, the “Loan
8 Agreement” was a complete scam because all of the Counter Defendants knew Morales was
9 not capable of fulfilling its obligation to extend tens of millions of dollars in credit, and none
10 of the Counter Defendants ever intended to perform under the Loan Agreement.” *Id.* ¶ 2
- 11 • Specifically, in or about October 2017, Counter Defendants Front Sight, Piazza, Meacher,
12 Morales, and the Morales Entities (i.e., Morales Construction, All American Concrete and
13 Top Rank Builders) entered into a comprehensive scheme to further defraud LVD Fund. The
14 scheme involved Front Sight and the Morales Entities entering into a fictitious \$36 million
15 loan agreement to give the false appearance that Front Sight had access to enough credit to
16 complete the Project. *Id.* ¶ 59.
- 17 • Counter Defendants carried out the fraudulent scheme with the intent that LVD Fund would
18 rely on this false appearance of access to credit and believe that the credit would in fact be
19 utilized for construction of the Project. Counter Defendants further intended that the fictitious
20 loan agreement would give LVD Fund a false sense of security so that it would release funds
21 it was withholding from Front Sight (pursuant to §3.1 of the CLA), and facilitate continued
22 solicitation of additional EB-5 investors by using the loan agreement to give an appearance
23 that Front Sight was putting more money into construction than it really was. *Id.* ¶ 60.
- 24 • In furtherance of the fraudulent scheme, on October 31, 2017, Front Sight entered into the
25 purported “Loan Agreement – Construction Line of Credit” (“Loan Agreement”) with the
26 Morales Entities. (*See Exhibit 8*). The Loan Agreement was executed by Counter Defendant
27 Morales. Per the terms of the Loan Agreement, the Morales Entities were to provide Front
28 Sight with up to \$36,000,000 of credit to be applied towards completing the Project. *Id.* ¶ 61.
- Counter Defendants Front Sight, Piazza, Meacher, Morales, and the Morales Entities caused
this “Loan Agreement” to be executed with no intent to ever utilize the credit line, and with
knowledge that the Morales Entities were not capable of extending or carrying the amount
of credit purportedly available under the agreement’s terms. *Id.* ¶ 62.
- On October 31, 2017, Meacher represented to LVD Fund that: “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 . . . 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

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1 investors in China who are currently looking for another project. There are now no excuse
2 [sic] for not closing more of these EB-5 investors.” *Id.* ¶ 63.

- 3 • Counter Claimant is informed and believes, and thereon alleges, that in return for the Morales
4 Entities entering into the fraudulent Loan Agreement, Front Sight agreed to contract with the
5 Morales Entities to perform construction work on the Project. Morales, as the owner of the
6 Morales Entities, personally benefitted from the profit generated by the millions of dollars
7 received from Front Sight. *Id.* ¶ 64.
- 8 • Rather than the construction funding coming from the Morales Entities pursuant to the Loan
9 Agreement, the Counter Defendants agreed that the funds were to come solely from LVD
10 Fund. The Loan Agreement was simply a ruse to lull LVD Fund into soliciting more EB-5
11 funds, with the intent that the false appearance of Front Sight having a \$36 million line of
12 credit would result in a greater number of EB-5 investors coming forward. *Id.* ¶ 65.

10 **a. Fraud Claim**

11 LVDF’s fraud claim against Piazza is based upon the fraudulent misrepresentations as stated
12 in the Morales Construction Line of Credit. This fraud claim is not an alter ego claim nor a fraudulent
13 transfer action. *Id.*, p. 32, l. 5-26. The Debtor **does not** assert that the fraud claim is property of the
14 bankruptcy. Rather, the Debtor states “any cause of action against Dr. Piazza, including the first
15 cause of action, is property of the Debtor’s estate as LVDF seeks a finding that Dr. Piazza is an alter
16 ego of the Debtor...” *See*, Motion p. 12, l. 7-9. Despite the assertion, LVDF has recognized that any
17 alter ego action is property of the bankruptcy estate and has not sought a finding that Dr. Piazza is
18 the alter ego of the Debtor. Accordingly, the argument to obtain such terminating sanctions order
19 and the order as applicable to this cause of action was not a violation of the stay and is not void.

20 **b. Intentional Interference with Contractual Relationship Against Mr. Piazza,**
21 **Jennifer Piazza, VNV Dynasty Trust I and II**

22 The Debtor asserts that the intentional interference with contractual relationship cause of
23 action is “also property of the Debtor’s bankruptcy estate as they are in reality fraudulent transfer
24 claims and the injury alleged is an injury primarily to the Debtor.” *See*, Motion p. 12, l. 19-22. The
25 complaint repeated and realleged each and every allegation in the counterclaim in this cause of action,
26 including but not limited to the Morales Line of Credit Allegations. *See*, Exhibit 10, ¶ 89.

1 As a matter of law, this cause of action is not a fraudulent transfer and could not be applicable
 2 to the Debtor nor the Bankruptcy Estate. Under Nevada Law, the elements for an action for
 3 intentional interference with contractual relations are: (1) a valid and existing contract; (2) the
 4 defendant's knowledge of the contract; (3) intentional acts intended or designed to disrupt the
 5 contractual relationship; (4) actual disruption of the contract and (5) resulting damage. *See, J. J.*
 6 *Industries, LLC v. Bennett*, 119 Nev. 269, 274 (Nev. 2003) citing to *Sutherland v. Gross*, 105 Nev.
 7 192 (Nev. 1989). Moreover, as Front Sight could never be a party to such an action because it was
 8 one of the contractual parties, this cause of action could never be part of the bankruptcy estate.
 9 Therefore, the oral argument to obtain such terminating Sanctions Order and the order as applicable
 10 to this cause of action were not violations of the stay and are not void.

11 **c. Civil Conspiracy Against Mr. Piazza, Jennifer Piazza, VNV Dynasty Trust I and**
 12 **II**

13 The Debtor alleges that the civil conspiracy cause of action is "also property of the Debtor's
 14 bankruptcy estate as they are in reality fraudulent transfer claims and the injury alleged is an injury
 15 primarily to the Debtor." *See*, Motion p. 12, l. 19-22. But LVDF repeated and realleged each and
 16 every allegation in the counterclaim in this cause of action, including but not limited to the Morales
 17 Line of Credit. *See*, Exhibit 10, ¶ 101. The Civil Conspiracy action relates to the Morales
 18 Construction Line of Credit and other bad acts by these parties. Under Nevada law, a cause of action
 19 for civil conspiracy consists of two elements: (1) two or more defendants acting in concert with the
 20 intent to accomplish an unlawful objective for the purpose of harming another, and (2) damage
 21 resulting from the concerted acts. *Consol. Generator-Nev., Inc. v. Cummins Engine Co.*, 114 Nev.
 22 1304, 1311, 971 P.2d 1251, 1256 (1998). Here, LVDF has made a variety of allegations in the
 23 complaint as to the Morales Line of Credit which would support a civil conspiracy claim. As the
 24 only damage would be to LVDF, the civil conspiracy claim is not property of the estate, the argument
 25 to obtain such terminating sanctions order was not a violation of the stay, and the order as applicable
 26 to this cause of action is not void.

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1 d. **The Remaining Claims**

2 The Sanctions Order expressly stated, it does not apply to “that portion of the Motion that
3 relates to Front Sight or that is otherwise stayed based on Front Sight’s bankruptcy petition.”⁵ *See*,
4 Exhibit 10, p. 2, l. 4-7. Moreover, the Court Order reflected that “[t]he Court’s ruling does not apply
5 to LVDF’s second cause of action for fraudulent transfers because such action is property of the
6 bankruptcy estate of Front Sight Management, LLC. While the parties disagree as to whether the
7 Court’s ruling applies to LVDF’s fourth cause of action for conversion and seventh cause of action
8 for waste, LVDF has agreed not to take any action on those claims pending clarification from the
9 bankruptcy court.” *Id.* Moreover, it was clear that LVDF had advised the Debtor that the fraudulent
10 transfer, conversion, waste claim and alter ego relief are not being pursued. *See*, Exhibit 10 to Gubner
11 Declaration. LVDF did not argue for, nor did the Order for Terminating Sanctions apply to, such
12 actions. Although the Debtor asserts such claims are property of the bankruptcy estate, they are not
13 germane to the underlying request for a finding that there was a violation of the stay by arguing for
14 terminating sanctions or by virtue of the Court Order.

15 **B. The Debtor is Not Entitled to Relief of the Terminating Sanctions Order Under Civil**
16 **Rule 60(b)(4) and (b)(6)**

17 **1. The Debtor Does Not Have Standing**

18 The Debtor requests this Court to set aside the order based upon Rule 60(b)(4) or (b)(6). This
19 court “[o]n motion and just terms, . . . may relieve a party or its legal representative from a final
20 judgment, order, or proceeding for the following reasons . . . (4) the judgment is void . . . (6) any other
21 reason that justifies relief.” Fed. R. Civ. P. 60(b).⁶ Generally, a nonparty does not have standing
22 under Rule 60(b). Although the debtor is party to the underlying action, it is not a party to the order.
23 A non-party to an order may seek relief if it is directly affected and if it was procured by fraud.

24
25
26 ⁵ To the extent that there was any violation of the automatic stay (which LVDF disputes), then consistent with Nevada
27 Law, the State Court cured any such violation before entering its written order. *See Div. of Child & Family Servs.*, 120
28 Nev. at 451, 92 P.3d at 1243.

⁶ To the extent that the Court finds that the order was entered in violation of the stay then as a matter of law, it is void.
As such, Rule 60(b)(4) is not applicable.

1 *Native Eyak Native Village v. Exxon Corp.*, 25 F.3d 773, 777 (9th Cir. 1994) (“However, a non-party
 2 may seek relief from a judgment procured by fraud if the nonparty's interests are directly affected.
 3 See *Kem Manufacturing Corp. v. Wilder*, 817 F.2d 1517, 1521 (11th Cir. 1987); see also *Southerland*
 4 *v. Irons*, 628 F.2d 978, 980 (6th Cir. 1980). Moreover, a court has "inherent power . . . to investigate
 5 whether a judgment was obtained by fraud," and may bring before it "all those who may be affected.
 6 . . ." *See Universal Oil Products Co. v. Root Refining Co.*, 328 U.S. 575, 580, 66 S.Ct. 1176, 90 L.Ed.
 7 1447 (1946).”) (“[A] nonparty may seek relief from a judgment procured by fraud if the nonparty's
 8 interests are directly affected.”).

9 The Debtor does not argue that there was any fraud but asserts that by the State Court entering
 10 the terminating sanctions order it negates the January 23, 2020 Order and directly conflicts with such
 11 order. See, Motion, p. 20-21, l. 28-3. Such argument is disingenuous. The January 23, 2020 order
 12 was a preliminary order and was not binding upon any of the parties. Such restrictions were expressly
 13 stated in the June 8, 2020 orders which stated that the January 23, 2020 order was a “preliminary
 14 finding related to the temporary restraining order” and was not intended to be and cannot be the basis
 15 of any final judgment in this case.” See, Exhibits 8 and 9.

16 Without explicitly stating it, the Debtor must be concerned that Mr. Piazza breached his
 17 fiduciary duty to the Debtor by failing to produce a witness for the Debtor which resulted in a motion
 18 for terminating sanctions being filed. He had no excuse and just chose not to appear. Mr. Piazza
 19 flippantly states in his declaration that “in hindsight, this may have been a mistake.” Such action by
 20 Mr. Piazza is gross malfeasance to the Debtor. Fortunately, for Mr. Piazza, because the Debtor filed
 21 bankruptcy, no terminating sanctions order was entered at this time as to Debtor and the request has
 22 been stayed.

23 Although LVDF contends that the Debtor does not have standing to request such relief under
 24 Fed. R. Civ. P. 60(b)(6), even under such Rule, the Motion should be denied.

25 **2. The Reconsideration Motion Under Bankruptcy Rule 9024**

26 The Federal Rules of Civil Procedure “do not recognize a motion for reconsideration.”
 27 *Captain Blythers, Inc. v. Thompson (In re Captain Blythers, Inc.)*, 311 B.R. 530, 539 (B.A.P. 9th
 28 Cir. 2004). Rather, the rules recognize two types of motion to obtain post-judgment relief under Fed.

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1 R. Civ. P. 59 and 60. Although the request is not based upon a final judgment, the Debtor is asserting
2 that this Court could construe the request for relief under Bankruptcy Rule 9024, which incorporates
3 Rule 60(b) of the Federal Rules of Civil Procedure. *United States v. Nutricology, Inc.*, 982 F.2d 394,
4 397 (9th Cir. 1992). The Debtor, besides asserting that the order is void as it was a violation of the
5 stay, is arguing that Rule 60(b)(6) is applicable as it should be set aside for “any other reason that
6 justifies relief.”⁷

7 However, the Ninth Circuit has stated that Rule 60(b)(6) is used sparingly and only reserved
8 for “extraordinary circumstances”. *Ashford v. Steuart*, 657 F.2d 1053, 1055 (9th Cir. 1981). *See also*,
9 *Supermarket of Homes, Inc. v. San Fernando Valley Bd. of Realtors*, 786 F.2d 1400, 1410 (9th Cir.
10 1986). Fault by movant usually means [a] lack of ‘extraordinary circumstances.’” 12 JAMES WM.
11 MOORE, ET. AL., MOORE’S FEDERAL PRACTICE § 60.48[3][c] (3d ed. 2005).

12 Although the Debtor provides no declaration of Mr. Piazza as to why the Debtor failed to
13 appear at the deposition, Mr. Piazza chose not to appear on behalf of the Debtor and now states in a
14 separate motion that his intentional nonappearance at a deposition “may have been a mistake.”
15 Again, neither he nor the other Piazza parties provide any reason why that they failed to appear.
16 Keeping in mind that the Court entered an order setting forth the firm deposition dates, the choice of
17 Mr. Piazza, Jennifer Piazza, and the VNV Trusts I and II in not appearing for their respective
18 depositions (including that of the 30(b)(6) for Front Sight) was their own voluntarily decision. Such
19 actions do not give rise to extraordinary circumstances and the order should not be set aside.
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27 ⁷ Conversely, in a competing motion by the Piazza Entities, such entities argue that such order is interlocutory, and Fed.
28 R. Civ. P. 54 is applicable, but the standards are similar.

1 **IV. CONCLUSION**

2 The pursuit of individualized claims that are not property of the bankruptcy estate are not
3 stayed. As such, the oral presentation by JL on behalf of LVDF at the hearing on terminating
4 sanctions and the subsequent order submitted by JL on behalf of LVDF did not violate the automatic
5 stay and are not void.

6 The Debtor's assertions of a violation of the stay are simply that, assertions. A review of the
7 Court transcript and subsequent order reflect that there was no violation. There is no legal basis for
8 this Court to make a finding that there was such a violation and the request to determine that LVDF
9 and JL violated the automatic stay should be denied. Similarly, the request that the entry of the
10 Terminating Sanctions Order violated the stay and is void ab initio should be denied. Finally, the
11 Debtor lacks standing to request Rule 60(b)(6) relief and to the extent that the Court determines that
12 it has such standing, the request should be denied.

13
14 Dated 8-18-2022

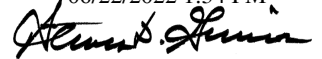
/s/ Brian D. Shapiro, Esq.

Brian D. Shapiro, Esq.

Attorney for LVDF and Jones Lovelock

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EXHIBIT 1



CLERK OF THE COURT

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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.: 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 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

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1 multiple parties failed to appear on different dates, the Court can only infer that the
2 Counterdefendants' failure to appear for duty 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.

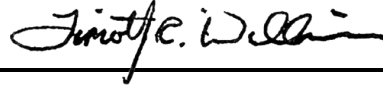
22 15. The Court has been previously advised, on multiple occasions, by the Lender Parties
23 that they anticipated the Counterdefendants would not appear for depositions. On each of those
24 occasions, the Court, while never previously presented with a motion for sanctions, has advised the
25 Counterdefendants 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.

1 contractual relationships and fifth cause of action for civil conspiracy.

2 **IT IS SO ORDERED.**

3 Dated this 22nd day of June, 2022

4 

5 MH

6 **489 490 FCCA 16DD
Timothy C. Williams
District Court Judge**

7 Respectfully submitted by:

Approved as to form and content:

8 **JONES LOVELOCK**

ALDRICH LAW FIRM, LTD.

9 /s/ Andrea M. Champion, Esq.

/s/ Circulated – No Response

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14 *Attorneys for Defendants/Counterclaimants*

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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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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

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24 Stephen Davis	sdavis@joneslovelock.com
25 Kenneth Hogan	ken@h2legal.com

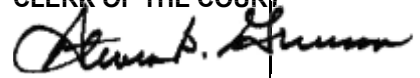
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Jeffrey Hulet	jeff@h2legal.com
Julie Linton	jlinton@joneslovelock.com
Georlen Spangler	jspangler@joneslovelock.com
Sue Cavaco	scavaco@joneslovelock.com
Andrea Champion	achampion@joneslovelock.com
Lorraine Rillera	lrillera@joneslovelock.com

EXHIBIT 2

Electronically Filed
5/24/2022 3:45 PM
Steven D. Grierson
CLERK OF THE COURT



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

7 **EIGHTH JUDICIAL DISTRICT COURT**

8 **CLARK COUNTY, NEVADA**

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

11 Plaintiff,

12 vs.

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

15 Defendants.

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

SUGGESTION OF BANKRUPTCY

16 AND ALL RELATED COUNTERCLAIMS.

17 **TO THIS HONORABLE COURT AND TO ALL PARTIES IN INTEREST:**

18 PLEASE TAKE NOTICE that Defendant Front Sight Management LLC (“Front Sight”)
19 has filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code (“the
20 Bankruptcy Code”) on May 24, 2022, in the United States Bankruptcy Court, District of Nevada,
21 Case No. 22-11824-abl. A copy of the Notice of Bankruptcy Filing is attached hereto as **Exhibit**

22 **1.**

23 ///

24 ///

1 PLEASE TAKE FURTHER NOTICE that pursuant to Sections 362 (a) (1) and (3) of the
2 Bankruptcy Code, an automatic stay is currently in effect.

3 DATED this 24th day of May, 2022.

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 7866 West Sahara Avenue
11 Las Vegas, NV 89117
12 Tel (702) 853-5490
13 Fax (702) 226-1975
14 *Attorneys for Plaintiff/Counterdefendant*

15 **CERTIFICATE OF SERVICE**

16 I HEREBY CERTIFY that on the 24th day of May, 2022, I caused the foregoing
17 **SUGGESTION OF BANKRUPTCY** to be electronically filed and served with the Clerk of the
18 Court using Wiznet which will send notification of such filing to the email addresses denoted on
19 the Electronic Mail Notice List, or by U.S. mail, postage prepaid, if not included on the Electronic
20 Mail Notice List, to the following parties:

21 Nicole E. Lovelock, Esq.
22 Stephen A. Davis, Esq.
23 **JONES LOVELOCK**
24 6600 Amelia Earhart Court, Suite C
Las Vegas, Nevada 89119
Attorneys for Defendants/Counterclaimant

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

EXHIBIT 1

EXHIBIT 1

1 STEVEN T. GUBNER – NV Bar No. 4624
SUSAN K. SEFLIN – CA Bar No. 213865
2 BG LAW LLP
300 S. 4th Street, Suite 1550
3 Las Vegas, NV 89101
Telephone: (702) 835-0800
4 Facsimile: (866) 995-0215
Email: ssubner@bg.law
5

6 Proposed Bankruptcy Attorneys for Front
Sight Management LLC, chapter 11 debtor
7 and debtor in possession

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

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

12 Plaintiff,

13 v.
14

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

17 Defendants.
18

Case No.: A-18-781084-B

Dept. No.: 16

**NOTICE OF BANKRUPTCY FILING AND
NOTICE OF BANKRUPTCY STAY**

19
20 AND ALL RELATED COUNTERCLAIMS.
21


22 **TO THIS HONORABLE COURT AND TO ALL PARTIES IN INTEREST:**

23 **PLEASE TAKE NOTICE** that on May 24, 2022, Front Sight Management LLC (the “Front
24 Sight”) filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code
25 (“the Bankruptcy Code”), commencing Bankruptcy Case No. 22-11824-abl now pending in the
26 United States Bankruptcy Court for the District of Nevada. A copy of the Front Sight’s bankruptcy
27 petition is attached hereto as **Exhibit 1**. The undersigned is proposed bankruptcy counsel for Front
28 Sight in the bankruptcy case.

1 **PLEASE TAKE FURTHER NOTICE** that pursuant to Sections 362 (a) (1) and (3) of the
2 Bankruptcy Code, an automatic stay is currently in effect and has been in effect since May 24, 2022.
3 The terms of the automatic stay include, but are not limited to, any continuation of a judicial action
4 or proceeding against the Plaintiff. Any act taken in violation of the automatic stay is void. *In re*
5 *Schwartz*, 954 F. 2d 569 (9th Cir. 1992). In light of the bankruptcy filing and the automatic stay
6 imposed by Section 362 of the Bankruptcy Code, it is believed that these proceedings are hereby
7 stayed. Therefore, Front Sight requests that the Defendant/Counterclaimants' Motion to Case
8 Dispositive Sanctions on Order Shortening Time currently set for May 25, 2022 be placed off
9 calendar to avoid unnecessary appearance thereat.

10 DATED: May 24, 2022

BG LAW LLP

11
12 By: 
13 Steven T. Gubner
14 Susan K. Seflin
15 Proposed Bankruptcy Attorneys for Front
16 Sight Management LLC, chapter 11 debtor
17 and debtor in possession
18
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Fill in this information to identify your case:

United States Bankruptcy Court for the:
 DISTRICT OF NEVADA

Case number (if known) _____ Chapter 11

Check if this an amended filing

Official Form 201
Voluntary Petition for Non-Individuals Filing for Bankruptcy

04/20

If more space is needed, attach a separate sheet to this form. On the top of any additional pages, write the debtor's name and the case number (if known). For more information, a separate document, *Instructions for Bankruptcy Forms for Non-Individuals*, is available.

1. **Debtor's name** Front Sight Management LLC

2. **All other names debtor used in the last 8 years**
 Include any assumed names, trade names and *doing business as* names

dba Front Sight Firearms Training Institute
aka Front Sight Resorts
aka Front Sight

3. **Debtor's federal Employer Identification Number (EIN)** 77-0306282

4. **Debtor's address**

<p>Principal place of business</p> <p><u>1 Front Sight Road, Pahrump, NV 89061</u> Number, Street, City, State & ZIP Code</p> <p><u>Nye</u> County</p>	<p>Mailing address, if different from principal place of business</p> <p>_____</p> <p>P.O. Box, Number, Street, City, State & ZIP Code</p> <p>Location of principal assets, if different from principal place of business</p> <p>_____</p> <p>Number, Street, City, State & ZIP Code</p>
---	--

5. **Debtor's website (URL)** www.frontsight.com

6. **Type of debtor**

Corporation (including Limited Liability Company (LLC) and Limited Liability Partnership (LLP))

Partnership (excluding LLP)

Other. Specify: _____

Debtor Front Sight Management LLC
Name _____

Case number (if known) _____

7. Describe debtor's business

A. Check one:

- Health Care Business (as defined in 11 U.S.C. § 101(27A))
- Single Asset Real Estate (as defined in 11 U.S.C. § 101(51B))
- Railroad (as defined in 11 U.S.C. § 101(44))
- Stockbroker (as defined in 11 U.S.C. § 101(53A))
- Commodity Broker (as defined in 11 U.S.C. § 101(6))
- Clearing Bank (as defined in 11 U.S.C. § 781(3))
- None of the above

B. Check all that apply

- Tax-exempt entity (as described in 26 U.S.C. §501)
- Investment company, including hedge fund or pooled investment vehicle (as defined in 15 U.S.C. §80a-3)
- Investment advisor (as defined in 15 U.S.C. §80b-2(a)(11))

C. NAICS (North American Industry Classification System) 4-digit code that best describes debtor.
See <http://www.uscourts.gov/four-digit-national-association-naics-codes>.

8. Under which chapter of the Bankruptcy Code is the debtor filing?

Check one:

- Chapter 7
- Chapter 9
- Chapter 11. Check **all that apply**:

A debtor who is a "small business debtor" must check the first sub-box. A debtor as defined in § 1182(1) who elects to proceed under subchapter V of chapter 11 (whether or not the debtor is a "small business debtor") must check the second sub-box.

- The debtor is a small business debtor as defined in 11 U.S.C. § 101(51D), and its aggregate noncontingent liquidated debts (excluding debts owed to insiders or affiliates) are less than \$2,725,625. If this sub-box is selected, attach the most recent balance sheet, statement of operations, cash-flow statement, and federal income tax return or if any of these documents do not exist, follow the procedure in 11 U.S.C. § 1116(1)(B).
- The debtor is a debtor as defined in 11 U.S.C. § 1182(1), its aggregate noncontingent liquidated debts (excluding debts owed to insiders or affiliates) are less than \$7,500,000, **and it chooses to proceed under Subchapter V of Chapter 11**. If this sub-box is selected, attach the most recent balance sheet, statement of operations, cash-flow statement, and federal income tax return, or if any of these documents do not exist, follow the procedure in 11 U.S.C. § 1116(1)(B).
- A plan is being filed with this petition.
- Acceptances of the plan were solicited prepetition from one or more classes of creditors, in accordance with 11 U.S.C. § 1126(b).
- The debtor is required to file periodic reports (for example, 10K and 10Q) with the Securities and Exchange Commission according to § 13 or 15(d) of the Securities Exchange Act of 1934. File the *Attachment to Voluntary Petition for Non-Individuals Filing for Bankruptcy under Chapter 11* (Official Form 201A) with this form.
- The debtor is a shell company as defined in the Securities Exchange Act of 1934 Rule 12b-2.

Chapter 12

9. Were prior bankruptcy cases filed by or against the debtor within the last 8 years?

- No.
- Yes.

If more than 2 cases, attach a separate list.

District _____ When _____ Case number _____
District _____ When _____ Case number _____

10. Are any bankruptcy cases pending or being filed by a business partner or an affiliate of the debtor?

- No
- Yes.

List all cases. If more than 1, attach a separate list

Debtor _____ Relationship _____
District _____ When _____ Case number, if known _____

Debtor Front Sight Management LLC
Name

Case number (if known) _____

11. Why is the case filed in this district?

Check all that apply:

- Debtor has had its domicile, principal place of business, or principal assets in this district for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other district.
- A bankruptcy case concerning debtor's affiliate, general partner, or partnership is pending in this district.

12. Does the debtor own or have possession of any real property or personal property that needs immediate attention?

No

Yes. Answer below for each property that needs immediate attention. Attach additional sheets if needed.

Why does the property need immediate attention? (Check all that apply.)

- It poses or is alleged to pose a threat of imminent and identifiable hazard to public health or safety.
What is the hazard? _____
- It needs to be physically secured or protected from the weather.
- It includes perishable goods or assets that could quickly deteriorate or lose value without attention (for example, livestock, seasonal goods, meat, dairy, produce, or securities-related assets or other options).
- Other _____

Where is the property? _____

Number, Street, City, State & ZIP Code

Is the property insured?

No

Yes.

Insurance agency _____

Contact name _____

Phone _____

Statistical and administrative information

13. Debtor's estimation of available funds

Check one:

- Funds will be available for distribution to unsecured creditors.
- After any administrative expenses are paid, no funds will be available to unsecured creditors.

14. Estimated number of creditors

- | | | |
|----------------------------------|--|---|
| <input type="checkbox"/> 1-49 | <input type="checkbox"/> 1,000-5,000 | <input type="checkbox"/> 25,001-50,000 |
| <input type="checkbox"/> 50-99 | <input type="checkbox"/> 5001-10,000 | <input type="checkbox"/> 50,001-100,000 |
| <input type="checkbox"/> 100-199 | <input type="checkbox"/> 10,001-25,000 | <input checked="" type="checkbox"/> More than 100,000 |
| <input type="checkbox"/> 200-999 | | |

15. Estimated Assets

- | | | |
|--|---|--|
| <input type="checkbox"/> \$0 - \$50,000 | <input type="checkbox"/> \$1,000,001 - \$10 million | <input type="checkbox"/> \$500,000,001 - \$1 billion |
| <input type="checkbox"/> \$50,001 - \$100,000 | <input checked="" type="checkbox"/> \$10,000,001 - \$50 million | <input type="checkbox"/> \$1,000,000,001 - \$10 billion |
| <input type="checkbox"/> \$100,001 - \$500,000 | <input type="checkbox"/> \$50,000,001 - \$100 million | <input type="checkbox"/> \$10,000,000,001 - \$50 billion |
| <input type="checkbox"/> \$500,001 - \$1 million | <input type="checkbox"/> \$100,000,001 - \$500 million | <input type="checkbox"/> More than \$50 billion |

16. Estimated liabilities

- | | | |
|--|---|--|
| <input type="checkbox"/> \$0 - \$50,000 | <input type="checkbox"/> \$1,000,001 - \$10 million | <input type="checkbox"/> \$500,000,001 - \$1 billion |
| <input type="checkbox"/> \$50,001 - \$100,000 | <input checked="" type="checkbox"/> \$10,000,001 - \$50 million | <input type="checkbox"/> \$1,000,000,001 - \$10 billion |
| <input type="checkbox"/> \$100,001 - \$500,000 | <input type="checkbox"/> \$50,000,001 - \$100 million | <input type="checkbox"/> \$10,000,000,001 - \$50 billion |
| <input type="checkbox"/> \$500,001 - \$1 million | <input type="checkbox"/> \$100,000,001 - \$500 million | <input type="checkbox"/> More than \$50 billion |

Debtor Front Sight Management LLC
Name

Case number (if known) _____

Request for Relief, Declaration, and Signatures

WARNING -- Bankruptcy fraud is a serious crime. Making a false statement in connection with a bankruptcy case can result in fines up to \$500,000 or imprisonment for up to 20 years, or both. 18 U.S.C. §§ 152, 1341, 1519, and 3571.

17. Declaration and signature of authorized representative of debtor

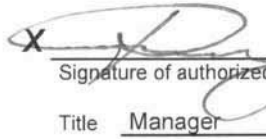
The debtor requests relief in accordance with the chapter of title 11, United States Code, specified in this petition.

I have been authorized to file this petition on behalf of the debtor.

I have examined the information in this petition and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 05/24/2022
MM / DD / YYYY

X 
Signature of authorized representative of debtor
Title Manager

Ignatius Piazza
Printed name

18. Signature of attorney

X 
Signature of attorney for debtor

Date 05/24/2022
MM / DD / YYYY

Steven T. Gubner
Printed name

BG Law LLP
Firm name

300 S. 4th Street, Suite 1550, Las Vegas, NV 89101
Number, Street, City, State & ZIP Code

Contact phone (702) 835-0800 Email address sgubner@bg.law

Nevada Bar No. 4624
Bar number and State

Fill in this information to identify the case:

Debtor name Front Sight Management LLC

United States Bankruptcy Court for the: _____ District of Nevada
(State)

Case number (If known): _____

Check if this is an amended filing

Official Form 204

Chapter 11 or Chapter 9 Cases: List of Creditors Who Have the 20 Largest Unsecured Claims and Are Not Insiders

12/15

A list of creditors holding the 20 largest unsecured claims must be filed in a Chapter 11 or Chapter 9 case. Include claims which the debtor disputes. Do not include claims by any person or entity who is an *insider*, as defined in 11 U.S.C. § 101(31). Also, do not include claims by secured creditors, unless the unsecured claim resulting from inadequate collateral value places the creditor among the holders of the 20 largest unsecured claims.

	Name of creditor and complete mailing address, including zip code	Name, telephone number, and email address of creditor contact	Nature of the claim (for example, trade debts, bank loans, professional services, and government contracts)	Indicate if claim is contingent, unliquidated, or disputed	Amount of unsecured claim		
					Total claim, if partially secured	Deduction for value of collateral or setoff	Unsecured claim
1	[Confidential Party] [Address Redacted]	[Redacted]	Real Estate	U	\$350,000.00	\$ 0.00	\$350,000.00
2	Steve Heun 35 Hahnemann Ln Napa, CA 94558-7210	sheun@pacbell.net	Real Estate	U	\$165,000.00	\$ 0.00	\$165,000.00
3	Gary Cecchi 90 Grey Fox Ln Oroville, CA 95966-9460	gcecchi@comcast.net	Real Estate	U	\$148,000.00	\$ 0.00	\$148,000.00
4	David Streck 22W330 Spring Valley Dr. Medinah, IL 60157	dstreck1@gmail.com	Real Estate	U	\$106,000.00	\$ 0.00	\$106,000.00
5	Arm Scor Precision International 1731 Village Center Circle Suite 150 Las Vegas, NV 89134	Attn: Kyle Wyany kwyant@shea.law	Trade		\$100,000.00	\$ 0.00	\$100,000.00
6	Thomas Fitzgerald 1527 South Ct Findlay, OH 45840	flstffitz@gmail.com	Member Obligation		\$96,000.00	\$ 0.00	\$96,000.00
7	Thomas Donaghy 3346 Woolsey Rd Windsor, CA 95492	tom@ncva.com	Member Obligation		\$96,000.00	\$ 0.00	\$96,000.00
8	Edward Barber 14831 Ronda Drive San Jose, CA 95124	rondavoo@aol.com	Member Obligation		\$96,000.00	\$ 0.00	\$96,000.00

Debtor Front Sight Management LLC
Name

Case number (if known) _____

	Name of creditor and complete mailing address, including zip code	Name, telephone number, and email address of creditor contact	Nature of the claim (for example, trade debts, bank loans, professional services, and government contracts)	Indicate if claim is contingent, unliquidated, or disputed	Amount of unsecured claim If the claim is fully unsecured, fill in only unsecured claim amount. If claim is partially secured, fill in total claim amount and deduction for value of collateral or setoff to calculate unsecured claim.		
					Total claim, if partially secured	Deduction for value of collateral or setoff	Unsecured claim
9	Daniel Smith 46006 N 37th Ln New River, AZ 85087-6963	parzifalus@yahoo.com	Member Obligation		\$81,003.00	\$ 0.00	\$81,003.00
10	Call & Jensen Law 610 Newport Center Drive Suite 700 Newport Beach, CA 92660	Attn: Julie R. Trotter, Managing Shareholder P: (949) 717-3000 jtrotter@calljensen.com	Legal		\$78,219.41	\$ 0.00	\$78,219.41
11	Preston Arza LLP 301 North Palm Canyon Drive Suite 103-102 Palm Springs, CA 92262-5672	Attn: Scott Preston scott@prestonarza.com	Legal		\$72,444.60	\$ 0.00	\$72,444.60
12	ALM Investments LLC 3525 Sage Rd 115 Houston, TX 77056	P: (917) 856-8213	Unsecured Note		\$55,000.00	\$ 0.00	\$55,000.00
13	Allan Paine 888 Twin Creeks Crossing Apt 114 Central Point, OR 97502	allanpaine57@gmail.com	Member Obligation		\$54,000.00	\$ 0.00	\$54,000.00
14	Ronald Genova 3430 N. Mountain Ridge Unit # 14 Mesa, AZ 85207	rtgenov@aol.com	Member Obligation		\$50,003.00	\$ 0.00	\$50,003.00
15	David Wallace 791 Star View Way Bridgewater, NJ 08807	david.w.wallace@hotmail.com	Member Obligation		\$48,000.00	\$ 0.00	\$48,000.00
16	William Feczko 230 Highview Ave Pittsburgh, PA 15238	marty@chaneyassoc.com	Member Obligation		\$48,000.00	\$ 0.00	\$48,000.00
17	Ted Balmforth 133 E 4000 S Victor, ID 83455-5562	tsbalmforth@silverstar.com	Member Obligation		\$48,000.00	\$ 0.00	\$48,000.00
18	Rafael Angel 4240 Whisper Trail Olive Branch, MS 38654	mazatlan8@live.com	Member Obligation		\$48,000.00	\$ 0.00	\$48,000.00
19	James Taylor 2013 Legacy Drive Faribault, MN 55021	jctm@taylors.xyz	Member Obligation		\$48,000.00	\$ 0.00	\$48,000.00
20	Michael Meacher 4770 Santa Luc Street Mt. Falls, NV 89061	mike.meacher@gmail.com	Employment Agreement – Former CFO	D	TBD	TBD	TBD

Fill in this information to identify the case and this filing:

Debtor Name Front Sight Management LLC

United States Bankruptcy Court for the: _____ District of Nevada
(State)

Case number (If known): _____

Official Form 202

Declaration Under Penalty of Perjury for Non-Individual Debtors

12/15

An individual who is authorized to act on behalf of a non-individual debtor, such as a corporation or partnership, must sign and submit this form for the schedules of assets and liabilities, any other document that requires a declaration that is not included in the document, and any amendments of those documents. This form must state the individual's position or relationship to the debtor, the identity of the document, and the date. Bankruptcy Rules 1008 and 9011.

WARNING – Bankruptcy fraud is a serious crime. Making a false statement, concealing property, or obtaining money or property by fraud in connection with a bankruptcy case can result in fines up to \$500,000 or imprisonment for up to 20 years, or both. 18 U.S.C. §§ 152, 1341, 1519, and 3571.

Declaration and signature


I am the president, another officer, or an authorized agent of the corporation; a member or an authorized agent of the partnership; or another individual serving as a representative of the debtor in this case.

I have examined the information in the documents checked below and I have a reasonable belief that the information is true and correct:

- Schedule A/B: Assets—Real and Personal Property* (Official Form 206A/B)
- Schedule D: Creditors Who Have Claims Secured by Property* (Official Form 206D)
- Schedule E/F: Creditors Who Have Unsecured Claims* (Official Form 206E/F)
- Schedule G: Executory Contracts and Unexpired Leases* (Official Form 206G)
- Schedule H: Codebtors* (Official Form 206H)
- Summary of Assets and Liabilities for Non-Individuals* (Official Form 206Sum)
- Amended Schedule _____
- Chapter 11 or Chapter 9 Cases: List of Creditors Who Have the 20 Largest Unsecured Claims and Are Not Insiders* (Official Form 204)
- Other document that requires a declaration _____

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 05/24/2022
MM / DD / YYYY



Signature of individual signing on behalf of debtor

Ignatius Piazza

Printed name
Manager

Position or relationship to debtor

**WRITTEN CONSENT OF THE MANAGER OF
FRONT SIGHT MANAGEMENT LLC AUTHORIZING FILING
OF CHAPTER 11 PETITION AND OTHER RESOLUTIONS**

Dated: May 23, 2022

The undersigned manager (“Manager”) of Front Sight Management LLC, a Nevada limited liability company (the “Company”), does hereby consent, approve and adopt the following resolutions by written consent pursuant to the Company’s operating agreement:

WHEREAS, the Manager has considered the financial condition and circumstances of the Company, including without limitation the assets and liabilities of the Company and the strategic alternatives available to the Company;

WHEREAS, the Manager has reviewed, considered and received the recommendations of the Company’s management and the Company’s professional advisors as to the relative risks and benefits of a bankruptcy proceeding;

WHEREAS in the judgment of the Manager, it is desirable and in the best interests of the Company, its creditors and other stakeholders, that the Company be authorized and empowered to file a petition under the provisions of title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the District of Nevada.

NOW THEREFORE, BE IT RESOLVED that, in the judgement of the Manager, it is necessary and in the best interests of the Company, its creditor and its other stakeholders that a chapter 11 petition (the “Petition”) be filed on behalf of the Company on May 24, 2022 or such other date as may be determined;

RESOLVED FURTHER, that Ignatius Piazza or any other person that he may authorize (the “Designated Officer”) is hereby authorized, empowered and directed on behalf of, and in the name of, the Company, to execute and file, and to cause counsel or other professionals to the Company to prepare with the assistance of the Company, as appropriate, all petitions, schedules, lists and other papers, documents and pleadings in connection with the bankruptcy case, and to take any and all action which the Designated Officer deems necessary and proper in connection with the bankruptcy case. Such actions shall include, but not be limited to, employing counsel and other professionals (both prior to and after the filing of the Petition), seeking Bankruptcy Court approval for the Company to use cash collateral and/or post-bankruptcy financing, seeking Bankruptcy Court approval of a plan and disclosure statement or as appropriate seeking dismissal or conversion of the bankruptcy case, compensating employees, negotiating with creditors, lenders, vendors, suppliers, landlords and any other party in interest, as needed, and entering into agreements regarding the same, and, if appropriate, negotiating, documenting and closing a sale of all or substantially all of the Company’s assets;

RESOLVED FURTHER, that Ignatius Piazza, the current Manager of the Company, shall be the Designated Officer for all matters unless he either designates a different person to be

the Designated Officer for any particular purpose of purposes, or he is unable or unwilling to serve as the Designated Officer in which case, Brad Ackman, an employee of the Company who is the operations manager and oversees the business, shall be second in line to serve as the Designated Officer.

IN WITNESS WHEREOF, the undersigned has executed this Written Consent on May 23, 2022.



Ignatius Piazza, Manager

EXHIBIT 3

From: [Andrea Champion](#)
To: [John Aldrich](#); [Traci Bixenmann](#)
Cc: [Nicole Lovelock](#); [Julie Linton](#); [Sue Trazig Cavaco](#)
Subject: RE: 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 Suggestion of Bankruptcy - SUGB (CIV), Envelope Number: 9922155
Date: Tuesday, May 24, 2022 4:45:00 PM
Attachments: [image001.png](#)

John,

We received the Suggestion of Bankruptcy that you just filed which includes a request that the Court take tomorrow's hearing off calendar. However, the law is quite clear that automatic stays do not protect nonbankrupt third parties, *even when* the co-defendants are closely related to the debtor. *U.S. v. Dos Cabezas Corp.*, 995 F.2d 1489, 1491 (9th Cir. 1993) ("the automatic stay does not extend to actions against parties other than the debtor, such as codebtors and sureties."); *see also Queenie, Ltd. v. Nygard Int'l*, 321 F.3d 282, 287 (2nd Cir. 2003); *In re Miller*, 262 B.R. 499, 503-05 (9th Cir. BAP 2001). Accordingly, we intend to proceed with Defendants/Counterclaimant's Motion for Sanctions as it is presented against Ignatius Piazza, Jennifer Piazza, and each of the VNV Trusts. In addition, we will appear in opposition to Jennifer Piazza's Motion for Summary Judgment.

Andrea M. Champion, Esq.



6600 Amelia Earhart Ct., Suite C
Las Vegas, NV 89119

P (702) 805-8450

F (702) 805-8451

E achampion@joneslovelock.com

<https://www.joneslovelock.com/>

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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 Suggestion of Bankruptcy - SUGB (CIV), Envelope Number: 9922155

**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: 9922155

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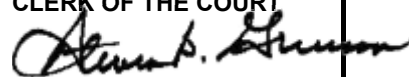
Filing Details	
Case Number	A-18-781084-B
Case Style	Front Sight Management LLC, Plaintiff(s)vs.Las Vegas Development Fund LLC, Defendant(s)
Date/Time Submitted	5/24/2022 3:45 PM PST
Filing Type	Suggestion of Bankruptcy - SUGB (CIV)
Filing Description	Suggestion of Bankruptcy
Filed By	Traci Bixenmann
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>Nicole Lovelock (nlovelock@joneslovelock.com)</p> <p>Kathryn Holbert (kholbert@farmercase.com)</p> <p>Lorie Januskevicius (ljanuskevicius@joneslovelock.com)</p> <p>Stephen Davis (sdavis@joneslovelock.com)</p> <p>Julie Linton (jlinton@joneslovelock.com)</p> <p>Georlen Spangler (jspangler@joneslovelock.com)</p> <p>Andrea Champion (achampion@joneslovelock.com)</p>

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EXHIBIT 4

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TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

FRONT SIGHT MANAGEMENT LLC,)
)
Plaintiff,)
)
vs.)
)
LAS VEGAS DEVELOPMENT)
FUND LLC,)
)
Defendant.)
)
AND RELATED PARTIES)

CASE NO. A-18-781084-B
DEPT NO. XVI

**TRANSCRIPT OF
PROCEEDINGS**

BEFORE THE HONORABLE TIMOTHY C. WILLIAMS, DISTRICT COURT JUDGE

WEDNESDAY, MAY 25, 2022

MOTION FOR CASE DISPOSITIVE SANCTIONS ON OST

**RENEWED MOTION FOR SUMMARY JUDGMENT AS TO THE COUNTERCLAIMS
AGAINST JENNIFER PIAZZA**

APPEARANCES:

FOR THE PLAINTIFF/
COUNTERDEFENDANTS:

JOHN P. ALDRICH, ESQ.

FOR DEFENDANTS/
COUNTERCLAIMANTS

ANDREA M. CHAMPION, ESQ.

RECORDED BY: MARIA GARIBAY, COURT RECORDER
TRANSCRIBED BY: JD REPORTING, INC.

1 **LAS VEGAS, CLARK COUNTY, NEVADA, MAY 25, 2022, 10:38 A.M.**

2 * * * * *

3 THE COURT: Okay. We have the final matter on
4 calendar. Up next will be -- I guess it's page 11.

5 Is it page 11?

6 THE CLERK: 8 (indiscernible).

7 THE COURT: Oh, I'm sorry. Page 8, and that's Front
8 Sight Management, LLC, versus Las Vegas Development.

9 And we'll go ahead and let you get set up, and we're
10 going to take a quick 10-minute recess. My staff wants to --
11 (Proceedings recessed 10:38 a.m., until 10:55 a.m.)

12 THE COURT RECORDER: We're on the record.

13 THE COURT: Okay. Thank you, ma'am.

14 I guess for the record, next up Front Sight
15 Management, LLC, versus Las Vegas Development Fund, LLC.

16 All right. Let's go ahead and set forth our
17 appearances for the record. We'll start first with the
18 plaintiff. Then we'll move to the defense.

19 MR. ALDRICH: Good morning, Your Honor. John Aldrich
20 on behalf of plaintiff and counterdefendants.

21 MS. CHAMPION: Good morning, Your Honor. Andrea
22 Champion on behalf of defendants and counterclaimants.

23 THE COURT: All right. So once again, a good morning
24 to everyone. And I see we have a couple of matters on the
25 calendar for today. We have a motion for case dispositive

1 sanctions on an OST. We also have renewed motion for summary
2 judgment as to counterclaims against Jennifer Piazza.

3 And I do realize there's been a Chapter 11 filed. Is
4 that correct?

5 MR. ALDRICH: That's correct.

6 THE COURT: All right.

7 MR. ALDRICH: On behalf of Front Sight.

8 THE COURT: Okay. And then for the record, that
9 would be on behalf of Front Sight Management, LLC.

10 MR. ALDRICH: That's correct.

11 THE COURT: Okay. All right.

12 MS. CHAMPION: But not, Your Honor, as to the other
13 half.

14 THE COURT: No, I understand. That is to the
15 individual defendants.

16 MS. CHAMPION: Yeah.

17 MR. ALDRICH: And so, Your Honor, if I may for the
18 record, because my client has asked me to do so.

19 THE COURT: Oh, absolutely.

20 MR. ALDRICH: There has been a request by my clients,
21 obviously, that I ask that the Court not hold the hearing this
22 morning on these issues because a lot of these claims are based
23 on assertions related to alleged fraudulent transfers and
24 things like that relate to Front Sight that may be addressed in
25 the bankruptcy.

1 I certainly understand that an automatic stay does
2 not come in play except for the entities or people who are in
3 bankruptcy. But I'm making that request on behalf of my
4 clients just based on the fact that those are the allegations
5 that are related to these alleged fraudulent transfers from
6 Front Sight.

7 THE COURT: Okay. And thank you, sir.

8 Ma'am.

9 MS. CHAMPION: Your Honor, I e-mailed Mr. Aldrich
10 yesterday. I did not receive a response from him, but I told
11 him in my e-mail, and I'll say it again today. We're here.
12 We're ready to proceed with the motions today.

13 The motions relate to separate counterdefendants
14 individually named and the VNV Dynasty Trusts, and specifically
15 Mrs. Piazza's motion for summary judgment, and then the
16 individual counterdefendants and the VNV's Trust failure to
17 appear for depositions, which is the basis of our motion for
18 case dispositive sanctions. Those things can and should be
19 heard despite the fact that Front Sight has declared
20 bankruptcy.

21 THE COURT: I understand. Okay. And, ma'am, what
22 we're going to do, we're going to hear them because there's no
23 stay in place as it relates to the individual defendants.

24 MS. CHAMPION: That's correct, Your Honor.

25 THE COURT: Okay. All right. You have the floor,

1 ma'am.

2 MS. CHAMPION: Okay. Your Honor, at nearly every
3 hearing, if not every hearing, that we've had for the last
4 five months we have told you that my clients are ready to
5 proceed with the Front Sight parties' depositions, and
6 specifically Ignatius Piazza; Jennifer Piazza; Front Sight; and
7 the two VNV trusts, the VNV Dynasty Trust I and VNV Dynasty
8 Trust II.

9 At almost every one of those hearings, we've also
10 told you that we don't think they're going to appear for their
11 deposition. And when and if they don't, we will be here
12 arguing a motion for case dispositive sanctions, and that is
13 precisely what's happened and why we're here today.

14 And so acknowledging that because Front Sight has
15 declared bankruptcy, I'm going to tailor my argument today to
16 the remaining parties that we're going to be considering. But
17 I want to say at the outset this is a lawsuit about a lender,
18 Las Vegas Development Fund, who owns \$6.375 million to Front
19 Sight. And shortly after that money was loaned, Front Sight
20 turned around and immediately began defaulting on the
21 construction loan agreement.

22 Now, I admit those are nonmonetary breaches at first:
23 The failure to provide EB-5 documentation, the failure to
24 provide access to books and records, the failure to obtain
25 senior debt. And so the lender, like most lenders, said, What

1 are you doing? You've got to comply with the construction loan
2 agreement. And Mr. Piazza, the owner of Front Sight, became
3 aggressive, abrasive and immediately threatened litigation to
4 financially ruin my clients and the lender. And that has been
5 exactly what has happened throughout the four years of
6 litigation.

7 Mr. Piazza's plan was always to avoid the obligations
8 under the construction loan agreement; to delay this case; and
9 to avoid, avoid, avoid, avoid a trial, avoid a deposition at
10 all costs. And that is particularly true today.

11 I say this at the beginning of my argument because
12 that is the thread through which you have to look at this
13 motion. It's the lens in which we have to take a look at the
14 facts that have led to this motion for case dispositive
15 sanctions. Throughout this four years of litigation, Front
16 Sight has brought numerous motions for case dispositive
17 sanctions.

18 I had never argued a motion for case of dispositive
19 sanctions before this case. I think I've argued at this point
20 at least six or seven. And it's always been over ticky tacky
21 stuff, simple discovery disputes, things that could have been
22 and probably should have been addressed through a meet and
23 confer process had there been appropriate one.

24 But the point was always that Front Sight was always
25 trying to avoid the merits of this case, the trial, and

1 Mr. Piazza and the other Front Sight parties' testimony being
2 taken. And that was clear as early as the preliminary
3 injunction hearing when Mr. Piazza was only questioned and
4 examined for approximately 20 to 30 minutes. And then all of a
5 sudden there were some scheduling conflicts that came up, and
6 all of a sudden that preliminary injunction hearing could not
7 continue.

8 And so for the last four years, this case has
9 proceeded by focusing on this blitz of motion practice that's
10 been filed by the Front Sight parties. It's one of the most
11 litigated cases I think I've ever been on, and I know you've
12 mentioned multiple times that it's one of the busiest cases on
13 your docket.

14 THE COURT: And it had been for about a year and a
15 half or so. And then after that -- I mean, the last six months
16 or so, we haven't nearly the level of activity in court than we
17 had in the year and a half or two before. And I still,
18 interestingly, I remember, I guess because of that activity, I
19 remember a lot of the facts of this case, probably more so than
20 most. And I still remember at the very outset I thought to
21 myself this seems like the type of case that should have
22 resolved.

23 In fact, I might even have ordered a settlement
24 conference in front of Judge Gonzalez was it?

25 MS. CHAMPION: Yes, Your Honor.

1 THE COURT: Two. Two. Right?

2 MR. ALDRICH: Two of them.

3 THE COURT: Two of them. And for whatever reason, I
4 guess they didn't resolve. It doesn't matter, and now we are
5 where we are.

6 MR. ALDRICH: Uh-huh.

7 THE COURT: That's probably the best way to say it.

8 MR. ALDRICH: And so, you know, I've been on this
9 case twice.

10 THE COURT: Yes.

11 MR. ALDRICH: The first time I was on this case,
12 stood before you almost at every hearing, and I said, look,
13 this is their plan is to win through attrition. And for a long
14 time it was just argument until it wasn't, until last year in
15 July, last year when Mr. Piazza proudly stood up in front of a
16 room full of hundreds of people and said, This is my strategy.
17 I want to bleed them out. I want to avoid a trial. And the
18 point, Your Honor, is that we have to look at the motion for
19 case dispositive sanctions and everything that's led up to
20 today's hearing through that lens.

21 By the end of last year, not only was the Front Sight
22 parties' game obvious, but the lender parties had tired of
23 their games. In December of 2021, at that point the Front
24 Sight parties' depositions were set to begin on January 17th,
25 2022, on dates that the Front Sight parties specifically

1 provided. And that's after a year of Front Sight and the
2 Piazza parties focusing on motion practice, playing this game.
3 Well, I'm going to file motions to avoid my deposition. I'm
4 not going to respond to your e-mails requesting dates, or I'll
5 respond, but I'm going to give you dates months out. And then
6 sure enough, every single time their depositions were set, at
7 the 11th hour, there was some reason that they couldn't be
8 deposed.

9 So fast-forward to December 2021, right before I came
10 back into this case, and all of a sudden the Front Sight
11 parties told the lender parties, We're just simply not
12 appearing for our deposition. And we said to that, Excuse me?
13 That's not an option. When you file a lawsuit, when you are a
14 counterdefendant in a case, we have a right to depose you.

15 You know, every good litigator knows that that's the
16 way you build a case, right. You take depositions and party
17 depositions. We need to know what they're going to stay on the
18 stand. We need to be able to test our theories. We need to
19 determine if there's other witnesses in the case that we didn't
20 know about that we only learned through depositions. We need
21 to know if there's other documents that haven't been disclosed
22 that we might only find out about through depositions.

23 And we said to them, That's not an option. You need
24 to give us alternative dates or explain why you're not going to
25 be deposed. And they said, Well, we're just not.

1 And so at the first hearing before you this year on
2 January 12th, 2022, we told the Court exactly the problem
3 that we were having and that the Front Sight parties were
4 refusing to be deposed. At that point, Your Honor, we were on
5 the sixth deposition notices for Mr. Piazza and Front Sight and
6 I believe the fifth deposition notice for Mrs. Piazza. And the
7 Court indicated at that hearing that you would send an order to
8 show cause hearing on January 24th if the parties could not
9 resolve this deposition issue and if they did not provide us
10 with new dates.

11 Following that hearing, the Front Sight parties
12 agreed to extend discovery and to provide deposition dates, and
13 we had to agree to that because we had no other option. But
14 this time, unlike the last year where they avoided their
15 depositions, we demanded that the parties put in the
16 stipulation that these were going to be firm deposition dates.
17 I had never in all my practice had to put into a stipulation
18 that depositions for parties are firm settings, never.

19 The fact that we had to do that I think speaks
20 volumes. Because for over a year, we couldn't get these
21 parties to sit for a deposition, and so we had to put it in
22 that stipulation, which became an order when you signed it,
23 that they were firm settings. In fact, the word "firm" is
24 underlined and bolded in that January 21st, '22, stipulation
25 and order.

1 And so the depositions were set and scheduled on
2 dates that again the Front Sight parties provided in March.
3 Then March rolled around, and just days before depositions, all
4 of a sudden, the Front Sight parties wanted to settle. In
5 fact, they were so desperate to settle before Mrs. Piazza's
6 deposition and to avoid their depositions that after a
7 negligible back-and-forth they agreed to the lender parties'
8 settlement demand. That, of course, resulted in the party
9 depositions coming off calendar temporarily while we tried to
10 work through the settlement discussions.

11 But when we appeared, Your Honor, before you on the
12 status check to let you know of the tentative settling --
13 excuse me, the tentative settlement, I again made it abundantly
14 clear that if this settlement did not materialize, that we were
15 proceeding with party depositions, and that is clear throughout
16 the documents that we've provided in this Court in support of
17 our motion.

18 And sure enough, as you know, Your Honor, that
19 settlement never materialized, and we contend that it didn't do
20 so because, well, they never intended to do so. It was just a
21 ploy to again avoid depositions.

22 And so after much back and forth and renoticing
23 depositions, we again agreed to extend discovery and set the
24 Front Sight parties' depositions on firm settings again. This
25 time, when the parties entered into their April 6, 2022,

1 stipulation, we again put in that stipulation that they were
2 firm settings, bolded and underlined. And, in fact, this
3 stipulation specifically identifies the dates that each of
4 those parties were to be deposed, with Mrs. Piazza's deposition
5 on April 25th, Mr. Piazza's deposition on April 26th, and
6 the VNV Trust following shortly thereafter.

7 There is no requirement in the Rules of Civil
8 Procedure that party depositions be taken back to back over
9 four or five consecutive days. I would almost never agree to
10 that when I take a case because I think it's so important as a
11 litigator to take that testimony, hear how it plays out, tweak
12 things for the next day.

13 But if you look at this case, not only did we agree
14 to do that, but we just repeatedly bent over backwards to try
15 to get these party depositions done. When Mr. Hogan was
16 counsel on this case, he agreed to take those depositions by
17 Zoom, which with the reduced COVID numbers and all of us
18 getting back to in person, certainly my preference would be to
19 be taking them in person. We agreed to take them back to back
20 to back to back on consecutive days, and we agreed repeatedly
21 to take them on dates that the Front Sight parties provided
22 even when that meant that we had to juggle things and move
23 things on our own calendars to make sure that we were
24 accommodating those dates. And that's exactly what we did,
25 Your Honor.

1 You know, I didn't just set these depositions
2 willy-nilly out of thin air. And I think if you look at the
3 record, the only time that the lender parties ever set
4 deposition dates on dates that the Front Sight parties did not
5 specifically provide it was when Mr. Hogan was on the case, and
6 he had repeatedly asked for deposition dates, and he wasn't
7 provided any.

8 And so then what other option did the lender parties
9 have but to notice them up. And then when they came back and
10 said, look, we're not available, but here's when we are, we
11 renoticed them. And I think the history here demonstrates that
12 the lender parties did everything, I mean, we did everything we
13 could to get these party depositions taken and done. I mean,
14 that the fact that we put in the stipulation twice that these
15 were firm settings, that these depositions had to go forward,
16 that every single time I stood before you and told you --

17 THE COURT: And, Ms. Champion, I do get that. I do
18 understand there's no requirement under the rules as it
19 pertains to firm settings. And I do realize this was a highly
20 contested case.

21 But at the end of the day, if you set someone's
22 deposition and they're a party and they fail to show and you
23 take a nonappearance, that's problematic for the adverse party,
24 and there has to be a good reason why they didn't show.

25 MS. CHAMPION: Yes.

1 THE COURT: And what concerns me more than anything
2 is the history of this case as it relates to the attempts to
3 take a party's deposition because you have a duty and
4 obligation if you file a lawsuit to participate in discovery,
5 right.

6 MS. CHAMPION: So then let me move exactly to that
7 point, Your Honor.

8 THE COURT: Yes.

9 MS. CHAMPION: Before the depositions on
10 April 25th, we were here in front of you on a status check.
11 Mr. Aldrich did not say to me, or you, to anyone that morning
12 that the Piazza parties -- that Mrs. Piazza, whose deposition
13 was set for that day just an hour and a half later, was not
14 attending her deposition. There was no explanation. Hey,
15 look, something happened. Mrs. Piazza can't make it. There's
16 been an emergency, a scheduling conflict, something that's
17 arisen, right.

18 And certainly, if you look at the history of this
19 case, they knew how to do that because they filed motions for
20 protective order when we set them on dates that they didn't
21 like. And we repeatedly worked with them.

22 Instead what happened is that Mrs. Piazza just failed
23 to appear, and we didn't even get a notice in advance. I got
24 an e-mail one minute before her deposition with no explanation
25 whatsoever.

1 The very next day we were scheduled to take Ignatius
2 Piazza's deposition. Mr. Aldrich and the Front Sight parties
3 at no point before that date told me that he was not going to
4 appear. And, Your Honor, I mean, if Mrs. Piazza didn't appear
5 and something happened, someone should have told us, right.
6 There should have been a call to the department. Hey, look,
7 something has happened, and these parties can't proceed. That
8 just didn't happen because there was, again, no reason, no
9 justification for the failure to appear. Instead, Mr. Piazza
10 just simply no-showed.

11 It happened again that Thursday the 27th with the VNV
12 Dynasty Trust I. Just minutes before that deposition, I
13 received an e-mail for the first time that the VNV Trust was
14 not appearing for their deposition. Again, no explanation was
15 provided, no justification, no call to the department, no
16 nothing.

17 Then we appeared in front of you, Your Honor, that
18 Friday on our application for TRO. And at that hearing we had
19 a dialogue about what a big deal it was that parties just are
20 no-showing for the depositions. I think you said you just can't do
21 that without justification.

22 And still there was no communication about the VNV
23 Dynasty Trust deposition which was scheduled for the very next
24 business day that Monday. Instead the VNV Dynasty Trust and
25 Mr. Aldrich, their counsel, just failed to appear, no-show, no

1 explanation at all. In fact, that time I didn't even get an
2 e-mail minutes before giving me a courtesy heads up that they
3 weren't showing. So I continued the deposition for a few
4 minutes, sent an e-mail to Mr. Aldrich reminding him that the
5 deposition was scheduled and asking if they were appearing. I
6 received no response. The VNV Dynasty Trust also decided to
7 just not show up.

8 Party depositions are a big deal, and you can't just
9 show up [sic] without any justification. Mr. Aldrich admitted
10 to at the last time that we were before you that he had no
11 explanation or additional facts beyond the e-mails that he sent
12 me just minutes before those depositions. In other words, he
13 had no reason why his clients failed to appear, and you don't
14 see any in the opposition either.

15 They don't even try to come up with a reason. There
16 is no declaration from Mrs. Piazza or Mr. Piazza saying, Your
17 Honor, I had an emergency. Here's what happened. This is why
18 I couldn't appear. None. They just figured, you know what,
19 let's no-show. Let's roll the dice and say so what. Let's see
20 what the Court does. And, Your Honor, for the last five months
21 we've told you what we were going to do if that happened, and
22 that's to file the exact motion that we're here before you
23 today.

24 We're all aware of the standard on a motion for case
25 dispositive sanctions and the *Johnny Ribeiro* factors because

1 we've argued them a number of times, but I want to go through
2 them briefly.

3 And so the first is degree of willfulness. The fact
4 that these parties appeared [*sic*] without explanation,
5 justification or any prior notice is the epitome of
6 willfulness. They could not have been more willful. And as
7 you know, Your Honor, under Nevada law, willfulness weighs
8 heavily in favor of case dispositive sanctions.

9 The second, the extent to which the nonoffending
10 party, here the lender parties, would be prejudiced by a lesser
11 sanction. That's the primary opposition that you see to this
12 motion. In fact, they don't even really dispute that they
13 should be sanctioned. Rather the argument is, well, just let
14 us have a redo. Let us be deposed in July. Let us pay for the
15 nonappearances. That's not sufficient, Your Honor.

16 It's not sufficient in light of the history of this
17 case. It's not sufficient given that Front Sight was noticed
18 to be deposed ten times, Mrs. Piazza eleven times, the VNV
19 Dynasty Trust five times. These aren't just one off, something
20 happened, let us try again, let us give you dates. If that was
21 the case, I would have never filed this motion, and I wouldn't
22 be standing here arguing it today. Instead it's this pattern,
23 the intentional avoidance that demonstrates these parties have
24 no intent to be deposed, none whatsoever.

25 In fact, you know, there was a new administrative

1 order that came down, I believe just last week, from the
2 District Court that addresses depositions specifically. And in
3 that administrative order it says that if you have a scheduling
4 conflict, you can't appear, it's on the party who has that
5 scheduling conflict to immediately advise the other side and to
6 provide dates. They didn't do that, not even, you know, before
7 we filed this motion and they knew it was coming. They waited
8 until the motion was filed, and they waited until it became an
9 issue before turning around and saying, well, you know what,
10 we'll give you some dates in a couple of months after the close
11 of discovery.

12 Your Honor, based on the history of this case,
13 there's no way those parties are going to be deposed. They're
14 just going to come up with another scheduling conflict.
15 They're going to no-show again. I think the pattern and the
16 history of this case demonstrates just that.

17 Third, the severity of sanction relative to the
18 severity of a discovery dispute -- abuse, excuse me. The
19 failure to appear for party depositions is a big deal. It is
20 one of the most severe discovery abuses there could be, and it
21 warrants severe sanctions.

22 Fourth, whether any evidence was irreparably lost.
23 We have no testimony from any of the counterdefendants or from
24 Front Sight, none. And so how exactly are we going to proceed
25 to trial in a few months on these claims? We can't.

1 The sixth factor, policy favoring adjudication on the
2 merits. Your Honor, this factor typically weighs against case
3 dispositive sanctions, but here it actually weighs in favor.
4 We cannot proceed to trial without depositions. We cannot
5 prepare dispositive motions without depositions. We cannot get
6 an adjudication on the merits, period.

7 And the last factor, the need to deter parties and
8 future litigants from similar abuses. The worst possible
9 outcome today would be granting a lesser sanction in favor of
10 Mrs. Piazza and Mr. Piazza and the two VNV Dynasty Trusts
11 because it would send a message to them that they can continue
12 to engage in discovery abuses, that they can continue to play
13 games and avoid their depositions so then they can just stretch
14 this case out as long as they can.

15 And beyond this case, it would send a message to
16 future litigants that you can walk into court, waste
17 four years, millions of dollars --

18 THE COURT: Well, and I think it even -- to not show
19 up for your deposition is -- that's -- and you don't have to
20 say firm setting. You've got to show up for your deposition,
21 right, without a legitimate basis for not showing up, and
22 especially in a case where you've had history of depositions.

23 And I don't mind saying this. As a trial judge, I
24 try not to be heavy handed, you know, but, you know, just
25 because you make a determination at the end of the day where

1 you've tried to marshal a case to trial, and if I have to make
2 a determination such as being what's being requested today,
3 that doesn't mean I'm being heavy handed either. All it means
4 is I am following the mandate of the rules and the case law of
5 the State of Nevada. That's all it means.

6 MS. CHAMPION: Your Honor, I agree, and I think you
7 said it at the last big motion for case dispositive sanctions
8 that was Front Sight's motion. I think after hearing hours of
9 argument what you said to Mr. Aldrich is something that I go
10 back to, which is that to get case dispositive sanctions there
11 has to be something so severe, and the example you gave in that
12 hearing was parties not appearing for deposition. And it was
13 probably the example you gave because not only is it one that's
14 repeatedly acknowledged by the Nevada Supreme Court, but it's
15 something that we've been telling you and had been telling you
16 at that months leading up to that hearing was likely going to
17 happen. And even after that hearing, they didn't appear.

18 I mean, I agree, I should never have to say this is
19 your firm deposition setting to a party. Never. I mean, I
20 have had to say it so many times in this case because we just
21 didn't think they were going ever to appear.

22 I am happy to answer any questions you have, Your
23 Honor, but at this point, I think you've heard enough from me.

24 And we request that you order case dispositive
25 sanctions as to Mrs. Piazza, Mr. Piazza and the two VNV Dynasty

1 Trusts.

2 And specifically, Your Honor, and to be very clear on
3 the record, we are only asking you to strike their answers and
4 affirmative defenses, which essentially establishes liability,
5 but we are not asking you at this time to rule on damages,
6 which under Nevada Supreme Court law does not require an
7 evidentiary hearing.

8 THE COURT: I understand that. And thank you.

9 Okay. Mr. Aldrich, sir.

10 MR. ALDRICH: Good morning, Your Honor. I'm sure
11 you'll be surprised to hear that I would like the Court to
12 consider a different history of the case. But --

13 THE COURT: Mr. Aldrich, I always enjoy listening to
14 you, sir.

15 MR. ALDRICH: Okay. Thank you.

16 THE COURT: So don't worry about that.

17 MR. ALDRICH: Let me -- let's start with the --

18 THE COURT: And that goes for Ms. Champion also,
19 right.

20 MR. ALDRICH: I'll start with the easy, slash, hard
21 part. It's easy because we agree on it, and it's hard because
22 I don't like where I'm standing.

23 Our clients' depositions were noticed. My clients
24 did not appear. That's not in dispute. And with regard to
25 what happened there and me sending an e-mail, whether it was a

1 minute or five minutes before the depositions, that's correct.
2 That happened.

3 So I want to talk about obviously the severity of the
4 case dispositive sanctions and the history of this case. Your
5 Honor, you and I are the -- and Mike and the other staff here
6 are the ones who have been here from the beginning, and we've
7 watched this play out. And I started off my opposing brief by
8 saying this case is approaching four years old, and discovery
9 has been open for what was approaching through three years old
10 now since the discovery opened.

11 The Court will recall that from approximately July
12 of 2019 until around December of 2020, January 2021, we,
13 meaning myself and my clients, brought motion after motion
14 after motion just trying to get adequate discovery responses.
15 We were trying to get requests for production of documents
16 responded to. Those came to us with objection after objection
17 that were boilerplate for literally a thousand requests.

18 We got answers to interrogatories that were many,
19 many objections. Obviously Ms. Champion wasn't in the case at
20 the beginning, and when she came in the case and started
21 working on it, we did start to get some information which we
22 were grateful for, but we also got new sets of objections. And
23 this is how the first year and a half went.

24 And we did bring a motion for case dispositive
25 sanctions at the end of last year. Interestingly enough, we

1 brought that motion. I know it was long. We gave lots of time
2 for a response; I think it was five weeks. And we came and
3 argued that in front of the Court. In this instance, we got it
4 on an order shortening time, and I got a week to respond and
5 with a whole bunch of characterizations of discovery -- or I'm
6 sorry, settlement discussions and things like that, which I'll
7 get to in a minute.

8 But in the last year or so, as I outlined in our
9 opposition on page 5, we've taken 14 depositions, and we, you
10 know, had to come back and ask for more time with regard to
11 Mr. Dziubla and all of those things, but we've done our part.
12 We've also, at least my office has, disclosed tens of thousands
13 of documents on behalf of the defendants that are here today.
14 We've produced tax returns and everything for VNV Trust, for
15 the Piazzas. Like, all of that information has been provided.
16 And so it's not like we've been completely uncooperative
17 throughout this process.

18 And quite the contrary, additionally, I would note --
19 I know I've already argued my motion for case dispositive
20 sanctions, but I outlined in that that there were multiple
21 orders from this Court ordering the defendants to provide
22 discovery that they then violated again. That's why I brought
23 the motion.

24 So I understand that -- we've talked about this
25 before, sort of the goose-gander argument is not always the

1 best argument, but in this instance, when the Court looks at
2 what has happened on the other side as well, a one-time
3 nonappearance at a deposition and a one strike you're out is
4 extreme.

5 Now, I want to talk about the history of setting
6 these depositions. We spent quite a bit of time and put
7 several tables in our opposition, and I'd like Your Honor to
8 watch those closely because what we keep hearing is
9 Mrs. Piazza's deposition was set 11 times.

10 Well, if we look at the table, it goes through. It
11 was first set last June on a date that they were not available.
12 We didn't have a request for any dates. The deposition simply
13 was set.

14 I sent an e-mail to Mr. Hogan, probably talked to him
15 on the phone as well, and said they're not available then, but
16 I've got you some dates after June 10th.

17 When those depositions -- I noted on here that the
18 Second Amended Notice was never actually served, but the
19 deposition was then set -- moved from June 4th to
20 June 21st. Well, I had given a date after June -- or
21 July 10th, but it was set on a different day. And so we had to
22 move forward and get different dates. Then they did not set
23 the deposition in July for the dates we had given. Instead
24 they gave them -- set it for some dates in August.

25 Now, that's the one I believe where there was a

1 daughter was having a surgery or something. We let them know.
2 They didn't want to take it off. We had to do a motion for
3 protective order. That was never opposed.

4 Then we had some more dates -- depositions set. We
5 had to do another motion for protective order that wasn't
6 opposed. And I walked through these different things that
7 happened.

8 It gets even more interesting when we get down in
9 this --

10 THE COURT: You know what it is though, and here's
11 the thing, and I realize the parties, lawyers could have good
12 faith arguments regarding the sufficiency of responses to the
13 discovery requests, interrogatories, requests for production of
14 documents. I kind of -- I get that.

15 And on an issue-by-issue basis, depending on what the
16 issue is, ultimately I might give sanctions -- I might -- or
17 attorney's fees. In the general sense, and I think most courts
18 don't do this, they don't strike answers based upon those types
19 of events unless it's really, really egregious. For example,
20 not responding at all, right, that's a different level.

21 But here's my point, and one of the things I wanted
22 to make perfectly clear I guess, at one of the prior hearings
23 as we discussed case dispositive sanctions, not showing up to a
24 deposition that's duly noticed would be akin to not responding
25 to interrogatories or not responding to requests for production

1 of documents and except it's probably at a higher level.

2 And the reason why I say that is this: The parties,
3 especially in this case because they have individual claims,
4 right, and/or counterclaims, they have defenses, and so the
5 adverse party has a right to take their deposition. And then I
6 look at the history of the scheduling of the depositions, and
7 say maybe 50 percent of them are -- have merit, and maybe some
8 don't or whatever.

9 But here's my point. All I was doing at the one
10 hearing I think Ms. Champion raised was this: I was trying to
11 tell everyone, look, if your deposition is noticed, you've got
12 to show up. Nothing more. Nothing less. You've got to show
13 up for the deposition.

14 And so two things have occurred, I think. I just
15 want to make sure I'm factually correct. Number one, there was
16 never any indication of a no-show. And just as important too,
17 I mean, hypothetically, if someone said, look, I got stricken
18 with COVID, and I could not appear, and I have a doctor's
19 excuse or something like that, even if they didn't call, of
20 course I'm going to take that into consideration. Because
21 things, even in light of this tortured procedural history going
22 both ways in this case, I get that. But I said, Look, you've
23 got to, I mean, hopefully it was like a scream for me as a
24 trial judge. Look, I want this case decided on the merits, but
25 everybody show up for your depositions, or case dispositive

1 sanctions might be applicable or not. Of course, I can't give
2 an advisory decision like that, but the rules -- we have really
3 sophisticated litigators involved in this case.

4 And the only reason I bring that up, I find it
5 troubling that in light of the history of this case they
6 wouldn't show.

7 MR. ALDRICH: I hear you, Your Honor. So let me make
8 this point. Your Honor, said --

9 THE COURT: Go ahead. Make the point. But and
10 that's my concern. They didn't show.

11 THE CLERK: I understand.

12 THE COURT: Especially in this case of all cases
13 where everything is being tested and litigated. So, but go
14 ahead, Mr. Aldrich. I'm listening.

15 MR. ALDRICH: And I understand what Your Honor is
16 saying. So and Your Honor said it's akin to not answering
17 discovery at all.

18 THE COURT: Right.

19 MR. ALDRICH: I concede that point which makes me go
20 back to what I already said which is how many times did I have
21 to come before the Court where I got over a thousand responses
22 to discovery with absolutely no reference to documents,
23 nothing, nothing but objections that were boilerplate. Then
24 Your Honor ordered them, not just a violation of a rule, which
25 is what we have here, right, they set a deposition. It's duly

1 noticed. They don't show up. They violated a rule. They're
2 supposed to follow the rules. I agree, okay.

3 But what happened with -- on the other side is they
4 didn't respond to written discovery over and over again. Then
5 Your Honor ordered them to do it, and they didn't.

6 What does Rule 37 say? You can sanction for
7 violating a rule or order. In my 23 years of practice, I've
8 seen sanctions come along, but usually it's a lesser sanction,
9 then a more severe one, and then a bigger sanction. Why?
10 Well, because usually it's a violation of a rule. Then there's
11 a motion to compel, which is pretty standard. Okay. Someone
12 doesn't appear for a deposition. What's the normal course?
13 Motion to compel, okay. Then -- because they violated a rule.

14 Then the Court says, hello, Mr. Defendant. You have
15 to show up on this day, and if you don't, there's going to be a
16 sanction. Then they violate the order. Then you're closer to
17 a more severe sanction, okay. And that's where we are here.
18 My we have my clients, by nonappearing -- and I've said it the
19 brief --

20 THE COURT: Do you even have a reason why they didn't
21 appear?

22 MR. ALDRICH: Your Honor, I was told they were not
23 available. I am -- you know, I don't have that they had COVID
24 or anything else.

25 THE COURT: But you see why I am trying to -- I mean,

1 and here's the -- typically, if there is a failure to respond
2 to discovery or whatever, lawyers will give a reason. It might
3 not have a lot of merit, but it kind of -- something I can take
4 into consideration. That's probably the best way I can look at
5 it.

6 So, but my question is this: What do I do now,
7 Mr. Aldrich, because I have no explanation for the
8 nonappearance?

9 MR. ALDRICH: But it's really simple, and I put it in
10 my papers. We gave dates, and I believe they're end of June
11 and into July that they're available. I sent those to
12 Ms. Champion. I believe it was while Your Honor was
13 considering the OST because the response I got back from her
14 was, well, we've already filed the motion. So we're going to
15 move forward. But I believe I hadn't received the motion yet
16 when I sent those over. I could be wrong. I can double check
17 that.

18 But this goes to these elements that we talked about,
19 right, in the *Young versus Johnny Ribeiro*. Is a lesser
20 sanction going to work? Yeah, a lesser sanction is going to
21 work. You issue a sanction for them having to pay a court
22 reporter to be there, and then you order them to appear on a
23 date certain for their deposition. Now, I would ask that that
24 be the dates we gave, but -- because it happens to fit my
25 schedule, but we will work around whatever the Court orders to

1 happen.

2 But that's the reason that case dispositive sanctions
3 don't apply. Because there is a very easy lesser sanction, and
4 that is monetary sanction for the court reporter, and then what
5 would normally happen when someone violates a rule which is a
6 motion to compel and a court order saying comply. So the Court
7 then says to my clients you need to appear on these dates. And
8 if you don't appear, then sanctions -- you know, whether the
9 Court wants to say case dispositive sanctions or sanctions or
10 whatever, you know, may be imposed. But that is -- that is
11 easy. It's an easy fix.

12 And it also goes to why there is no prejudice, okay.
13 I recognize that Ms. Champion prepared for depositions. They
14 have to be prepared for anyway, and all that work still goes
15 towards taking these depositions if the Court orders them to
16 appear. And that leads to the case being heard on the merits.
17 That lets everybody hear the merits of the case, and it is in
18 line with what has happened in the prior history of this case,
19 which is you didn't comply with the rule. Here's a motion to
20 compel, order granting the motion to compel. Comply or else.
21 And that is an easy fix, and that is why case dispositive
22 sanctions are not appropriate here.

23 I have gone through the opposition. I'm sure the
24 Court read it. I went through in my opposition and countered
25 many of the things that were said about the settlement.

1 THE COURT: I will just say for the record, as far as
2 the settlement issues, I kind of ignore those. I do.

3 MR. ALDRICH: Okay.

4 THE COURT: I mean, I do. And the reason why I say
5 that is this: Settlements happen. Sometimes they don't. I
6 realize there's -- in almost all cases there's some level of
7 settlement discussion, sometimes very serious, sometimes not,
8 but that doesn't bother me.

9 The issues that really are of concern is, for
10 example -- and I'm looking at your opposition. I'm looking at
11 page 6 and just going through all these notices for the
12 depositions. And say hypothetically, Mr. Aldrich, and let's
13 kind of go down this road, say they -- there was a no-show, and
14 I ordered, and they didn't show up. But when you look at the
15 history of it, we have here from what I can tell or at least
16 according to your own calculations on some level, there were,
17 from what I can gather, ten notices sent to Jennifer Piazza as
18 to -- it relates to setting her deposition.

19 MR. ALDRICH: Well, one of the notices didn't go out.

20 THE COURT: Okay. So we'll make it nine.

21 MR. ALDRICH: Okay. Two of the notices, the first
22 two were on dates that no one asked about, and they weren't
23 available. And the second one was set after we gave them
24 dates.

25 THE COURT: Okay.

1 MR. ALDRICH: Okay. And then --

2 THE COURT: But my point is this, and, as a lawyer, I
3 don't mind telling you this. I mean, you try to have courtesy
4 to counsel, but I used to find that trying to get dates was a
5 waste of time. I would notice it, and then we can talk about
6 dates later, right, because I'd want to get it out there
7 because I realize we have a ticker we're dealing with as to the
8 Rule 16 scheduling order, and you want to move the case along.
9 And so I just noticed them, and then, of course, I'd give the
10 adverse party time to move it if it's inconvenient.

11 MR. ALDRICH: Which we did. We gave -- then we said
12 that's not going to work, and we gave other dates. And then
13 they set them on dates that he wasn't available.

14 And as Your Honor walks down this chart, then we had
15 to file a motion for protective order twice. They went
16 unopposed, okay --

17 THE COURT: And which dates? When I look at this
18 chart, the matrix, which one --

19 MR. ALDRICH: That's the Third and Fourth Amended
20 were both ones that we had to file a motion for protective
21 order on that were not opposed.

22 THE COURT: Okay.

23 MR. ALDRICH: Okay. So now we're on the -- so the
24 second was never served.

25 The third and fourth, we did motions for protective

1 order that weren't supposed because we didn't agree on the
2 dates.

3 The first two were on dates we hadn't agreed to. And
4 one of them was this date specifically we had said we weren't
5 available. So now we're down to the Fifth Amended, which set
6 those for 11/15. Well, as I explain in here, on 11/12, I had a
7 conversation with Ms. Lovelock and Mr. Hogan, and we talked
8 about various issues, and they needed more time for discovery.
9 We extended the discovery deadlines, and they moved to those
10 depositions. Those were moved by agreement.

11 Now, the dates that we gave were in January. The
12 amended notice didn't actually get sent for six weeks. So we
13 extended discovery 60 days, and nothing happened. Because
14 we're already done with our depositions, right, and the Court
15 will recall we twice asked -- had to come and ask the Court for
16 more time after all the stuff that was going on the first
17 couple years of the case, and we had -- not only did we not get
18 an agreement, we had to come in here and fight tooth and nail
19 to get more time. Here they asked for more time; we gave it.

20 Then six weeks passed before the notice came out at
21 that point that I was informed that they weren't available.

22 And then we have another time where we extended the
23 discovery again. Not to mention that during the course of our
24 settlement discussions, Ms. Champion made it clear to me that
25 if they didn't settle that she was going to need time to take

1 the depositions that were not being taken. And I agreed to
2 that. So we've been here cooperating, giving more time for
3 these things to happen.

4 So when you -- that's why I put the table in here, is
5 because when you really look at it, this is a one strike you're
6 out, right. They did not appear for this deposition that was
7 duly noticed. One strike you're out. It's a violation of a
8 rule, much like not responding to interrogatories, much like
9 not responding to requests for production of documents.

10 What normally happens is there's a motion to compel
11 and an order that says show up on this day, or there's going to
12 be a more harsh sanction. That's what this -- that's why I
13 made the chart for each of these is because that, when you
14 understand the real facts -- yeah, they should have shown up.
15 I don't have a way around that. But it's not as bad as it
16 sounds. And then --

17 THE COURT: Well, here's my question: What about,
18 for example, the Seventh amendment -- Amended Notice of
19 Deposition? It's my understanding that was served on 2/2/2022?

20 MR. ALDRICH: Yes.

21 THE COURT: And I'm just looking at the chart.

22 MR. ALDRICH: That just simply changed the location
23 of where the deposition was going to take place.

24 THE COURT: Okay. And I see that. But why was there
25 no appearance at that deposition?

1 MR. ALDRICH: Those were the depositions that
2 ultimately came off because we were having settlement
3 discussions.

4 THE COURT: So that would have been the Seventh and
5 Eighth Amended Notices?

6 MR. ALDRICH: Yes.

7 THE COURT: Because the Seventh it looks like a
8 change of location. Looking at note --

9 MR. ALDRICH: Right. So going from Seventh to
10 Eighth, it was a change of location. So the Eighth had the new
11 location in it. And then we -- it was taken off pursuant to
12 settlement discussions.

13 And then the Ninth Amended Notice, when we were
14 having settlement discussions, initially Ms. Champion agreed
15 when we agreed on an amount and to provide documents, she
16 agreed to move the depositions one week.

17 And in the motion there's some discussion about how I
18 was delaying. I disagree, and we ended up having a conference
19 call with their EB-5 counsel on Wednesday afternoon, and, you
20 know, it just didn't come together that fast. And in the
21 afternoon, when Ms. Champion had given me a 3:00 o'clock
22 deadline to respond to an e-mail -- or maybe at 2:00 o'clock, I
23 sent it just after 3:00, and they went ahead and set the
24 deposition kind of as a -- I took it to be sort of to exert
25 pressure, that they were just going to go back to taking

1 depositions, and the settlement was falling apart.

2 We provided documents, not all of them, but some of
3 the documents before 5:00 o'clock. I don't remember what time
4 that afternoon, and then they took that deposition off. So
5 that was another agreed.

6 So that's why we're back to the deposition where they
7 ultimately didn't appear, and so one strike you're out. That's
8 why I'm saying that. Okay. So --

9 THE COURT: No, go ahead, sir. I'm listening.

10 MR. ALDRICH: All right. So I want to go ahead and
11 address the case dispositive sanction piece and the *Young*
12 *versus Johnny Ribeiro* elements.

13 And I've got it in my brief at page 19, nice and
14 bold, that case terminating sanctions are a last resort,
15 appropriate only when no lesser sanction will do. That goes
16 back to what I said before. There's an easy fix here. Order
17 them to appear, or they're going to have a more severe
18 sanction, and otherwise -- I mean, last resort, one strike
19 you're out; that's not last resort.

20 Now, the willfulness piece I've addressed a little
21 bit, and I understand kind of where I'm standing on that piece.
22 I mean, the case law, when it talks about willfulness though,
23 they talk about destroying evidence. A lot of cases are about
24 that. *Young versus Johnny Ribeiro* itself was about fabricating
25 evidence. Here we just haven't had -- defendants have had a

1 chance to take the depositions. That is not -- there's not
2 some willful destruction or something like that going on.

3 THE COURT: Well, why isn't there? And the reason
4 why I say that is this: When it comes to depositions and the
5 failure to show, it's akin to spoliation, not presenting
6 evidence you're obligated to present during the course and
7 scope of litigation. Because the only difference from a
8 substantive perspective would be this. We might not be talking
9 about photographs or video tapes, like in *Bass-Davis*, but we're
10 talking about testimony that's just as important, and it's the
11 testimony of a party. And so the failure to attend is
12 precluding the other side from having an opportunity to find
13 out specifically what is that evidence and potentially test it
14 down the road.

15 MR. ALDRICH: Sure. And I don't disagree with that,
16 but what I'm saying is one strike you're out, you didn't show
17 up to this deposition, so it's over? No. Usually it's a
18 motion to compel and whether you try case dispositive sanctions
19 or not, the court says you've got to show up for your
20 deposition on this date certain, and that's what I'm
21 essentially asking the Court to do. And I under -- I've
22 already addressed the potential monetary sanction and all that
23 stuff. But this is -- the case law is case terminating
24 sanctions are a last resort. And then we walk through these
25 elements.

1 THE COURT: And I do understand that. I mean,
2 because I --

3 MR. ALDRICH: And if I may, Your Honor?

4 THE COURT: -- I don't mind saying this. I mean,
5 I've done it a few times. In fact, the last time I issued case
6 dispositive sanctions, I think I got it right because they
7 ultimately settled the case in the interim. So it was a really
8 fascinating case. I won't go into detail on that one, but I
9 didn't pull the trigger until the very end, but -- and there
10 was a lot there. There's a fairly significant history, and the
11 only thing they asked me to do, it was the defense, and they
12 said, Judge, can you delay your hearing -- your decision on one
13 issue. I forget what it was. I can say it now because the
14 case is settled, but I did that on purpose so they could
15 settle, and they actually settled the case. And it was a big
16 case too, a big tort case.

17 But go ahead, sir.

18 MR. ALDRICH: Like, yeah, this was a big case too we
19 were trying to get settled, but there was -- there were a lot
20 of moving pieces and some things were a big surprise for us.

21 THE COURT: Oh, I understand.

22 MR. ALDRICH: But nonetheless, defendants will not be
23 prejudiced by a lesser sanction, okay. That's the second
24 element. They won't be prejudiced because Your Honor can just
25 order them to show up, and they get the testimony that they're

1 looking for. That's -- and then they're not prejudiced.
2 That's easy. Easy solution. Not a last resort.

3 The third element, case dispositive sanctions are
4 grossly severe compared to the discovery violation. I've kind
5 of already talked about that. It's a violation of a rule. I
6 concede that. There's an easy fix for it, which I've already
7 talked about; order them to come on a date certain.

8 No evidence has been irreparably lost. It hasn't
9 because the testimony --

10 THE COURT: No, I understand that. Here's my
11 question though, and you answer this for me. And I understand
12 what your position is. But what about the failure to attend by
13 a party and no excuse given whatsoever?

14 MR. ALDRICH: But, Your Honor, what I am -- I
15 understand what you're saying, and I've given the information
16 that I have.

17 THE COURT: No. No. I'm not talking -- I'm not
18 calling you out on it. Mr. Aldrich, trust me --

19 MR. ALDRICH: No, I understand.

20 THE COURT: -- I respect the work you've done. I've
21 had you on many cases, and I have no question about that. I'm
22 just talking about the action of the party not showing up,
23 number one; and number two, not even giving me a reason for it.

24 Judge, I had the flu, or I had a headache, or I had
25 migraines, or I had transportation issues, something. And the

1 reason why I bring that up, I mean, without an adequate
2 explanation, what inference can I draw based upon the failure
3 to attend? That it was done potentially intentionally; right?
4 Because I don't have any other evidence to look at other than a
5 voluntary no-show.

6 MR. ALDRICH: I hear what you're saying. Again, I go
7 back to it's a violation of a rule, right, just like sending --
8 responses to requests for production that have only boilerplate
9 objections and no responses for, you know, over and over again.
10 It's a violation of a rule. What is the proper procedure at
11 that point? Motion to compel. Order granting the motion to
12 compel. That's the proper procedure here, right. The Court
13 can count the motion for case dispositive sanctions as a motion
14 to compel, enter an order for him to be here to testify.

15 But this is a one strike you're out. I hear what the
16 Court is saying on that particular issue, but this is -- when
17 you look at these elements from *Young versus Johnny Ribeiro*,
18 there's an easy fix, and there's no evidence that's been
19 irreparably lost. Remember, most of these cases are spoliation
20 or fraudulent evidence. Evidence hasn't been irreparably lost.

21 THE COURT: But the --

22 MR. ALDRICH: Your Honor, tells them to show up for a
23 deposition, and they show up.

24 THE COURT: But isn't *Johnny Ribeiro* or some of
25 the -- one of the factors I have to consider as a trial judge

1 was potentially halting the adversarial process. And the
2 reason why I bring -- and I know that's discussed in some of
3 the cases because at the end of the day that's what happened.

4 And so when someone fails to attend a deposition
5 without any explanation at all, isn't that essentially halting
6 the adversarial process?

7 MR. ALDRICH: No. Because Your Honor can move the
8 process forward by ordering them to appear by the regular
9 course of how things normally go.

10 And it goes back to my issue, and I understand that
11 we disagree on this, but I have taken the position, and I stand
12 by it, that some of this is fabricated by taking so long
13 through the discovery process and not making this happen
14 sooner, right. So we are close to the end of discovery.
15 There's a trial coming. Interestingly enough, the alleged
16 prejudice, if there is any, is that now we don't have time to
17 take the depositions in the order we want to take them, which
18 I'm not taking issue with anyone wanting to do things in a
19 certain order. But as time passes, sometimes you have to do
20 something different.

21 But the case isn't going to go trial against Front
22 Sight in October or whenever it is that it's set. So
23 everything is going to get pushed anyway. So there's no
24 prejudice. We can push the discovery dates out far enough that
25 they are able to take the depositions that they want to take in

1 the order they want to take them, including the experts and
2 everything else, and it solves the problem completely. There's
3 no evidence that's irreparably lost. You get trial on the
4 merits. It's a lesser sanction that works just fine.

5 And as far as the need to deter any future conduct,
6 the Court sets an order -- or sets the depositions, orders them
7 in an order, and they have to show up. That right there deters
8 future conduct.

9 So when you look at the elements all together, this
10 is -- to grant case dispositive sanctions for a one-time
11 nonappearance is a gross overreach because it is so easily
12 remedied. And like I said, a monetary sanction for paying the
13 court reporter fee and an order that says show up on this day
14 or else, and that takes care of it.

15 Does the Court have any other questions for me?

16 THE COURT: Not at this time, Mr. Aldrich.

17 MR. ALDRICH: All right. I appreciate your time.

18 THE COURT: Ms. Champion.

19 MS. CHAMPION: Yes, Your Honor. We are not asking
20 you to grossly overreach. We're asking you to follow Nevada
21 Supreme Court law.

22 You had a good question there about whether or not
23 the failure to appear infers that it was intentional. And I
24 think not only does it infer that it was intentional, but given
25 the history of the case, the failure to provide any explanation

1 whatsoever, the fact that the night before these depositions
2 were set to commence Mr. Piazza sent out the e-mail that was
3 attached to our motion for TRO hinting -- well, outright saying
4 there was big and positive secret news coming, and then sure
5 enough they filed -- Front Sight filed bankruptcy the night
6 before this hearing, I mean, if you look at everything, it's
7 very clear here that these parties knew they had to appear for
8 their depositions, and they chose not to.

9 I totally agree, Your Honor. If I had gotten a call
10 from Mr. Aldrich telling me, look, I just found out my client
11 was in a car accident, has a headache, was exposed to COVID,
12 whatever, we would have moved them. And we did it before.

13 THE COURT: Well, here's the thing, and I'm looking
14 at it from this perspective. I'm not judging what the
15 explanation would be.

16 For example, I have a head cold, right. At least I
17 have an explanation. Whether it's sufficient basis or not,
18 that's subject to debate. I mean, you know, or it could be my
19 kid is sick, or I had to go visit my -- just something. Right?

20 MR. ALDRICH: I agree, Your Honor.

21 THE COURT: I overslept.

22 MS. CHAMPION: I agree. And the point, Your Honor,
23 is that at that hearing --

24 THE COURT: Right? I over -- just something to hang
25 my hat on.

1 MS. CHAMPION: Yep. And the point, Your Honor, is --
2 and you made this point when you were talking to Mr. Aldrich at
3 that hearing when you were commenting that case dispositive
4 sanctions are for things like failure to appear. I know
5 Mr. Aldrich is a good lawyer. I know he went back and
6 communicated that to his clients. His clients knew what the
7 law was. They had been advised. They certainly knew from all
8 these hearings we've had where I've told you we fear this is
9 going to happen, and when it happens, I will be here arguing a
10 motion for case dispositive sanctions.

11 These are not parties that had a one-off failure to
12 appear, that had no idea what could happen. These are
13 sophisticated parties that knew exactly what would happen.
14 Because if the shoe was on the other foot, I guarantee the
15 Front Sight parties would be here on their own motion for case
16 dispositive sanctions because they filed every single one over
17 every single ticky tacky discovery dispute that we've ever had
18 in this case.

19 Depositions are so important. Not only are they akin
20 to a failure to respond to written discovery, but actually
21 they're so important that NRC 37(d) specifically provides that
22 a Court can sanction a party for failure to attend. And
23 there's a distinction there that's an important one in the
24 Rule 37 that needs to be drawn out because Mr. Aldrich was kind
25 of conflating and then -- and arguing that they were one and of

1 the same. They're not.

2 Because 37 says if you don't respond to written
3 discovery or properly respond to written discovery you've got
4 to meet and confer. And then you've got to file a motion to
5 compel. And the same is not true of failure to appear for
6 party depositions. Rule 37 makes a distinction --

7 THE COURT: Well, I mean, really and truly it makes
8 sense because you can meet and confer, and there might be an
9 ambiguity in the deposition -- I mean in the interrogatory
10 response, or there might be something there that you should try
11 to work out.

12 But I don't -- other than my client is unavailable
13 because of a health reason or an emergency or something like
14 that, what's there to discuss when it comes to showing up for
15 the deposition?

16 MS. CHAMPION: I agree, Your Honor. And the fact
17 that the Front Sight parties previously filed motions for
18 protective order when something came up or dates became
19 unavailable that were -- their party depositions were set on
20 only demonstrates they knew exactly what to do if there was a
21 real justification, and they didn't do that. And that speaks
22 to the fact that they chose to intentionally not appear. They
23 chose to roll the dice.

24 The other point, Your Honor, that I want to make is
25 that -- and I made this point in passing in my previous

1 argument. But the stips and orders -- the stipulations and
2 order to extend discovery specifically had deposition dates in
3 those stipulations. Once they were signed, those are orders.
4 And so the argument that the lesser sanction is appropriate,
5 well, it's not. Because not only do you have intentional
6 willful failure to appear, but you have stipulations and orders
7 for their specific deposition dates, the ones they failed to
8 appear. And they still failed to appear.

9 THE COURT: And in looking at Mr. Aldrich's chart,
10 ma'am, and, for example, we can --

11 I don't know if you have it in front of me.

12 MS. CHAMPION: I can grab it, Your Honor.

13 THE COURT: Yeah.

14 MS. CHAMPION: Did you have questions?

15 THE COURT: Yeah. I was listening to you, and you
16 said there was stipulation and -- stipulations and orders. And
17 in those orders specifically there would have been deposition
18 dates, and there were failures to appear, I guess, at those
19 dates as set forth in the order.

20 And I was just wondering if you take a look at it,
21 for example, are there specific ones I should look at?

22 MS. CHAMPION: Yes. So, Your Honor, the first thing
23 I want to point out about this chart for Jennifer Piazza that
24 you guys have focused on is that there's a column there
25 Proposed Date Used, and also a column Proposed Date Requested

1 or Given.

2 If you look at the Proposed Date Requested or Given,
3 that means that the lender parties requested dates or that the
4 Piazza parties provided dates, right. And if you look at
5 Mr. Hogan's declaration -- and it is a very lengthy
6 declaration, and we didn't go through everything in the motion,
7 but if you look at his declaration, what you see in the e-mails
8 attached to the motion is that Mr. Hogan repeatedly asked, I
9 need dates. I need dates. I need dates. And Mr. Aldrich
10 sometimes provided dates and often did not. And I'm not
11 putting that on Mr. Aldrich at all. I acknowledge that he's
12 not giving dates if his client is not giving dates, right.

13 But the point here is that the proposed date and
14 requested given, there's very few no's here. The vast majority
15 of them are yeses. In other words, we're working with or
16 attempting to work with the Front Sight parties to get dates
17 for their depositions.

18 The proposed date used, there are multiple yeses on
19 this chart that demonstrate that these are dates that were
20 specifically provided by the Front Sight parties or agreed
21 upon. And nonetheless, they didn't appear.

22 The Fourth Amended --

23 THE COURT: Okay. And I want to make sure I
24 understand. Like, for example, when I look at the First
25 Amended, and this would be on page 6, the second entry, First

1 Amended served on 6/2/2021.

2 MS. CHAMPION: Yes.

3 THE COURT: It says deposition date 6/21/2021,
4 proposed date. That would have been the date that was given by
5 the --

6 MS. CHAMPION: The original deposition notice on
7 6/4/21?

8 THE COURT: I don't know if I see that, but I'm
9 looking here. It says -- I'm looking at the First Amended
10 served on 6/2/2021. And there was a deposition date, and that
11 was proposed; it said yes. Proposed date used; it says no.
12 And it says, Previously told not available until after
13 7/10/2021. So that would have been well after the deposition,
14 I anticipate. Is that true or not?

15 MS. CHAMPION: Yes, Your Honor. And if you look at
16 Mr. Hogan's declaration, what you see is that he had repeatedly
17 asked for deposition dates. He provided in e-mails proposed
18 dates for the deposition. And specifically paragraphs --
19 excuse me, paragraph 28, he e-mailed Mr. Aldrich. In
20 paragraphs 25 through 28, he e-mailed Mr. Aldrich with the
21 proposed schedule of deposition dates, which included that June
22 21st deposition date for Mrs. Piazza. And then there was no
23 response or, no, hey, that date is not going to work for us
24 until right before that deposition.

25 And so that's the problem that we keep having, right,

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1 is -- and I said this in my motion. I think it's a really good
2 way to explain it. We're playing whack-a-mole, right. There
3 is a deposition date. It comes up. They know it's coming.
4 And then right before the deposition, they whack the mole. We
5 don't want to appear for that one. We've got a conflict. We
6 need you to move it. So we move it. Here comes another mole.
7 Another deposition is coming up. Nope. Can't make that one
8 either. And it just continues over and over and over and over.

9 But to your initial question, Your Honor, the date
10 that they failed to appear, April 25th, 2022, for
11 Mrs. Piazza, that's in the stipulation and order that was
12 signed and executed by Your Honor on April 6, 2022. It's in
13 the specific stipulation. That's the deposition date. That's
14 when she's being deposed, and she just chose not to appear.

15 THE COURT: And so what you're saying, ma'am, you're
16 saying, look, Judge, this wasn't pursuant to a notice of a
17 deposition. You're saying, Judge, this failure to appear is --
18 and the notice of the -- I mean, sorry, the deposition date set
19 was based upon a duly issued stipulation and order signed by
20 this Court?

21 MS. CHAMPION: It is both, Your Honor.

22 THE COURT: Right.

23 MS. CHAMPION: It is duly noticed, and it's part of a
24 stipulation and order.

25 THE COURT: Okay.

1 MS. CHAMPION: And so that only furthers, right, this
2 idea that they knew they had to appear. They chose not to.

3 Now, I know Mr. Aldrich certainly wished that his
4 clients appeared on those dates and wished that they could take
5 depositions over. And I'm sure he advised them of what would
6 happen if they didn't. And they chose not to appear for those
7 depositions.

8 I'm happy to answer any questions you have, Your
9 Honor. I think you've heard a lot from us, and you've got a
10 good grasp on the issue, but I'm happy to address any questions
11 you may have.

12 THE COURT: All right. No, I don't have any
13 questions right now.

14 Ma'am, I don't mind saying this. I'm grappling -- I
15 shouldn't say grappling. I'm just trying to decide ultimately
16 what to do, you know, and I do understand.

17 And I will say this. The potential impact of my
18 decision -- and I do have significant concerns under the facts
19 of this case in this one respect. I still don't even have a
20 justification. I don't have anything why they didn't show up
21 for their deposition.

22 MS. CHAMPION: Right. Not only do you not have no
23 justification, Your Honor, they didn't provide any available
24 dates. If I had gotten an e-mail the day of Mrs. Piazza's
25 deposition that said, you know, she's not available today, but

1 here's available dates in the next few weeks, I think this
2 hearing would be quite different. I don't even know that we'd
3 even be here arguing over it, quite candidly. But that's not
4 what happened.

5 They chose not to appear, and then they waited until
6 the motion for sanctions was sent down to the court and was
7 being prepared to be filed before all of a sudden they were
8 able to give up dates.

9 And even when they did that, Your Honor, the dates
10 they gave aren't given in good faith. I had a conversation
11 with Mr. Aldrich back in March when we were entering into that
12 stipulation and order that sets forth their deposition dates,
13 and I made him aware that I had a personal conflict. I have a
14 preplanned family vacation at the end of June through mid-July.
15 And because of that vacation, the parties specifically
16 stipulated to extend the dispositive motion deadline to
17 accommodate that conflict. The only dates the Front Sight
18 parties have provided are conveniently when I am not available.
19 And they've known it for three months.

20 I mean, this idea that we should just get a do-over,
21 we should be able to be compelled to be deposed, well, not only
22 were you under a stipulation and order and under a duly noticed
23 deposition notices to appear, you haven't given real, true,
24 good faith dates even if this could be remedied. And I think
25 that is so salient and relevant to this idea that they won't --

1 my clients won't be prejudiced. Well, no. They're still
2 playing games even to this day.

3 THE COURT: All right, ma'am.

4 MR. ALDRICH: If I may, Your Honor?

5 THE COURT: You can.

6 MR. ALDRICH: Briefly.

7 THE COURT: Mr. Aldrich, it was not just pursuant to
8 a notice of a deposition but also a court order.

9 MR. ALDRICH: Well, that's what I want to address.
10 So I can't get Internet to work on my computer for some reason,
11 but I was trying to pull the stipulation up. So my
12 recollection, and I had Tracy text me a couple of pictures, but
13 in the stipulation portion --

14 THE COURT: What date was that stipulation filed?

15 MR. ALDRICH: I don't have that handy. Do you?

16 MS. CHAMPION: It is April 6, 2022, Your Honor.

17 THE COURT: Okay. Go ahead. Sir.

18 MR. ALDRICH: And in the stipulation portion, it does
19 say that they're going to take these depositions with dates,
20 and it says that they take the position they're firm settings.

21 The order portion is an extension of discovery
22 deadlines and trial date. So I don't think it's the same as an
23 order.

24 In fact, we went back and forth with drafts, is my
25 recollection, and there was -- I think she referenced it in the

1 motion. I didn't agree to language that said that it was an
2 order for them to appear. I certainly understood she wanted
3 them -- that she was going to call them firm dates, but I don't
4 believe that's a court order.

5 Even if it is though -- I don't think it is, but
6 again, we go back to there are eight factors in the *Young*
7 *versus Johnny Ribeiro* case that need to be addressed. This is
8 only one. And the factors for trial on the merits, easily
9 fixing any prejudice, no lost -- irreparably lost evidence, all
10 those factors weigh in favor of our side, meaning denying the
11 motion for case dispositive sanctions because it's an easy fix.

12 And I want to address Ms. Champion's comments here at
13 the end about her notifying me of a vacation and me giving
14 dates that were those vacation. I do remember us talking about
15 her taking a vacation. I did not write that down on my --
16 anywhere. So that's actually on me. I asked for dates. They
17 gave me dates. I passed the dates along. That's not that my
18 client was trying to pick dates that she wasn't available. And
19 I'm the last person to try to make someone miss a family
20 vacation for discovery. But that was on me. So I just wanted
21 to address that.

22 And then one last thing is that we worked to schedule
23 lots of things in this case, and we've been dealing with
24 extending deadlines and other things. And, you know, likewise,
25 we've been trying to get Mr. Flynn's (phonetic) deposition for

1 a long, long time. And we did finally get some dates in July,
2 and we're going to take his deposition then. You know,
3 sometimes it works out that way.

4 But in this instance, there is an easy fix. Your
5 Honor can sanction them monetarily for not appearing, to pay
6 for the court reporter. Your Honor, can order them to appear
7 on a date certain. And certainly we'll work around
8 Ms. Champion's vacation and if it needs to be before that. I
9 have some scheduling problems myself, but we'll work it out.

10 Does the Court have any more questions for me?

11 THE COURT: No. I'm just reading the order.

12 MR. ALDRICH: Okay. And it's page 8 that references
13 the firm setting, Your Honor.

14 THE COURT: And I just want to make sure -- and maybe
15 this is a good thing I'm taking my time here. We have a
16 deposition of Jennifer Piazza, Ignatius Piazza, 30(b)(6) for
17 Front Sight, 30(b)(6) of VNV Dynasty Trust and the -- and that
18 would be Trust I for the record -- and the 30(b)(6) of VN --
19 I'm sorry, VNV Dynasty Trust II, and that was a 30(b)(6).

20 And none of these showed up?

21 MS. CHAMPION: Yes, Your Honor. None of those showed
22 up on the dates in the stipulation, with only one exception is
23 that Mr. Aldrich had a scheduling conflict on the VNV Dynasty
24 Trust II date. And so after the stipulation, the parties
25 agreed to move it. But again it was moved to a date that Front

1 Sight -- that the VNV Dynasty Trust II provided.

2 THE COURT: All right. Anything else I need to know?

3 MS. CHAMPION: No, Your Honor.

4 MR. ALDRICH: No, Your Honor.

5 THE COURT: All right. And there were no
6 explanations for any of these?

7 MS. CHAMPION: None, Your Honor. Not in an e-mail,
8 not in a -- in fact, I had a telephone call that's in my
9 declaration. I'm sure I can find the paragraph numbers for
10 you. But before we filed this motion for dispositive
11 sanctions, I actually called Mr. Aldrich, and we asked him if
12 he had any explanation. And he told us again I don't have
13 anything else for you.

14 And again, this is not a Mr. Aldrich problem, right.
15 It's his clients chose not to appear, without an explanation.
16 And even today we don't have one.

17 I mean, I would've thought if there was an
18 explanation I would've been told at that point. There would be
19 a declaration attached to the opposition, something.

20 THE COURT: All right. This is what I'm going to do,
21 and I just want to make sure the record is really clear in this
22 respect because I will agree that in the general sense
23 sanctions should be aggressive. There's no question about it.

24 But here's my concern as far as this matter is
25 concerned because I'm looking here and looking at my order, and

1 I think everyone has to understand that when I sign a
2 stipulation and an order I do rely upon the representations
3 made by the parties. I mean, that's one of the -- and I do
4 consider that. And just as important, as a trial judge, if
5 you're agreeing on things, I try to get out of the way. I do.
6 And I go with it.

7 But my point is this. I'm looking here, and we have
8 firm settings.

9 And I realize, ma'am, there's no -- that's a term of
10 art that was just utilized for the purposes of this case.
11 There's no firm settings. I get that. You get firm settings
12 in trials. And based upon age and/or other factors you get
13 priority. I understand that.

14 But I still have no explanation as to why they didn't
15 appear. And in light of that, I can only infer that it was
16 intentional, right. I don't have any basis for it except they
17 decided not to show.

18 And if there was an issue regarding unavailability, a
19 health issue, an inconvenience or something like that,
20 potentially, yes, Jennifer's might not have gone forward, but
21 maybe Mr. Piazza's deposition could have happened. Or if they
22 were -- both had problems, maybe the 30(b)(6)'s could have gone
23 on, something, right. And nothing happened.

24 What I'm going to do is this: I'm going to grant the
25 motion.

1 MS. CHAMPION: Thank you, Your Honor.

2 THE COURT: And it's based upon the totality of
3 circumstances here, and without an explanation, I have no
4 explanation other than they decided not to attend.

5 And it appears to me, unless there was a reason for
6 not attending, without an explanation, I just assume it was
7 intentional. I have no other way to look at it in that regard.

8 And it results -- at the end of the day, I understand
9 the progressiveness, but it's halting the adversarial process.
10 It truly is.

11 I guess as far as the other motion is concerned, it's
12 moot. Is that correct?

13 MS. CHAMPION: Yes, Your Honor. It's our position
14 it's moot at this point.

15 THE COURT: Yeah.

16 (Pause in the proceedings.)

17 THE COURT: What about the status check on the bond
18 and all that?

19 MR. ALDRICH: Well, the hearing tomorrow is supposed
20 to be on the preliminary injunction, but I think that's --

21 THE COURT: Mooted?

22 MR. ALDRICH: Well, it's either mooted, or because of
23 the stay, it wouldn't go forward anyway.

24 MS. CHAMPION: Right. It's not mooted, Your Honor,
25 but given the stay --

1 THE COURT: I understand that --

2 MS. CHAMPION: Given that Front Sight declared
3 bankruptcy, that motion should not go forward, but the TRO is
4 effectively in place because of the stay.

5 THE COURT: Right. That's true.

6 MS. CHAMPION: And so I don't think we need to have
7 that.

8 And similarly, the status check tomorrow, I don't
9 think -- on the status of the nonjudicial foreclosure, there is
10 no need to hear that because, obviously, in light of Front
11 Sight's declaring bankruptcy, the nonjudicial foreclosure can't
12 go forward.

13 THE COURT: Right. I understand.

14 All right. Everyone enjoy your day.

15 ATTORNEYS: Thank you, Your Honor.

16 THE COURT: Prepare findings, ma'am.

17 MS. CHAMPION: I will, Your Honor.

18 (Proceedings concluded at 12:17 p.m.)

19 -oOo-

20 ATTEST: I do hereby certify that I have truly and correctly
21 transcribed the audio/video proceedings in the above-entitled
22 case to the best of my ability.

23 

24 Dana L. Williams
25 Transcriber

MR. ALDRICH: [52]
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MS. CHAMPION: [35]
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**THE COURT
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<p>them... [17] 36/2 36/17 38/25 39/7 40/22 41/8 41/17 42/1 42/6 43/12 47/15 50/5 53/2 53/3 53/3 54/5 54/6</p> <p>then [53] 2/18 3/8 4/15 7/4 7/15 9/5 11/3 13/8 13/9 14/6 15/17 19/13 23/22 24/15 24/19 24/22 25/4 26/5 27/23 28/4 28/9 28/9 28/10 28/13 28/14 28/16 28/16 29/22 30/4 30/7 30/8 32/1 32/5 32/9 32/11 32/12 32/14 33/20 33/22 34/16 35/11 35/13 36/4 37/24 39/1 43/4 44/25 45/4 48/22 49/4 51/5 53/22 54/2</p> <p>theories [1] 9/18</p> <p>there [59]</p> <p>there's [29] 3/3 4/22 9/19 9/21 13/18 14/15 18/13 28/10 28/15 31/6 31/6 34/10 34/11 35/17 36/16 37/1 38/10 39/6 40/18 40/18 41/15 41/23 42/2 44/23 46/24 47/14 55/23 56/9 56/11</p> <p>thereafter [1] 12/6</p> <p>these [35] 3/22 3/22 4/5 10/16 10/20 12/15 13/1 13/13 13/14 13/15 15/7 17/4 17/19 17/23 18/25 24/6 25/6 29/18 30/7 30/15 31/11 34/3 34/13 37/24 40/17 40/19 43/1 43/7 44/8 44/11 44/12 47/19 52/19 54/20 55/6</p> <p>they [125]</p> <p>they're [17] 5/10 9/17 13/22 18/13 18/15 24/15 28/1 29/10 29/11 36/17 38/25 39/1 44/21 45/1 52/1 52/19 52/20</p> <p>they've [1] 51/19</p> <p>thin [1] 13/2</p> <p>thing [6] 25/11 38/11 43/13 46/22 53/22 54/15</p> <p>things [21] 3/24 4/18 6/21 12/12 12/22 12/23 23/6 23/11 25/6 25/21 26/14 26/21 30/25 34/3 38/20 41/9 41/18 44/4 53/23 53/24 56/5</p> <p>think [31] 5/10 6/19 7/11 10/19 12/10 13/2 13/11 15/20 18/15 19/18 20/6 20/8 20/21 20/23 23/2 25/17 26/10 26/14 38/6 42/24 49/1 50/9 51/1 51/24 52/22 52/25 53/5 56/1 57/20 58/6 58/9</p>	<p>18/17 32/19 32/25 39/3</p> <p>this [136]</p> <p>those [30] 4/4 4/18 5/9 5/22 12/4 12/16 12/24 16/12 18/13 22/16 23/11 24/8 24/17 25/18 29/11 29/16 31/2 33/6 33/9 33/10 35/1 46/3 46/3 46/17 46/18 50/4 50/6 53/10 53/14 54/21</p> <p>though [4] 25/10 36/22 39/11 53/5</p> <p>thought [2] 7/20 55/17</p> <p>thousand [2] 22/17 27/21</p> <p>thousands [1] 23/12</p> <p>thread [1] 6/12</p> <p>threatened [1] 6/3</p> <p>three [2] 22/9 51/19</p> <p>through [19] 6/12 6/22 8/13 8/20 9/20 9/22 11/10 17/1 22/9 24/10 25/6 30/23 30/24 31/11 37/24 41/13 47/6 48/20 51/14</p> <p>throughout [4] 6/5 6/15 11/15 23/17</p> <p>Thursday [1] 15/11</p> <p>ticker [1] 32/7</p> <p>ticky [2] 6/20 44/17</p> <p>time [34] 8/11 8/14 9/6 10/14 11/25 13/3 13/16 15/13 16/1 16/10 21/5 23/1 23/4 23/10 24/2 24/6 32/5 32/10 33/8 33/16 33/19 33/19 33/22 33/25 34/2 36/3 38/5 41/16 41/19 42/10 42/16 42/17 54/1 54/15</p> <p>times [9] 7/12 17/1 17/18 17/18 17/19 20/20 24/9 27/20 38/5</p> <p>TIMOTHY [1] 1/12</p> <p>tired [1] 8/22</p> <p>today [13] 2/25 4/11 4/12 5/13 5/15 6/10 16/23 17/22 19/9 20/2 23/13 50/25 55/16</p> <p>today's [1] 8/20</p> <p>together [2] 35/20 42/9</p> <p>told [14] 4/10 5/4 5/10 9/11 10/2 13/16 15/3 15/5 16/21 28/22 44/8 48/12 55/12 55/18</p> <p>tomorrow [2] 57/19 58/8</p> <p>too [3] 26/16 38/16 38/18</p> <p>took [2] 35/24 36/4</p> <p>tooth [1] 33/18</p> <p>tort [1] 38/16</p> <p>tortured [1] 26/21</p> <p>totality [1] 57/2</p> <p>totally [1] 43/9</p> <p>towards [1] 30/15</p> <p>Tracy [1] 52/12</p> <p>TRAN [1] 1/1</p> <p>transcribed [2] 1/25</p>	<p>58/21</p> <p>Transcriber [1] 58/25</p> <p>TRANSCRIPT [1] 1/8</p> <p>Transfers [2] 3/23 4/5</p> <p>transportation [1] 39/25</p> <p>trial [15] 6/9 6/25 8/17 18/25 19/4 19/23 20/1 26/24 40/25 41/15 41/21 42/3 52/22 53/8 56/4</p> <p>trials [1] 56/12</p> <p>tried [2] 11/9 20/1</p> <p>trigger [1] 38/9</p> <p>TRO [3] 15/18 43/3 58/3</p> <p>troubling [1] 27/5</p> <p>true [5] 6/10 45/5 48/14 51/23 58/5</p> <p>truly [3] 45/7 57/10 58/20</p> <p>trust [17] 4/16 5/7 5/8 12/6 15/12 15/13 15/23 15/24 16/6 17/19 23/14 39/18 54/17 54/18 54/19 54/24 55/1</p> <p>trusts [4] 4/14 5/7 19/10 21/1</p> <p>try [9] 12/14 16/15 17/20 19/24 32/3 37/18 45/10 53/19 56/5</p> <p>trying [11] 6/25 22/14 22/15 26/10 28/25 32/4 38/19 50/15 52/11 53/18 53/25</p> <p>turned [1] 5/20</p> <p>turning [1] 18/9</p> <p>tweak [1] 12/11</p> <p>twice [4] 8/9 13/14 32/15 33/15</p> <p>two [13] 5/7 7/17 8/1 8/1 8/2 8/3 19/10 20/25 26/14 31/21 31/22 33/3 39/23</p> <p>type [1] 7/21</p> <p>types [1] 25/18</p> <p>typically [2] 19/2 29/1</p>	<p>50/16 56/1 56/13 57/8 58/1 58/13</p> <p>understanding [1] 34/19</p> <p>understood [1] 53/2</p> <p>unless [2] 25/19 57/5</p> <p>unlike [1] 10/14</p> <p>unopposed [1] 32/16</p> <p>until [10] 2/11 8/14 8/14 18/8 18/8 22/12 38/9 48/12 48/24 51/5</p> <p>up [45] 2/4 2/9 2/14 7/5 8/15 8/19 13/9 16/2 16/7 16/9 16/15 18/14 19/19 19/20 19/21 20/16 25/23 26/12 26/13 26/25 27/4 28/1 28/15 31/14 34/11 34/14 35/18 37/17 37/19 38/25 39/22 40/1 40/22 40/23 42/7 42/13 45/14 45/18 49/3 49/7 50/20 51/8 52/11 54/20 54/22</p> <p>upon [7] 25/18 40/2 47/21 49/19 56/2 56/12 57/2</p> <p>us [15] 9/24 10/9 12/17 15/5 17/14 17/14 17/14 17/20 17/20 22/16 38/20 48/23 50/9 53/14 55/12</p> <p>used [4] 32/4 46/25 47/18 48/11</p> <p>usually [3] 28/8 28/10 37/17</p> <p>utilized [1] 56/10</p>	<p>voluntary [1] 40/5</p>
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				<p>waited [3] 18/7 18/8 51/5</p> <p>walk [2] 19/16 37/24</p> <p>walked [1] 25/6</p> <p>walks [1] 32/14</p> <p>want [23] 5/17 8/17 8/17 17/1 22/3 24/5 25/2 26/15 26/24 32/6 32/8 36/10 41/17 41/25 42/1 45/24 46/23 47/23 49/5 52/9 53/12 54/14 55/21</p> <p>wanted [4] 11/4 25/21 53/2 53/20</p> <p>wanting [1] 41/18</p> <p>wants [2] 2/10 30/9</p> <p>warrants [1] 18/21</p> <p>was [123]</p> <p>wasn't [7] 8/14 13/6 22/19 25/5 32/13 49/16 53/18</p> <p>waste [2] 19/16 32/5</p> <p>watch [1] 24/8</p> <p>watched [1] 22/7</p> <p>way [9] 8/7 9/16 18/13 29/4 34/15 49/2 54/3 56/5 57/7</p> <p>ways [1] 26/22</p> <p>we [167]</p> <p>we'd [1] 51/2</p> <p>we'll [7] 2/9 2/17 2/18 18/10 31/20 54/7 54/9</p> <p>we're [24] 2/9 2/12 4/11 4/12 4/22 4/22 5/13 5/16 9/11 9/25 13/10 16/22 16/24 29/14 32/7 32/23 33/5 33/14 36/6 37/9 42/20 47/15 49/2 54/2</p> <p>we've [20] 5/3 5/9 11/16 16/21 17/1 20/15 22/6 23/9 23/11 23/12 23/14 23/16 23/24 29/14 34/2 44/8 44/17 49/5 53/23 53/25</p> <p>WEDNESDAY [2] 1/13 35/19</p> <p>week [3] 18/1 23/4 35/16</p> <p>weeks [4] 23/2 33/12 33/20 51/1</p> <p>weigh [1] 53/10</p> <p>weighs [3] 17/7 19/2 19/3</p> <p>well [26] 9/3 9/25 11/20 17/13 18/9 19/18 24/2 24/10 24/15 24/20 28/10 29/14 31/19 33/6 34/17 37/3 43/3 43/13 45/7 46/5 48/13 51/21 52/1 52/9 57/19 57/22</p> <p>went [6] 22/23 30/24 32/15 35/23 44/5 52/24</p> <p>were [61]</p> <p>weren't [5] 16/3 31/22</p>

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EXHIBIT 5

Eighth Judicial District Court Clark County, Nevada



Home Departments Self-Help General Information Court Finder

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- Departments

+ Alternative Dispute Resolution

CASA

+ Clerk of the Court

Court Administration

Discovery

Family Mediation Center

+ Guardianship

Hearing Masters & Commissioners

- Judicial Departments

- Civil Criminal Division

Department I

Department II

Department III

Department IV

Department V

Department VI

Department VII

Department VIII

Department IX

Department X

Department XI

Department XII

Department XIII

Department XIV

Department XV

Department XVI



Timothy C. Williams

Office - (702) 671-4406

Fax - (702) 671-4405

Law Clerk - (702) 671-4403

Email - dept16lc@clarkcountycourts.us

Location - RJC Courtroom 16C

Regional Justice Center
200 Lewis Ave., Las Vegas, NV 89155



[Biography](#)

[Courtroom Protocol](#)

[Department Guideline](#)

Documents

[DC 16 Guidelines for Bench Trials](#)

[DC 16 Transcript Order Form](#)

[DC 16 Exhibit Guidelines for Jury/Non Jury Trials](#)

Current Assignment

- Department 16 is currently assigned Civil and Business Court cases.

Motion calendar schedule

- Department 16 hears Civil Court matters on Tuesdays and Thursdays at 9:00 a.m. and Business Court Matters on Wednesdays at 9:00 a.m. Dispositive motions are set at 9:30am.

Regular chambers calendar

- Department 16 does not have a regular chambers calendar. All matters are required to be set on the Department's regular motion calendar.

Motions

- Department 16 will consider motions in limine that are submitted as independently-noticed motions or as omnibus motions. In any case, subjects of each motion in limine must be numbered and there can be no redundantly numbered motions in limine for any individual party. Parties have a responsibility to resolve undisputed motions in limine prior to hearing pursuant to EDCR 2.47. Any

Department XVI

Department XVII

Department XVIII

Department XIX

Department XX

Department XXI

Department XXII

Department XXIII

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Department XXVI

Department XXVII

Department XXVIII

Department XXIX

Department XXX

Department XXXI

Department XXXII

+ Family Division

Juvenile

Jury Services

Probate

Specialty Courts

Protection Orders

Transcriber Video Services

Self -Help

+ General Information

Court Finder

motion in limine filed MUST be supported by an affidavit of counsel which contains ALL appropriate elements required by EDCR 2.47. The Court will not consider motions in limine which are not in compliance with EDCR 2.47.

- All motions seeking an extension of time to serve a party must be filed into Odyssey, and the Order submitted electronically to the DC16Inbox@clarkcountycourts.us for processing without placing the matter on the Court's calendar.
- Ex parte applications for Temporary Restraining Orders should be submitted to the DC16Inbox@clarkcountycourts.us for review, upon which time the Court will determine whether to issue an Ex Parte TRO and schedule a hearing for the Preliminary Injunction, or whether a hearing is necessary before the issuance of any injunctive relief.
- Ex parte Motions to Shorten Time must be submitted prior to filing and may not be granted except upon an unsworn declaration under penalty of perjury or affidavit of counsel describing the circumstances claimed to constitute good cause and justify shortening of time. If granted, it must be served upon all parties promptly. An order shortening the notice of a hearing **to less than 10 days may NOT be served by mail**. In no event may the notice of the hearing of a motion be shortened to less than 1 full judicial day (EDCR Rule 2.26).
- Continuance of Hearings Set on Calendar - Dept. 16 requires a Stipulation and Order (EDCR 2.22(b)). Written Stipulation and Order must be submitted to the DC16Inbox@clarkcountycourts.us not less than one full judicial day before the hearing date. If submitted to the inbox one judicial day prior to the hearing, please call/email the law clerk to advise. If the stipulation is not in writing, counsel for movant must appear at the hearing and present the oral stipulation.

Motions on Orders Shortening Time

- Orders Shortening Time must be submitted directly to the departmental inbox at dc16inbox@clarkcountycourts.us - OST's are NOT filed by counsel. The court will then review the order shortening time and if applicable, sign the order and set a hearing date. The Court will efile and serve the OST to all registered service contacts on Odyssey file and Serve.
- Order Shortening Time submitted on a Motion that was filed without the Judge's signature, or on a matter that has been previously filed and a hearing has been set by the Clerk - **Dept. 16 will not advance a hearing on a matter already set**. Dept. 16 requires either a Stipulation and Order of counsel to Advance the Hearing, or moving counsel to submit a Motion to Advance the Hearing on OST - no exceptions.

Courtesy copies

- Department 16 requires courtesy copies of all motions, oppositions and replies and they should be dropped off in the deliveries box on the sixteenth floor *at least* one week before the hearing or as soon as the document is filed. Courtesy copies of voluminous exhibits are not required, but any exhibits considered to require particular emphasis or exhibits the parties would like the Court to review are welcome.

Discovery Commissioner assigned

- Discovery matters in the Business Court are heard by the respective Business Court Judges, in Business Court cases, the judge appoints a special master for discovery matters. The Discovery Commissioner is utilized in non-Business Court civil matters.

Rule 16/Discovery Conferences

- Rule16 Conferences are conducted in all Business cases, set 30-60 days after the first answer is filed into Odyssey.
- In non-Business Court cases, the Court will schedule a Discovery Conference following the filing of the JCCR. Dept 16 hears all Discovery Conferences via BlueJeans audio/video (the link provided within the Order Scheduling Discovery Conference) - no live appearance is necessary.

Court Reporter or a Court Recorder for its official record

- Effective October 4, 2021, Department 16 will be using a Court Recorder.
- For court recording transcripts from October 4, 2021 to present, contact Maria Garibay at GaribayM@clarkcountycourts.us.
- For court reporting transcripts from June 14, 2021 to October 1, 2021, contact Rhonda Aquilina by email at Rhondareporter16@gmail.com
- For court reporting transcripts prior to June 14, 2021, please contact Peggy Isom at Dept16Reporter@gmail.com

Telephonic Appearances

- The Court prefers BlueJeans for remote conferencing on all status checks, Rule 16 conferences, and unopposed motions wherein you participate by phone or through an internet enabled device. Live appearances are authorized for opposed motions. Counsel may still appear via BlueJeans audio/video for opposed motions.
- Please note all witnesses appearing telephonically must have the appropriate, court-approved notary and/or official present on their end to swear them in (this also includes Default Judgment prove-up hearings).

Video Appearances

- BlueJeans videoconferencing will be offered for most matters. Counsel may contact chambers at 702-671-4406 to determine if their or their witness may appear via video no later than two days prior to the scheduled hearing.

Default Judgment prove-ups

- All Default Judgments for a total award of less than \$50,000, if based on a written contract, may be submitted to the DC16Inbox@clarkcountycourts.us for Judge's review and signature/filing. Personal injury claims require testimony. All Default Judgments for a total award of \$50,000 or more must be set on the Department's regular motion calendar. Live testimony is required at prove-up hearings. While the Court prefers witnesses testifying live at the prove-up hearing, telephonic testimony appearances are permitted if a notary public is present with the witness for the purpose of administering the Oath to the witness. Video appearances are also allowed.

Submission of Orders

- Department 16 requires proposed orders to be submitted electronically to the department inbox within ten (10) days of notification of the ruling, pursuant to EDCR 7.21. DC16Inbox@clarkcountycourts.us Counsel designated to prepare the order is required to provide a draft to opposing counsel(s), allowing for a reasonable opportunity for review and comment. If the Order is not signed by opposing counsel, designated counsel to include a copy of the email providing the draft to opposing counsel as the last page of the document.

Contested Orders

- If both sides cannot agree, each side may submit their own proposed Order for approval of the Judge. Any competing order without obtaining opposing counsel's signature must be accompanied by a brief 1-page cover letter with bullet-points highlighting each instance of contested language and the reasons for the competing order.
- Competing orders must be submitted to the DC16inbox@clarkcountycourts.us no later than 10 days from receipt of the first proposed order from adverse counsel.
- Instead of seeking to litigate any disapproval through correspondence directed to the Court or to counsel with copies to the Court, any such disapproval should be the subject of motion practice following entry of order.
- Letters to the Court containing substantive argument on the merits of a contested proposed order are disfavored, viewed as improper ex parte communications, even if copied to opposing counsel, and will not be considered.

Petition to Compromise Claims of Minors

- All Petitions to Compromise the claims of minors are to be filed into Odyssey. The proposed Order is to be submitted electronically to the DC16inbox@clarkcountycourts.us. A hearing is not required for this.
- NRS 41.200(3) does not require that medical records be filed. If medical records are filed as an attachment to the Petition, restricted personal information as defined by SRCR 2(6) and NRS 239B.030 must be redacted prior to filing. Failure to redact restricted personal information will require the Petitioner to file a motion to redact pursuant to SRCR 3 and EDCR 2.13 prior to the Judge signing off on the Order to Compromise the Minor's Claim.
- Proof of Establishment of Blocked Account MUST include the Bank's name, the Minor's name, the date and amount deposited and the words "Blocked" or "Court Blocked Account" on the document(s). Please make sure that the SSN or the Petitioner or the Minor is redacted prior to filing these exhibits! Do not include a copy of the trust account check or deposit slip; documentation from the bank with the above requirements is all that is necessary.

Petition to Seal Criminal Records

- A Petition may be submitted to chambers for processing without placing the matter on the Court's calendar when accompanied by a D.A. approved Order. Depending on the number of charges, the time-range, and the gravity of the charge(s), the Court may require a hearing. If needed, the Order will be held pending the scheduling of a hearing.

Electronic signatures

- With the exception of documents requiring the signature of a notary, an electronic signature will be considered an original signature. All documents requiring a signature of another person may be electronically signed; however, the party submitting the document must obtain e-mail verification of the other person's agreement to sign electronically. That verification must be embedded in the document or attached as the last page of the document.

Jury selection

- Department 16 uses a modified version "Arizona Method" of Jury selection. The presiding judge initially conducts voir dire of the entire panel. After questioning, the Judge meets with counsel at the bench to discuss whether any prospective jurors should be excused for cause. Prospective Jurors initially passing "cause" challenges are then seated in the Jury Box in the order of the Badge Numbers.
- Attorneys are then permitted to conduct voir dire examination of the jury in mass, or on an individual basis. After initial questioning, attorneys meet with the Judge at the bench to discuss whether any of these prospective jurors should be excused for cause. Once their prospective jurors are passed for cause, the parties exercise their peremptory challenges. Excusals for cause and peremptory challenges are discussed only at the Bench and later placed on the record. Excused jurors are not informed as to the reason for their discharge.

Jury Questionnaire

- Department 16 requires all requests for jury questionnaires to be done by Stipulation and Order (or by motion - and must be filed and heard) at least six (6) weeks in advance of the trial stack.
- Jury Services does not have the capacity to allow jurors to complete questionnaires in Jury Services. If a Jury Questionnaire is approved, it must be completed in the courtroom on the first day of trial, or on an earlier date convenient to the court and jury services.

EXHIBIT 6

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 10:49:00 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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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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EXHIBIT 7

From: [Julie Linton](mailto:Julie.Linton@clarkcountycourts.us)
To: dc16inbox@clarkcountycourts.us
Cc: [Andrea Champion](#); [Nicole Lovelock](#); [Sue Trazig Cavaco](#); [Lorie Januskevicius](#); [John Aldrich](#); [Traci Bixenmann](#)
Subject: A-18-781084-B -ORDR - Front Sight Management LLC v Las Vegas Development Fund LLC
Date: Thursday, June 16, 2022 5:07:00 PM
Attachments: [2022-06-16 Order granting LVDF's Mot Case Dispositive Sanctions \(AMC v4 clean\).pdf](#)
[image001.png](#)

Good afternoon,

Please see the attached *Order Granting in Part Defendants and Counterclaimant's Motion for Case Dispositive Sanctions* for Judge's review and signature.

Thank you,

Julie Linton



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4 Nicole E. Lovelock, Esq.
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16 *Attorneys for Las Vegas Development*
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

29 This matter came before the Court on May 25, 2022, at 10:30 a.m., on Defendants and
30 Counterclaimant’s Motion for Case Dispositive Sanctions and Supplement to Defendant and
31 Counterclaimants’ Motion for Case Dispositive Sanctions (collectively, the “Motion”), with John P.
32 Aldrich, Esq. appearing on behalf of Counterdefendants Jennifer Piazza (“Mrs. Piazza”), Ignatius
33 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 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

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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.

1 contractual relationships and fifth cause of action for civil conspiracy.

2 **IT IS SO ORDERED.**

3

4

5

6

7 Respectfully submitted by:

Approved as to form and content:

8 **JONES LOVELOCK**

ALDRICH LAW FIRM, LTD.

9 /s/ Andrea M. Champion, Esq.

/s/ Circulated – No Response

Nicole E. Lovelock, Esq.
10 Nevada State Bar No. 11187
Sue Trazig Cavaco, Esq.
11 Nevada State Bar No. 6150
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Nevada State Bar No. 6877
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7866 West Sahara Avenue
Las Vegas, Nevada 89117

Attorneys for Plaintiff/Counterdefendants

14 *Attorneys for Defendants/Counterclaimants*

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From: [Andrea Champion](#)
To: [John Aldrich](#); [Traci Bixenmann](#)
Cc: [Nicole Lovelock](#); [Julie Linton](#); [Lorie Januskevicius](#)
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Andrea M. Champion, Esq.



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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,

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Thanks,
Andi

Andrea M. Champion, Esq.



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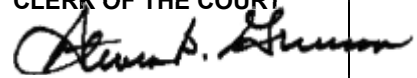
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EXHIBIT 8

Electronically Filed
6/5/2020 2:12 PM
Steven D. Grierson
CLERK OF THE COURT



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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,)

CASE NO.: A-18-781084-B

19 Plaintiff,)

DEPT NO.: XVI

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)
LLC; JON FLEMING, individually and as an)
agent of LAS VEGAS DEVELOPMENT)
26 FUND LLC and EB5 IMPACT ADVISORS)

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 ///

26 ///

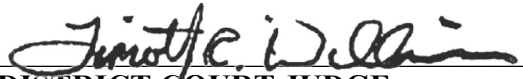
27 *Front Sight Management LLC v. Las Vegas Development Fund LLC, et al.*, Case No.: A-18-781084-B Dept. No.: XVI

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.


DISTRICT COURT JUDGE
A-18-781084-B CG
Dept 16

6
7
8 Respectfully submitted by:

9 **FARMER CASE & FEDOR**

10
11 /s/ Kathryn Holbert
12 Kathryn Holbert, Esq.
13 Nevada Bar No. 10084
14 2190 E. Pebble Rd., Suite #205
15 Las Vegas, NV 89123
16 Tel: (702) 579-3900
17 *Attorneys for Defendants LAS VEGAS
DEVELOPMENT FUND LLC, EB5 IMPACT
CAPITAL REGIONAL CENTER LLC, EB5
IMPACT ADVISORS LLC, ROBERT W.
DZIUBLA, JON FLEMING and LINDA
STANWOOD*

Josephine Baltazar

From: Kathryn Holbert <kholbert@farmercase.com>
Sent: Monday, June 1, 2020 6:50 PM
To: Andrea Champion
Cc: Josephine Baltazar
Subject: Re: Front Sight v. LVDF PROPOSED ORDERS

Sorry. For clear confirmation you may esign the orders for me.

Sent from my T-Mobile 4G LTE device

----- Original message-----

From: Andrea Champion
Date: Mon, Jun 1, 2020 4:51 PM
To: Kathryn Holbert;
Cc: Josephine Baltazar;
Subject:Fwd: Front Sight v. LVDF PROPOSED ORDERS

Kathryn,

After responding to Mr. Aldrich, my secretary reminded me that two of these orders are on your caption since you drafted them (and we all agreed it made sense to keep it that way). Since your office will need to file them (and the related notices of entry), let us know if you would prefer to handle submitting them to the department (and we will submit the one on our caption). Alternatively, we can submit all three of them and then your office can handling the filing after we receive the orders back signed. Just let us know what your preference is and assuming we will be submitting them, confirm that we may affix your e-signature to the orders.

Thanks, Andi

Sent from my iPhone

On Jun 1, 2020, at 4:26 PM, Andrea Champion <AChampion@baileykennedy.com> wrote:

John,

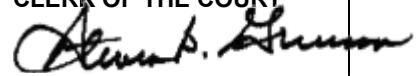
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Thanks,
Andi

Andrea Champion
Bailey•Kennedy
8984 Spanish Ridge Avenue
Las Vegas, NV 89148-1302
702.562.8820 (Main)

EXHIBIT 9

Electronically Filed
6/5/2020 2:16 PM
Steven D. Grierson
CLERK OF THE COURT



1 **ORDR**
ANTHONY T. CASE, ESQ.
2 Nevada Bar No. 6589
tcase@farmercase.com
3 KATHRYN HOLBERT, ESQ.
Nevada Bar No. 10084
4 kholtbert@farmercase.com
FARMER CASE & FEDOR
5 2190 E. Pebble Rd., Suite #205
Las Vegas, NV 89123
6 Telephone: (702) 579-3900
Facsimile: (702) 739-3001

7
C. KEITH GREER, ESQ.
8 Cal. Bar. No. 135537 (*Pro Hac Vice*)
Keith.greer@greerlaw.biz
9 **GREER & ASSOCIATES, A.P.C.**
16855 W. Bernardo Dr., Suite 255
10 San Diego, California 92127
Telephone: (858) 613-6677
11 Facsimile: (858) 613-6680

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,)

CASE NO.: A-18-781084-B

19 Plaintiff,)

DEPT NO.: XVI

20 v.)

ORDER DENYING COUNTER
DEFENDANT JENNIFER
PIAZZA'S MOTION FOR
SUMMARY JUDGMENT

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)

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 ///

24 ///

25 ///

26 ///

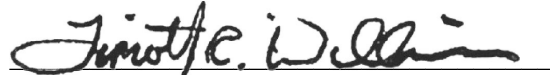
27 *Front Sight Management LLC v. Las Vegas Development Fund LLC, et al.*, Case No.: A-18-781084-B Dept. No.: XVI

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
13 2190 E. Pebble Rd., Suite #205
14 Las Vegas, NV 89123
15 Tel: (702) 579-3900
16 *Attorneys for Defendants LAS VEGAS
DEVELOPMENT FUND LLC, EB5 IMPACT
CAPITAL REGIONAL CENTER LLC, EB5
IMPACT ADVISORS LLC, ROBERT W.
DZIUBLA, JON FLEMING and LINDA
STANWOOD*

17
18
19
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23
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26
27
28

Josephine Baltazar

From: Kathryn Holbert <kholbert@farmercase.com>
Sent: Monday, June 1, 2020 6:50 PM
To: Andrea Champion
Cc: Josephine Baltazar
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Sorry. For clear confirmation you may esign the orders for me.

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----- Original message-----

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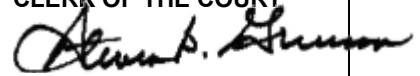
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Andrea Champion
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8984 Spanish Ridge Avenue
Las Vegas, NV 89148-1302
702.562.8820 (Main)

EXHIBIT 10

Electronically Filed
3/30/2021 12:37 PM
Steven D. Grierson
CLERK OF THE COURT



1 AACC
KENNETH E. HOGAN
2 NEVADA BAR NO. 10083
1140 N TOWN CENTER DRIVE, STE 300
3 LAS VEGAS NV 89144
TEL/FAX: 702-800-5482
4

Attorneys for Defendants
5 LAS VEGAS DEVELOPMENT FUND LLC;
EB5 IMPACT CAPITAL REGIONAL CENTER
6 LLC; EB5 IMPACT ADVISORS LLC; ROBERT
W. DZIUBLA; JON FLEMING; and
7 LINDA STANWOOD

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

10 FRONT SIGHT MANAGEMENT LLC, a
11 Nevada Limited Liability Company,
12
13 Plaintiff,

13 vs.

14 LAS VEGAS DEVELOPMENT FUND LLC, a
Nevada Limited Liability Company; et al,
15
16 Defendants.

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

**DEFENDANTS' ANSWER TO
PLAINTIFF'S SECOND AMENDED
COMPLAINT; AND UNREDACTED
FIRST AMENDED COUNTERCLAIM**

17
18 AND ALL RELATED COUNTERCLAIMS.
19

20 COMES NOW Defendants, LAS VEGAS DEVELOPMENT FUND LLC, EB5 IMPACT
21 CAPITAL REGIONAL CENTER LLC, EB5 IMPACT ADVISORS LLC; ROBERT W. DZIUBLA;
22 JON FLEMING; and LINDA STANWOOD, (collectively "Responding Parties"), by and through
23 their counsel of record, Bailey ❖ Kennedy, and specifically admit, deny, and respond to the
24 allegations of FRONT SIGHT MANAGEMENT, LLC's ("Plaintiff") Second Amended Complaint as
25 follows:

26 1. These responding Defendants lack sufficient information to admit or deny the
27 allegations in Paragraph 1 of Plaintiff's Second Amended Complaint and, therefore, deny the same.
28

1 12. These responding Defendants admit that Defendants and Plaintiff exchanged
2 correspondence. However, these responding Defendants deny the remainder of the allegations in
3 Paragraph 12 of Plaintiff's Second Amended Complaint.

4 13. These responding Defendants admit that Defendants and Plaintiff exchanged
5 correspondence. However, these responding Defendants deny the remainder of the allegations in
6 Paragraph 13 of Plaintiff's Second Amended Complaint.

7 14. These responding Defendants admit that Defendants and Plaintiff exchanged
8 correspondence. However, these responding Defendants deny the remainder of the allegations in
9 Paragraph 14 of Plaintiff's Second Amended Complaint.

10 15. These responding Defendants admit that Defendants and Plaintiff exchanged
11 correspondence. However, these responding Defendants deny the remainder of the allegations in
12 Paragraph 15 of Plaintiff's Second Amended Complaint.

13 16. These responding Defendants admit that Defendants and Plaintiff exchanged
14 correspondence. However, these responding Defendants deny the remainder of the allegations in
15 Paragraph 16 of Plaintiff's Second Amended Complaint.

16 17. These responding Defendants admit that Defendants and Plaintiff exchanged
17 correspondence. However, these responding Defendants deny the remainder of the allegations in
18 Paragraph 17 of Plaintiff's Second Amended Complaint.

19 18. These responding Defendants deny the allegations in Paragraph 18 of Plaintiff's
20 Second Amended Complaint.

21 19. These responding Defendants admit that Defendants and Plaintiff exchanged
22 correspondence. However, these responding Defendants deny the remainder of the allegations in
23 Paragraph 19 of Plaintiff's Second Amended Complaint.

24 20. These responding Defendants admit that Defendants and Plaintiff exchanged
25 correspondence. However, these responding Defendants deny the remainder of the allegations in
26 Paragraph 20 of Plaintiff's Second Amended Complaint.

27 21. These responding Defendants lack sufficient information to admit or deny the
28 allegations in Paragraph 21 of Plaintiff's Second Amended Complaint and, therefore, deny the same

1 22. These responding Defendants admit that Defendant EB5 Impact Advisors LLC and
2 Plaintiff executed an engagement letter dated February 13, 2013. However, these responding
3 Defendants deny the remainder of the allegations in Paragraph 22 of Plaintiff's Second Amended
4 Complaint.

5 23. These responding Defendants admit that Defendant EB5 Impact Advisors LLC and
6 Plaintiff executed an engagement letter dated February 13, 2013. However, these responding
7 Defendants deny the remainder of the allegations in Paragraph 23 of Plaintiff's Second Amended
8 Complaint.

9 24. These responding Defendants admit that Defendant EB5 Impact Advisors LLC and
10 Plaintiff executed an engagement letter dated February 1, 2013. However, these responding
11 Defendants deny the remainder of the allegations in Paragraph 24 of Plaintiff's Second Amended
12 Complaint.

13 25. These responding Defendants admit that Defendant EB5 Impact Advisors LLC and
14 Plaintiff executed an engagement letter dated February 1, 2013. However, these responding
15 Defendants deny the remainder of the allegations in Paragraph 25 of Plaintiff's Second Amended
16 Complaint.

17 26. These responding Defendants admit that Defendants and Plaintiff exchanged
18 correspondence. However, these responding Defendants deny the remainder of the allegations in
19 Paragraph 26 of Plaintiff's Second Amended Complaint.

20 27. These responding Defendants admit that the Regional Center Application was filed
21 on or about April 14, 2014 and that the application was approved on or about July 27, 2015, and
22 deny the remaining allegations in Paragraph 27 of Plaintiff's Second Amended Complaint.

23 28. These responding Defendants admit that the application for EB5 Impact Capital
24 Regional Center, LLC was filed on April 15, 2014. However, these responding Defendants deny the
25 remainder of the allegations in Paragraph 28 of Plaintiff's Second Amended Complaint.

26 29. These responding Defendants admit that Defendants and Plaintiff exchanged
27 correspondence. However, these responding Defendants deny the remainder of the allegations in
28 Paragraph 29 of Plaintiff's Second Amended Complaint.

1 30. These responding Defendants admit that the application for EB5 Impact Capital
2 Regional Center, LLC was approved on July 27, 2015. However, these responding Defendants deny
3 the remainder of the allegations in Paragraph 30 of Plaintiff's Second Amended Complaint.

4 31. These responding Defendants admit that Defendants and Plaintiff exchanged
5 correspondence. However, these responding Defendants deny the remainder of the allegations in
6 Paragraph 31 of Plaintiff's Second Amended Complaint.

7 32. These responding Defendants admit that Defendants and Plaintiff exchanged
8 correspondence. However, these responding Defendants deny the remainder of the allegations in
9 Paragraph 32 of Plaintiff's Second Amended Complaint.

10 33. These responding Defendants admit to the existence of a website identified as
11 "eb5impactcapital.com," and deny the allegations in Paragraph 33 of Plaintiff's Second Amended
12 Complaint.

13 34. These responding Defendants admit that Defendants and Plaintiff exchanged
14 correspondence. However, these responding Defendants deny the remainder of the allegations in
15 Paragraph 34 of Plaintiff's Second Amended Complaint.

16 35. These responding Defendants admit that Defendants and Plaintiff exchanged
17 correspondence. However, these responding Defendants deny the remainder of the allegations in
18 Paragraph 35 of Plaintiff's Second Amended Complaint.

19 36. These responding Defendants admit that Defendants and Plaintiff exchanged
20 correspondence. However, these responding Defendants deny the remainder of the allegations in
21 Paragraph 36 of Plaintiff's Second Amended Complaint.

22 37. These responding Defendants admit that Defendants and Plaintiff exchanged
23 correspondence. However, these responding Defendants deny the remainder of the allegations in
24 Paragraph 37 of Plaintiff's Second Amended Complaint.

25 38. These responding Defendants admit that Defendants and Plaintiff exchanged
26 correspondence. However, these responding Defendants deny the remainder of the allegations in
27 Paragraph 38 of Plaintiff's Second Amended Complaint.

28

1 39. These responding Defendants admit that Defendants and Plaintiff exchanged
2 correspondence. However, these responding Defendants deny the allegations in Paragraph 39 of
3 Plaintiff's Second Amended Complaint.

4 40. These responding Defendants admit that LVD Fund has loaned Front Sight
5 \$6,375,000 and deny the rest of the allegations in Paragraph 40 of Plaintiff's Second Amended
6 Complaint.

7 41. These responding Defendants admit that Defendants and Plaintiff exchanged
8 correspondence. However, these responding Defendants deny the remainder of the allegations in
9 Paragraph 41 of Plaintiff's Second Amended Complaint.

10 42. These responding Defendants admit that Defendants and Plaintiff exchanged
11 correspondence. However, these responding Defendants deny the remainder of the allegations in
12 Paragraph 42 of Plaintiff's Second Amended Complaint.

13 43. These responding Defendants deny the allegations in Paragraph 43 of Plaintiff's
14 Second Amended Complaint.

15 44. These responding Defendants admit that Defendants and Plaintiff exchanged
16 correspondence. However, these responding Defendants deny the allegations in Paragraph 44 of
17 Plaintiff's Second Amended Complaint.

18 45. These responding Defendants deny the allegations in Paragraph 45 of Plaintiff's
19 Second Amended Complaint.

20 46. These responding Defendants deny the allegations in Paragraph 46 of Plaintiff's
21 Second Amended Complaint.

22 47. These responding Defendants deny the allegations in Paragraph 47 of Plaintiff's
23 Second Amended Complaint.

24 48. These responding Defendants admit that Defendant LVD Fund loaned \$6,375,000 to
25 Plaintiff and deny the remaining allegations in Paragraph 48 of Plaintiff's Second Amended
26 Complaint.

27 49. These responding Defendants admit that Defendant Las Vegas Development Fund
28 served a Notice of Default on July 31, 2018. However, these responding Defendants deny the

1 remainder of the allegations in Paragraph 49 of Plaintiff's Second Amended Complaint.

2 50. These responding Defendants deny the allegations in Paragraph 50 of Plaintiff's
3 Second Amended Complaint.

4 51. These responding Defendants deny the allegations in Paragraph 51 of Plaintiff's
5 Second Amended Complaint.

6 52. These responding Defendants admit that Plaintiff responded to Defendant Las Vegas
7 Development Fund's July 31, 2018 Notice of Default. However, these responding Defendants deny
8 the remainder of the allegations in Paragraph 52 of Plaintiff's Second Amended Complaint.

9 53. These responding Defendants admit that Defendant Las Vegas Development Fund
10 served a second Notice of Default on August 24, 2018. However, these responding Defendants deny
11 the remainder of the allegations in Paragraph 53 of Plaintiff's Second Amended Complaint.

12 54. These responding Defendants deny the allegations in Paragraph 54 of Plaintiff's
13 Second Amended Complaint.

14 55. These responding Defendants admit that Plaintiff responded to Defendant Las Vegas
15 Development Fund's August 24, 2018 Notice of Default. However, these responding Defendants
16 deny the remainder of the allegations in Paragraph 55 of Plaintiff's Second Amended Complaint.

17 56. These responding Defendants admit that Defendant Las Vegas Development Fund
18 served a third Notice of Default on August 28, 2018. However, these responding Defendants deny
19 the remainder of the allegations in Paragraph 56 of Plaintiff's Second Amended Complaint.

20 57. These responding Defendants admit that Defendants and Plaintiff attempted to
21 resolve the issues regarding Plaintiff's Defaults regarding the Construction Loan Agreement.
22 However, these responding Defendants deny the remainder of the allegations in Paragraph 57 of
23 Plaintiff's Second Amended Complaint.

24 58. These responding Defendants admit that Defendant Las Vegas Development Fund
25 recorded a Notice of Default on September 11, 2018. However, these responding Defendants deny
26 the remainder of the allegations in Paragraph 58 of Plaintiff's Second Amended Complaint.

27 59. These responding Defendants admit that Defendants and Plaintiff exchanged
28 correspondence. However, these responding Defendants deny the allegations in Paragraph 59 of

1 Plaintiff's Second Amended Complaint.

2 60. These responding Defendants deny the allegations in Paragraph 60 of Plaintiff's
3 Second Amended Complaint.

4 61. These responding Defendants admit that a Court order was entered regarding
5 Plaintiff's Petition for Appointment of Receiver and for an Accounting. However, these responding
6 Defendants deny the remainder of the allegations in Paragraph 61 of Plaintiff's Second Amended
7 Complaint.

8 62. These responding Defendants admit they have complied with the Court order which
9 was entered regarding Plaintiff's Petition for Appointment of Receiver and for an Accounting.
10 However, these responding Defendants deny the remainder of the allegations in Paragraph 62 of
11 Plaintiff's Second Amended Complaint.

12 63. These responding Defendants deny the allegations in Paragraph 63 of Plaintiff's
13 Second Amended Complaint.

14 64. These responding Defendants admit Plaintiff is entitled to a \$36,000.00 offset.
15 However, these responding Defendants deny the remainder of the allegations in Paragraph 64 of
16 Plaintiff's Second Amended Complaint.

17 65. These responding Defendants admit Defendant EB5IA has been dissolved.
18 However, these responding Defendants deny the remainder of the allegations in Paragraph 65 of
19 Plaintiff's Second Amended Complaint.

20 66. These responding Defendants admit Defendant EB5IA has been dissolved.
21 However, these responding Defendants deny the remainder of the allegations in Paragraph 66 of
22 Plaintiff's Second Amended Complaint.

23 67. These responding Defendants deny the allegations in Paragraph 67 of Plaintiff's
24 Second Amended Complaint.

25 68. These responding Defendants deny the allegations in Paragraph 68 of Plaintiff's
26 Second Amended Complaint.

27 69. These responding Defendants admit Plaintiff wired funds to the wrong accounts on
28 multiple occasions. However, these responding Defendants deny the remainder of the allegations in

1 Paragraph 69 of Plaintiff's Second Amended Complaint.

2 70. These responding Defendants admit Plaintiff wired funds to the wrong accounts on
3 multiple occasions. However, these responding Defendants deny the remainder of the allegations in
4 Paragraph 70 of Plaintiff's Second Amended Complaint.

5 71. These responding Defendants admit Plaintiff wired funds to the wrong accounts on
6 multiple occasions. However, these responding Defendants deny the remainder of the allegations in
7 Paragraph 71 of Plaintiff's Second Amended Complaint.

8 72. These responding Defendants admit Plaintiff wired funds to the wrong accounts on
9 multiple occasions. However, these responding Defendants deny the remainder of the allegations in
10 Paragraph 72 of Plaintiff's Second Amended Complaint.

11 73. These responding Defendants deny the allegations in Paragraph 73 of Plaintiff's
12 Second Amended Complaint.

13 **FIRST CAUSE OF ACTION**

14 **(Fraud/Intentional Misrepresentation/Concealment Against All Defendants)**

15 74. These responding Defendants repeat and re-allege their responses to each of the
16 preceding and succeeding paragraphs as though fully set forth herein.

17 75. These responding Defendants deny the allegations in Paragraph 75 of Plaintiff's
18 Second Amended Complaint.

19 76. These responding Defendants deny the allegations in Paragraph 76 of Plaintiff's
20 Second Amended Complaint.

21 77. These responding Defendants admit that Defendant Dziubla is married to Defendant
22 Stanwood and that correspondence was exchanged. However, these responding Defendants deny the
23 remainder of the allegations in Paragraph 77 of Plaintiff's Second Amended Complaint.

24 78. These responding Defendants deny the allegations in paragraph 78 of Plaintiff's
25 Second Amended Complaint.

26 79. These responding Defendants deny the allegations in Paragraph 79 of Plaintiff's
27 Second Amended Complaint.

28 80. These responding Defendants deny the allegations in Paragraph 80 of Plaintiff's

1 Second Amended Complaint.

2 81. These responding Defendants deny the allegations in Paragraph 81 of Plaintiff's
3 Second Amended Complaint.

4 82. These responding Defendants deny the allegations in Paragraph 82 of Plaintiff's
5 Second Amended Complaint.

6 83. These responding Defendants deny the allegations in Paragraph 83 of Plaintiff's
7 Second Amended Complaint.

8 84. These responding Defendants deny the allegations in Paragraph 84 of Plaintiff's
9 Second Amended Complaint.

10 **SECOND CAUSE OF ACTION**
11 **(Breach of Fiduciary Duty Against All Defendants)**

12 85-89. Plaintiff's Second Cause of Action has been dismissed as against all Defendants
13 pursuant to this Court's Order filed April 9, 2019.

14 **THIRD CAUSE OF ACTION**
15 **(Conversion Against All Defendants)**

16 90. These responding Defendants repeat and re-allege their responses to each of the
17 preceding and succeeding paragraphs as though fully set forth herein.

18 91. These responding Defendants deny the allegations in Paragraph 91 of Plaintiff's
19 Second Amended Complaint.

20 92. These responding Defendants deny the allegations in Paragraph 92 of Plaintiff's
21 Second Amended Complaint.

22 93. These responding Defendants deny the allegations in Paragraph 93 of Plaintiff's
23 Second Amended Complaint.

24 94. These responding Defendants deny the allegations in Paragraph 94 of Plaintiff's
25 Second Amended Complaint.

26 **FOURTH CAUSE OF ACTION**
27 **(Civil Conspiracy Against All Defendants)**

28 95. These responding Defendants repeat and re-allege their responses to each of the

1 preceding and succeeding paragraphs as though fully set forth herein.

2 96. These responding Defendants deny the allegations in Paragraph 96 of Plaintiff's
3 Second Amended Complaint.

4 97. These responding Defendants deny the allegations in Paragraph 97 of Plaintiff's
5 Second Amended Complaint.

6 98. These responding Defendants deny the allegations in Paragraph 98 of Plaintiff's
7 Second Amended Complaint.

8 99. These responding Defendants deny the allegations in Paragraph 99 of Plaintiff's
9 Second Amended Complaint.

10 **FIFTH CAUSE OF ACTION**
11 **(Breach of Contract Against All Defendants EB5IA and LVDF)**

12 100. These responding Defendants repeat and re-allege their responses to each of the
13 preceding and succeeding paragraphs as though fully set forth herein.

14 101. These responding Defendants admit the allegations in Paragraph 101 of Plaintiff's
15 Second Amended Complaint.

16 102. These responding Defendants deny the allegations in Paragraph 102 of Plaintiff's
17 Second Amended Complaint.

18 103. These responding Defendants deny the allegations in Paragraph 103 of Plaintiff's
19 Second Amended Complaint.

20 104. These responding Defendants deny the allegations in Paragraph 104 of Plaintiff's
21 Second Amended Complaint.

22 105. These responding Defendants deny the allegations in Paragraph 105 of Plaintiff's
23 Second Amended Complaint.

24 106. These responding Defendants deny the allegations in Paragraph 106 of Plaintiff's
25 Second Amended Complaint.

26 **SIXTH CAUSE OF ACTION**
27 **(Breach of Implied Covenant of Good Faith and Fair Dealing -- Entity Defendants)**

28 Plaintiff's Sixth Cause of Action has been dismissed as against Defendant EB5IC pursuant to this Court's Order filed April 9, 2019.

1 107. These responding Defendants repeat and re-allege their responses to each of the
2 preceding and succeeding paragraphs as though fully set forth herein.

3 108. These responding Defendants admit the allegations in Paragraph 108 of Plaintiff's
4 Second Amended Complaint.

5 109. These responding Defendants admit the allegations in Paragraph 109 of Plaintiff's
6 Second Amended Complaint.

7 110. These responding Defendants admit the allegations in Paragraph 110 of Plaintiff's
8 Second Amended Complaint.

9 111. These responding Defendants deny the allegations in Paragraph 111 of Plaintiff's
10 Second Amended Complaint.

11 112. These responding Defendants deny the allegations in Paragraph 112 of Plaintiff's
12 Second Amended Complaint.

13 113. These responding Defendants deny the allegations in Paragraph 113 of Plaintiff's
14 Second Amended Complaint.

15 **SEVENTH CAUSE OF ACTION**
16 **(Tortious Breach of Implied Covenant of Good Faith and Fair Dealing**
17 **Against the Entity Defendants)**

18 114-121. Plaintiff's Seventh Cause of Action has been dismissed as against the Entity
19 Defendants pursuant to this Court's Order filed April 9, 2019.

20 **EIGHTH CAUSE OF ACTION**
21 **(Intentional Interference With Prospective Economic Advantage**
22 **Against the Entity Defendants and Defendant Dziubla)**

23 Plaintiff's Eighth Cause of Action has been dismissed as against the Entity Defendants EB5IC and
24 EB5IA pursuant to this Court's Order filed April 9, 2019. Therefore, Defendants Dziubla and LVD
25 Fund respond as follows:

26 122. These responding Defendants repeat and re-allege their responses to each of the
27 preceding and succeeding paragraphs as though fully set forth herein.

28 123. These responding Defendants lack sufficient information to admit or deny the
allegations in Paragraph 123 of Plaintiff's Second Amended Complaint and, therefore, deny the
same.

124. These responding Defendants deny the allegations in Paragraph 124 of Plaintiff's

1 Second Amended Complaint.

2 125. These responding Defendants deny the allegations in Paragraph 125 of Plaintiff's
3 Second Amended Complaint.

4 126. These responding Defendants deny the allegations in Paragraph 126 of Plaintiff's
5 Second Amended Complaint.

6 127. These responding Defendants deny the allegations in Paragraph 127 of Plaintiff's
7 Second Amended Complaint.

8 128. These responding Defendants deny the allegations in Paragraph 128 of Plaintiff's
9 Second Amended Complaint.

10 **NINTH CAUSE OF ACTION**
11 **(Unjust Enrichment Against All Defendants)**

12 129-135. Plaintiff's Ninth Cause of Action has been dismissed as against all Defendants
13 pursuant to this Court's Order filed April 9, 2019.

14 **TENTH CAUSE OF ACTION**
15 **(Negligent Misrepresentation Against all Defendants)**

16 Plaintiff's Tenth Cause of Action has been dismissed as against Defendants Stanwood, Fleming,
17 EB5IC, and LVDF pursuant to this Court's Order filed April 9, 2019. Therefore, Defendants EB5IA
18 and Dziubla respond as follows:

19 136. These responding Defendants repeat and re-allege their responses to each of the
20 preceding and succeeding paragraphs as though fully set forth herein.

21 137. These responding Defendants admit the allegations in Paragraph 137 of Plaintiff's
22 Second Amended Complaint.

23 138. These responding Defendants deny the allegations in Paragraph 138 of Plaintiff's
24 Second Amended Complaint.

25 139. These responding Defendants deny the allegations in Paragraph 139 of Plaintiff's
26 Second Amended Complaint.

27 140. These responding Defendants deny the allegations in Paragraph 140 of Plaintiff's
28 Second Amended Complaint.

1 141. These responding Defendants deny the allegations in Paragraph 141 of Plaintiff's
2 Second Amended Complaint.

3 142. These responding Defendants deny the allegations in Paragraph 142 of Plaintiff's
4 Second Amended Complaint.

5 143. These responding Defendants deny the allegations in Paragraph 143 of Plaintiff's
6 Second Amended Complaint.

7 144. These responding Defendants deny the allegations in Paragraph 144 of Plaintiff's
8 Second Amended Complaint.

9 145. These responding Defendants deny the allegations in Paragraph 145 of Plaintiff's
10 Second Amended Complaint.

11 **ELEVENTH CAUSE OF ACTION**
12 **(Negligence Against All Defendants)**

13 146-150. Plaintiff's Eleventh's Cause of Action has been dismissed as against all
14 Defendants pursuant to this Court's Order filed April 9, 2019.

15 **TWELFTH CAUSE OF ACTION**
16 **(Alter Ego Against All Defendants)**

17 151-160. Plaintiff's Twelfth Cause of Action has been dismissed as against all Defendants
18 pursuant to this Court's Order filed April 9, 2019.

19 These responding Defendants, LAS VEGAS DEVELOPMENT FUND LLC; EB5 IMPACT
20 CAPITAL REGIONAL CENTER LLC; EB5 IMPACT ADVISORS LLC, a dissolved Nevada
21 Limited Liability Company; ROBERT W. DZIUBLA; JON FLEMING; and LINDA STANWOOD,
22 by and through their counsel of record, HOGAN HULET PLLC, having fully and specifically
23 responded to each and every allegation set forth in Plaintiff's Second Amended Complaint, now
24 assert the following:

25 **AFFIRMATIVE DEFENSES**

26 **FIRST AFFIRMATIVE DEFENSE**

27 Plaintiff's Second Amended Complaint fails to state a claim for which relief can be granted
28 as against these responding Defendants.

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SECOND AFFIRMATIVE DEFENSE

These responding Defendants generally deny all liability and all allegations of negligence or wrongdoing.

THIRD AFFIRMATIVE DEFENSE

Any allegations or factual matters asserted by Plaintiff that are not specifically admitted are hereby denied.

FOURTH AFFIRMATIVE DEFENSE

The claims referred to in Plaintiff's Second Amended Complaint, and the resulting damage—if any—to Plaintiff, was proximately caused or contributed to by Plaintiff's own negligence and, as such, Plaintiff's negligence was greater than the negligence—if any—of these responding Defendants and therefore, Plaintiff's recovery should be barred or diminished.

FIFTH AFFIRMATIVE DEFENSE

If Plaintiff has been damaged as alleged, then said damages are the sole, direct, and proximate result of actions and/or inactions of other named parties and/or third parties not presently named herein over which these responding Defendants had no control.

SIXTH AFFIRMATIVE DEFENSE

These responding Defendants reserve the right to assert any and all defenses raised by any other party to this action.

SEVENTH AFFIRMATIVE DEFENSE

These responding Defendants reserve the right to amend their Answer and/or assert additional affirmative defenses based upon discovery as well as an investigation of the facts and circumstances concerning the alleged incident that is the subject of Plaintiff's Amended Complaint.

EIGHTH AFFIRMATIVE DEFENSE

As a separate and distinct affirmative defense, these responding Defendants allege that, to the extent that Plaintiff's Amended Complaint alleges violations of law, those alleged violations of law are the result of the conduct or omissions of persons or entities other than these responding Defendants.

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NINTH AFFIRMATIVE DEFENSE

Plaintiff is barred from asserting any claims against these responding Defendants because the alleged damages were the result of the intervening and/or superseding conduct of others.

TENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by the doctrine of laches and/or the statute of limitation.

ELEVENTH AFFIRMATIVE DEFENSE

These responding Defendants reserve the right to seek contribution and indemnity in the event that these responding Defendants deem it appropriate to do so.

TWELFTH AFFIRMATIVE DEFENSE

As a separate and distinct affirmative defense, these responding Defendants allege that, before the commencement of this action, these responding Defendants performed, satisfied, and discharged all duties and obligations they may have owed to Plaintiff.

THIRTEENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by the doctrine of unclean hands.

FOURTEENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred because Plaintiff was the first party to breach the contract and cannot maintain an action against the Defendants for a subsequent failure to perform.

FIFTEENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred because the alleged tortious act by Defendants was justified and/or privileged.

SIXTEENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred because all alleged injuries and damages, if any, were caused by the acts or omissions of Plaintiff.

SEVENTEENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred because Defendants complied with applicable statutes and with the requirements and regulations of the State of Nevada.

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FIRST AMENDED COUNTER CLAIM

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2 1. This First Amended Counterclaim stems from Front Sight’s misappropriation and
3 diversion of construction loan proceeds for the personal benefit of its principal, Ignatius Piazza, his
4 wife Jennifer Piazza, and beneficiaries of the VNV Trust Defendants, and Front Sight’s breach of
5 multiple material provisions of the Construction Loan Agreement (the “CLA”)¹, including its failure
6 to meet the construction schedule, material changes to the Project scope, failure to provide
7 government approved construction plans, failure to obtain Senior Debt, failure to meet its reporting
8 obligations to Lender under the CLA and EB-5 regulations, refusal to give Lender access to its
9 books and records, refusal to allow a site inspection and answer questions by Lender’s
10 representatives, failure to pay default interest, further encumbering the Property by selling securities,
11 and failure to pay Lender’s legal fees relating to enforcing Borrower to comply with the terms of the
12 CLA. Moreover, Borrower’s recent actions of delaying construction, refusing to grant Lender’s
13 representatives access to the property and concealing its books and records, raise serious questions
14 regarding Front Sight’s continued solvency (which is a required loan covenant) and thus, its ability
15 to complete the Project.

16 2. This First Amended Counterclaim is further based upon Counter Defendants entering
17 into a comprehensive scheme to defraud LVD Fund by falsely representing that Counter Defendant
18 Front Sight had entered into a legitimate and bona fide \$36,000,000 “Loan Agreement –
19 Construction Line of Credit” with Counter Defendant Morales Construction, Inc. (“Morales
20 Construction”), that would have provided sufficient capital to make substantial progress toward
21 completing the project. In reality, the “Loan Agreement” was a complete scam because all of the
22 Counter Defendants knew Morales was not capable of fulfilling its obligation to extend tens of
23 millions of dollars in credit, and none of the Counter Defendants ever intended to perform under the
24 Loan Agreement.

25 ///

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27 _____
28 ¹ “CLA” refers to the Construction Loan Agreement dated October 6, 2016, between Front Sight Management LLC (“Borrower”) and Las Vegas Development Fund LLC (“Lender”). (See Dziubla Decl., Ex. 3).

I. PARTIES

3. Counter Claimant LAS VEGAS DEVELOPMENT FUND LLC (hereafter “LVD Fund” or “Lender”) is a Nevada limited liability company with a principal place of business located in Nevada and has an interest and right in the Property through a certain Deed of Trust² that was by and between Front Sight and LVD FUND.

4. FRONT SIGHT MANAGEMENT LLC (hereinafter as “Front Sight” or “Borrower”) is a Nevada limited liability company with a principal place of business located in Clark County, Nevada.

5. Counter Claimant is informed and believes, and on that basis alleges, Counter Defendant VNV DYNASTY TRUST I is a Nevada statutory trust, Nevada business, family trust, or other irrevocable trust that functions as an entity and that may claim title and ownership interest in the Property. Counter Claimant is informed and believes, and on that basis alleges, Counter Defendant VNV DYNASTY TRUST I was organized and exists under the laws of Nevada and Counter Defendants IGNATIUS A. PIAZZA II and JENNIFER PIAZZA are trustees and/or beneficiaries of the VNV DYNASTY TRUST I.

6. Counter Claimant is informed and believes, and on that basis alleges, Counter Defendant VNV DYNASTY TRUST II is a Nevada statutory trust, Nevada business, family trust, or other irrevocable trust that functions as an entity and that may claim title and ownership interest in the Property. Counter Claimant is informed and believes, and on that basis alleges, Counter Defendant VNV DYNASTY TRUST II was organized and exists under the laws of Nevada and Counter Defendants IGNATIUS A. PIAZZA II and JENNIFER PIAZZA are trustees and/or beneficiaries of the VNV DYNASTY TRUST II. (Hereinafter, VNV DYNASTY TRUST I and VNV DYNASTY TRUST II are collectively referred to as the “VNV Trust Defendants” or “Trust Defendants”).

² “Deed of Trust” refers to the “Construction Deed of Trust, Security Agreement, Assignment of Leases and Rents, and Fixture Filing,” recorded in the official records of Nye County, Nevada, as “DOC #860867” on October 13, 2016, a copy of which is attached as Exhibit 1, filed herewith, as amended by the “First Amendment to Construction Deed of Trust, Security Agreement and Fixture Filing,” recorded in the official records of Nye County, Nevada, as “DOC #886510” on January 12, 2018, a copy of which is provided as Exhibit 2.

1 7. Counter Claimant is informed and believes, and on that basis alleges, that Counter
2 Defendant IGNATIUS A. PIAZZA II, ("Piazza"), is an individual who is, and at all times relevant
3 hereto was, a resident of Sonoma County, California. Piazza is the managing member, or otherwise
4 in control under another title, of Counter Defendant Front Sight Management, LLC and Trustee
5 and/or beneficiary of VNV Trust Defendants.

6 8. Counter Claimant is informed and believes, and on that basis alleges, that
7 DEFENDANT JENNIFER PIAZZA, is an individual who is, and at all times relevant hereto was, a
8 resident of Sonoma County, California, and is Trustee and/or beneficiary of VNV Trust Defendants.

9 9. Counter Defendant MORALES CONSTRUCTION, INC. ("MORALES
10 CONSTRUCTION") is a Nevada Corporation and licensed contractor with its principal place of
11 business in Pahrump, Nevada.

12 10. Counter Defendant ALL AMERICAN CONCRETE & MASONRY INC. ("ALL
13 AMERICAN CONCRETE") is a Nevada Corporation and licensed contractor with its principal
14 place of business in Pahrump, Nevada.

15 11. Counter Defendant TOP RANK BUILDERS INC. ("TOP RANK BUILDERS") is a
16 Nevada Corporation and licensed contractor with its principal place of business in Pahrump, Nevada.

17 12. Counter Claimant is informed and believes, and on such basis alleges, that Counter
18 Defendant EFRAIN RENE MORALES-MORENO ("MORALES") is, and at all times relevant was,
19 a resident of Nye County, Nevada, and the principal and chief executive officer of MORALES
20 CONSTRUCTION, ALL AMERICAN, and TOP RANK.

21 13. Counter Claimant is informed and believes, and on such basis alleges, that Counter
22 Defendant MICHAEL GENE MEACHER ("MEACHER") is, and at all times relevant, was a
23 resident of Nye County, Nevada, and the Vice President and Chief Operating Officer of Counter
24 Defendant FRONT SIGHT.

25 14. Upon information and belief, each of the Counter Defendants sued herein as ROE
26 Counter Defendants 1 through 10, inclusive, are beneficiaries or trustees of the Trust Defendants and
27 claim an interest in the Property or are responsible in some manner for the events and happenings
28 herein that Counter Claimant seeks to enjoin; that when the true names and capacities of such

1 defendants become known, Counter Claimant will ask leave of this Court to amend this counterclaim
2 to insert the true names, identities, and capacities together with proper charges and allegations.

3 15. Counter Claimant is informed and believes, and on that basis alleges, that Counter
4 Defendants Front Sight and the VNV Trust Defendants are influenced and governed by Counter
5 Defendant Ignatius Piazza, and they are so intertwined with one another as to be factually and
6 legally indistinguishable. As such, the adherence to an LLC, corporate, or trust fiction of separate
7 entities would, under the circumstances, sanction fraud and promote injustice.

8 16. As a result of Front Sight being the alter ego of Counter Defendant Ignatius Piazza,
9 Ignatius Piazza is personally liable for the liabilities of Front Sight regarding the allegations set forth
10 in this Counterclaim.

11 II. GENERAL ALLEGATIONS

12 17. The CLA was made to fund construction of the Front Sight Resort & Vacation Club
13 ("FS Resort") and an expansion of the facilities and infrastructure of the Front Sight Firearms
14 Training Institute (the "Training Facilities") located on a 550-acre site in Pahrump, Nevada (the
15 "Project"). The CLA dated October 6, 2016 (Exhibit 3) is the operative agreement for purposes of
16 determining Front Sight's obligations as the "Borrower," and the remedies available to LVD Fund as
17 the "Lender."

18 18. The "Project" is described as construction of the Front Sight Resort & Vacation Club
19 ("FSRVC") and an expansion of the facilities and infrastructure of the Front Sight Firearms Training
20 Institute ("FSFTI") (the "Facilities") located in a 550 acre site in Pahrump, Nevada. The Facilities
21 will include 102 timeshare residential units, up to 150 luxury timeshare RV pads, an 85,000 square
22 foot restaurant, retail, classroom, and office building (to be known as the Patriot Pavilion) and
23 related infrastructure and amenities, all of which will be located at One Front Sight Road, Pahrump,
24 Nevada 89041.

25 19. All of the loan funds came from foreign citizens participating in the Federal
26 Immigrant Investor Program, known as "EB-5." The EB 5 Immigrant Investor Program, which is
27 administered by the United States Citizenship and Immigration Services ("USCIS"), provides
28 certain immigrant investors, who can demonstrate that their investments are creating jobs in this

1 country, with a potential avenue to lawful permanent residency in the United States. The program
2 sets aside EB-5 visas for participants who invest in commercial enterprises approved by USCIS,
3 frequently administered by entities called "regional centers." Each investor is required to invest a
4 minimum of \$500,000 and, through the EB-5 Immigrant Investor Program, is anticipated to receive
5 permanent foreign resident status within the United States assuming compliance with the EB-5
6 program requirements and creation of 10 US jobs per investor. Material departures from the USCIS
7 approved plans for the Project, including delays in construction, and diversion of funds from the
8 Project to general corporate or personal uses, are all significant breaches of the CLA and potentially
9 jeopardize the immigration status of the EB-5 Investors.

10 20. According to the USCIS, the Immigrant Investor Program, also known as "EB-5,"
11 was created to stimulate the U.S. economy through job creation and capital investment from
12 immigrant investors by creating a new commercial enterprise or investing in a troubled business. In
13 this case, the immigrant investors are attempting to gain lawful permanent residence for themselves
14 and their families by participating in a Regional Center Pilot Program, which requires them to make
15 a capital investment of \$500,000, since this region is deemed to be a Targeted Employment Area
16 ("TEA"), i.e., "a rural area or an area that has experienced high unemployment of at least 150
17 percent of the national average." The new commercial enterprise must create or preserve 10 full time
18 jobs for qualifying U.S. workers within two years (or under certain circumstances, within a
19 reasonable time after the two year period) of the immigrant investor's admission to the United States
20 as a Conditional Permanent Resident (CPR).

21 21. The CLA, as well as the USCIS approved business plan and Confidential Offering
22 Memorandum that comply with both EB-5 legislation and U.S. securities laws and regulations,
23 specifically require that loan proceeds and disbursements be applied toward construction of the
24 Project and the creation of jobs. The CLA also includes a contractually agreed upon construction
25 schedule and construction budget that were specifically approved by the USCIS and must be
26 substantially complied with in order to meet the immigrant investors' obligations under the EB-5
27 Program.

28

1 22. Section 6.3 of the CLA (Exhibit 3) and Section 7.2(d) of the Deed of Trust (Exhibit 1)
2 specifically authorize Lender to take over and complete construction of the Project in accordance
3 with the USCIS’ approved plans and construction schedule in the event of certain defaults which
4 place timely completion of the project in jeopardy.

5 23. Pursuant to the terms of §6.1 of the CLA, each of the following, without limitation,
6 constitutes an Event of Default under the CLA:

7 “(a) Borrower shall default in any payment of principal or interest . . .

8 * * *

9 (c) Borrower shall default in the performance or observance of any
10 agreement, covenant or condition required to be performed or
11 observed by Borrower under the terms of this Agreement, or any
12 other Loan Document, other than a default described elsewhere in this
13 Section . . .

14 * * *

15 (j) A default occurs in the performance of Borrower's obligations in
16 any of Section 5.6, 5.7, 5.8, 5.10, 5.13, 5.16, 5.18, 5.19, 5.22, 5.23 or
17 5.24, hereof;

18 * * *

19 (m) Any failure by Borrower to timely deliver the EB-5 information,
20 which failure continues more than 5 days following notice of such
21 failure from Lender.”

22 24. In the event of default, Lender can, inter alia: suspend the obligation to make further
23 advances of funds (CLA §6.2(b)); foreclose on the Deed of Trust (CLA §6.2(e)); and ***“take over and
24 complete such construction in accordance with the Plans, with such changes therein as Lender
25 may, in its discretion, deem appropriate, all at the risk, cost and expense of Borrower.”*** (CLA
26 §6.3). [emphasis added]

27 **BORROWER’S BREACHES AND DEFAULT UNDER THE CLA**

28 **A. Breach Number 1: Improper Use of Loan Proceeds - CLA § 1.7(e)**

29 25. Section 1.7(e) of the CLA provides that “Borrower shall use the proceeds of the Loan
30 solely for the purpose of funding directly, or advancing to Affiliates to pay, the costs of the Project,
31 in accordance with the terms and conditions of this Agreement, as set forth in the Budget and the
32

1 Project documents submitted to, and approved by, USCIS.” However, in its October 30, 2018
2 prove-up to LVD Fund regarding EB-5 compliance, Front Sight revealed that although it has spent
3 all of the \$6,375,000 in loan proceeds since the initial disbursement in October 2016, only
4 approximately \$2,690,000 of the proceeds were actually spent on construction of the EB-5 project.

5 26. Counter Claimants are informed and believe, and thereon allege, that more than
6 \$3,675,000 of EB-5 loan proceeds have been diverted to fund matters that are not related to
7 completion of the approved EB-5 plan, such as payment of Front Sight’s general overhead expenses,
8 thereby severely prejudicing the EB-5 investors.

9 27. Counter Claimants are informed and believe, and thereon allege, that during the past two
10 years, while Front Sight has been using EB-5 (CLA) loan proceeds to pay its general overhead
11 operating costs, pay off a pre-existing loan for which Ignatius Piazza and Jennifer Piazza are
12 personal guarantors, and disburse multi-million shareholder distributions to Counter Defendants
13 Ignatius Piazza, Jennifer Piazza, and the VNV Trust Defendants.

14 **B. Breach Number 2: Failure to Provide Government Approved Plans-CLA §3.2(b)**

15 28. Section 3.2 (b)(I) of the CLA requires that, prior to the Commencement Date, Front
16 Sight provide LVD Fund with “Plans, in the form previously submitted to Lender, as finally
17 approved for construction by the Project Architect and the applicable Governmental Authority.”
18 (Exhibit 3, pg. 20). The “Commencement Date” for the Project is defined in the First Amendment to
19 Loan Agreement effective July 1, 2017 as “October 6, 2016.” (Exhibit 4). This is to include “a
20 schedule listing all Contractors, and primary contracts relating to the Project having a contract sum
21 in excess of \$250,000 for any such Contractor, and construction contracts, subcontracts and
22 schedules relating to the Project.” (Id. CLA §3.2(b)(ii)). In a letter dated August 28, 2018, Robert
23 Dziubla, on behalf of LVD Fund, gave notice to Front Sight that it was in default for failure to
24 provide construction plans and the related lists of contractors, licenses, agreements, and permits
25 relating to the construction as required under §§3.2(b)(I) and (ii) of the CLA. Front Sight remains in
26 default under these provisions of the CLA.

27 **C. Breach Number 3: Failure to Timely Complete Construction - CLA § 5.1**

28 29. Pursuant to Section 5.1 of the CLA, Front Sight was required to complete

1 construction by the “Completion Date” which is defined as “the date that is no later than thirty-six
2 (36) months from the Commencement Date.”(Exhibit 3 pg. 3). Pursuant to the First Amendment to
3 the Loan Agreement, the “Commencement Date” is defined as “October 4, 2016.” (Exhibit 4, §1).
4 Therefore, construction of the project must be completed on or before October 4, 2019.

5 30. Front Sight has explicitly acknowledged in writing that it is in default of this
6 requirement, warning LVD Fund in a letter dated August 25, 2018 that “. . . the foreclosure killed the
7 project when it was 18 months away from being completed.” Even by Counter Defendant Front
8 Sight’s written projection as of August 25, 2018, the Project would not be completed by the
9 contractual Completion Date of October 4, 2019, i.e., 36 months after the commencement date as
10 stated in the First Amendment to Loan Agreement.

11 31. This is a material event of Default, and it is particularly prejudicial to the EB-5
12 investors who risk losing their EB-5 benefits if the project is not completed in accordance with the
13 schedule approved by the USCIS.

14 **D. Breach Number 4: Material Change of Costs, Scope, or Timing of Work - CLA § 5.2**

15 32. Section 5.2 of the CLA states in pertinent part:

16 Borrower shall deliver to Lender revised, estimated costs of the Project,
17 showing changes in or variations from the original Estimated Construction
18 Cost Statement, as soon as such changes are known to Borrower. Borrower
19 shall deliver to Lender a revised construction schedule, if and when any
20 target date set forth therein has been delayed by twenty (20) consecutive
21 days or more, or when the aggregate of all such delays equals thirty (30)
22 days or more. Borrower shall not make or consent to any change or
23 modification in such Plans, contracts or subcontracts, and no work shall be
24 performed with respect to any such change or modification, without the
25 prior written consent of Lender, if (I) such change or modification would in
26 any material way alter the design or structure of the Project or change the
27 rentable area thereof in any way, or increase or decrease the Project cost by
28 \$250,000 or more (after taking into account cost savings and any insurance
proceeds of Borrower received by Lender) for any single change or
modification, or (ii) the aggregate amount of all changes and modifications
exceeds \$500,000 (after taking into account cost savings and any insurance
proceeds of Borrower received by Lender). Borrower shall promptly
furnish Lender with a copy of all changes or modifications in the Plans,
contracts or subcontracts for the Project prior to any Advance used to fund
such change or modification whether or not Lender's consent to such
change or modification is required hereby.”

1 33. Front Sight has made multiple material changes to the plans and schedule without
2 obtaining written consent from LVD Fund, including, inter alia, reducing the size of the “Patriot
3 Pavilion” from 85,000 square feet, as represented to USCIS, to approximately 25,000 - 30,000
4 square feet, while also modifying plans to eliminate foundations. Counter Claimants are informed
5 and believe, and thereon allege, that this change by Front Sight is a material change in the
6 construction plans, in breach of the CLA.

7 **E. Breach Number 5: Refusal to Comply Regarding Senior Debt - CLA § 5.27**

8 34. Under the CLA, Front Sight was required to obtain Senior Debt from a traditional
9 construction lender, originally by March 31, 2016 (Exhibit 3 at pg. 11 “Senior Debt” defined), then
10 was given an extension to December 31, 2017 (Exhibit 4 at ¶4), and then was given an extension to
11 June 30, 2018 (Exhibit 5 at ¶1). To date, Front Sight has not secured Senior Debt that meets the
12 requirements of the CLA.

13 **F. Breach Number 6: Failure to Provide Monthly Project Costs - CLA § 3.2(a)**

14 35. Front Sight has not delivered the required Monthly Evidence of Project Costs. “From
15 and after the date of the first Advance of the Loan, Borrower shall deliver to Lender on a monthly
16 basis evidence of the Project costs funded during the preceding month.” (CLA § 3.2(a)). Counter
17 Defendant Front Sight has not delivered a single monthly Project cost report.

18 **G. Breach Number 7: Failure to Notify of Event of Default - CLA § 5.10**

19 36. Section 5.10(d) of the CLA requires the Borrower to notify Lender of the occurrence
20 of an Event of Default. “Within five (5) Business Days after the occurrence of any event actually
21 known to Borrower which constitutes a Default or an Event of Default, notice of such occurrence,
22 together with a detailed statement of the steps being taken to cure such event, and the estimated date,
23 if known, on which such action will be taken.” Front Sight has failed to notify LVD Fund of either
24 (1) the existence of certain events of default; or (2) a detailed statement of the steps being taken to
25 cure the event of default.

26 **H. Breach Number 8: Refusal to Allow Inspection of Records - CLA § 5.4**

27 37. Section 5.4 of the CLA provides:
28

1 **Keeping of Records.** Borrower shall set up and maintain accurate
2 and complete books, accounts and records pertaining to the Project.
3 Borrower will permit representatives of Lender to have reasonable
4 access to and to inspect and copy such books, records and contracts
5 of Borrower and to inspect the Project and to discuss Borrower's
6 affairs, finances and accounts with any of its principal officers, all at
7 such times and as often as may reasonably be requested by Lender.

8 38. LVD Fund made a demand to Inspect the Books and Records by Notice of Default
9 and Letter dated July 30, 2018.

10 39. Front Sight explicitly refused to comply with this obligation under the CLA, as stated
11 in the letter from Ignatius Piazza dated August 20, 2018. It states "Borrower is not in breach; thus,
12 there will be no inspections. In the Notice; you have included a "Notice of Inspections" which
13 alleges that "[P]ursuant to articles 3.3 and 5.4 of the CLA, we hereby serve you notice that we and
14 our representatives will inspect the Project and your books and records on Monday, August 27." As
15 set forth above and below herein, we contend that Borrower is not in breach or default of any of its
16 obligations under the Loan Agreement; thus, **Borrower will not authorize any inspections
17 whatsoever by Lender or its representatives of the Project or its books and records on the
18 proposed date of August 27 [2018], or at any other time."**

19 40. The right of inspection with advance notice pursuant to §3.3 and §5.4 of the CLA is
20 not contingent on whether there is an Event of Default. Front Sight's refusal to permit the inspection
21 constitutes a separate Event of Default acknowledged in writing by Front Sight.

22 **I. Breach Number 9: Refusal to Allow Inspection of the Project - CLA § 3.3**

23 41. Section 3.3 of the CLA provides:

24 **Inspections:** Lender and its representatives shall have access to the
25 Project at all reasonable times and shall have the right to enter the
26 Project to conduct such inspections thereof as they shall deem
27 necessary or desirable for the protection of Lender's interests;
28 provided, however, that for so long as no Event of Default shall have
 occurred and be continuing, Lender shall provide to borrower prior
 to the notice of not less than seventy-two (72) hours of any such
 inspections and such inspection shall be subject to the rights of club
 members (i.e., owners of timeshare interests) and any tenants under
 any applicable leases."

1 42. As discussed in the section above, on July 30, 2018, LVD Fund made a demand to
2 Front Sight for permission to inspect the Project, with more than 72 hours notice, even though
3 Events of Default negated the need for advanced notice. In response, Front Sight explicitly refused
4 to comply with this obligation under the CLA, stating: **“Borrower will not authorize any
5 inspections whatsoever by Lender or its representatives of the Project or its books and records
6 on the proposed date of August 27 [2018], or at any other time.”**

7 43. This is a material breach of the CLA justifying court intervention because the right of
8 inspection is necessary for Lender to determine, inter alia, appropriate use of loan proceeds,
9 construction progress, and possible impairment of security, which is necessary for Lender to protect
10 its interests.

11 **J. Breach Number 10: Failure to Provide EB-5 Information - CLA § 1.7(f)**

12 44. In order to verify continuing eligibility for participation in the EB-5 Investor Program
13 with the USCIS, Front Sight was required to submit certain EB-5 information on a continuing basis
14 as a condition of the loan. “Borrower shall submit to Lender the EB-5 Information. Failure of
15 Borrower to use the proceeds of the Loan in accordance with the terms and conditions of this
16 Agreement or to provide the EB-5 Information shall be a default pursuant to Section 6.1.” (Exhibit
17 3). This obligation was further specified in the First Amendment to the CLA requiring “Borrower
18 [to] provide Lender with copies of major contracts, bank statements, receipts, invoices and cancelled
19 checks or credit card statements or other proof of payment reasonably acceptable to Lender that
20 document that Borrower has invested in the Project at least the amount of money as has been
21 disbursed by Lender to Borrower on or before the First Amendment Effective Date.” (Exhibit 4).

22 45. Front Sight has failed to provide the required EB-5 Information. It is necessary to
23 give Lender access to the information needed in order to meet its obligations to its EB-5 investors so
24 the investors don’t lose their investment and their path to citizenship.

25 **K. Breach Number 12: Transferring Assets to Related Parties - CLA § 5.18**

26 46. Section 5.18 of the CLA provides that: “Borrower shall not directly or indirectly,
27 prior to completion of all of the improvements or the Completion Date, (a) make any distribution of
28 money or property to any Related Party, or make or advance to any Related Party, or (b) make any

1 loan or advance to any Related Party, or . . . (d) pay any fees or other compensation . . . to itself or
2 to any Related Party, if any such payment in (a) through (d), inclusive, might adversely affect
3 Borrower’s ability to repay the loan in accordance with its terms . . .”

4 47. In violation of § 5.18, Counter Defendant Ignatius Piazza removed and converted
5 \$10,968,803 away from Front Sight in 2016-2017 (\$4,903,525 as income to Ignatius Piazza and the
6 VNV Trust Defendants and \$6,065,278 in “loans” from Front Sight). Then, in 2017-2018, Ignatius
7 Piazza removed and converted another \$7,505,895 out for himself and the VNV Trust Defendants
8 in 2017.

9 48. Counter Claimant LVD Fund is informed and believes that Ignatius Piazza has
10 transferred additional funds from Front Sight to himself, his wife Jennifer Piazza (either directly or
11 indirectly) and the VNV Trust Defendants in violation of §5.18, which have yet to be disclosed.

12 49. Counter Claimants are informed and believe, and thereon allege, that Counter
13 Defendants Ignatius Piazza and Jennifer Piazza—both individually, as Trustees of the VNV Trust
14 Defendants, and/or as beneficiaries of the VNV Trust Defendants—knew about the source of the
15 transferred funds, and that transferring such funds violated the CLA, and with such knowledge
16 endorsed and aided in the removal of funds from Front Sight, and directly benefitted from the funds
17 through the VNV Trust Defendants and by reduction in debts that Ignatius Piazza and Jennifer
18 Piazza had personally guaranteed.

19 50. Counter Defendants have now diverted out of Front Sight, for their personal benefit,
20 enough capital to have completed the Front Sight Resort Project well within the time constraints
21 approved by the USCIS for the EB-5 Project. By diverting profits generated by Front Sight’s
22 operations to themselves, their trusts, and using EB-5 investor funds to pay Front Sight’s operating
23 expenses and pre-existing loans, Counter Defendants Ignatius Piazza and Jennifer Piazza
24 misappropriated loan proceeds and endangered Front Sight’s solvency.

25 **L. Breach Number 11: Non Payment of Default Interest - CLA § 1.2**

26 51. Section 1.2 of the CLA provides that if there is an Event of Default, interest shall be
27 charged at the “Default Rate.” The “Default Rate” is defined as “the lesser of five percent (5%) per
28 annum in excess of the Loan Rate or the maximum lawful rate of interest which may be charged.”

1 (Exhibit 3, CLA, pg. 4, “Default Rate Defined.”) Because Front Sight is in default under multiple
2 provisions of the CLA as detailed above, the Default Rate provisions of Section 1.2 were properly
3 triggered.

4 52. Front Sight has failed and refused to pay the Default Rate despite the demand
5 therefore. As a result of failing to pay default interest rates, **Front Sight is in monetary default**
6 **under the terms of the CLA.**

7 **M. Breach Number 12: Non Payment of Legal Fees - CLA § 8.2**

8 53. Section 8.2(a) of the CLA provides that “Borrower agrees to pay and reimburse
9 Lender upon demand for all reasonable expenses paid or incurred by Lender (including reasonable
10 fees and expenses of legal counsel) in connection with the collection and enforcement of the Loan
11 Documents, or any of them.” This obligation was specifically reaffirmed in ¶7 of the First
12 Amendment to the Loan Agreement (Exhibit 4), with respect to failure to provide the EB-5
13 Information. LVD Fund has incurred legal fees in connection with the Notices of Default and has
14 made demand of payment therefore from Front Sight. To date, Front Sight has refused to pay such
15 fees and this constitutes a monetary default under §6.1(b) of the CLA. LVD Fund has also incurred
16 attorneys’ fees and costs in excess of \$625,000 in defense of this action and pursuing its rights and
17 remedies under the CLA and Deed of Trust, for which Front Sight is contractually liable.

18 **N. Breach Number 13: Wrongfully Encumbering the Property.**

19 54. Section 5.7 of the CLA provides that “[w]ithout the prior written consent of Lender,
20 Borrower shall not voluntarily or involuntarily agree to, cause, suffer or permit any sale,
21 conveyance, lease, mortgage, grant, lien, encumbrance, security interest, pledge, assignment or
22 transfer of: (a) the Project or any part or portion thereof, or (b) any ownership interest in Borrower,
23 direct or indirect, legal or equitable (including the issuance, sale, redemption, or repurchase of any
24 such interest, the distribution of treasury stock, or the payment of any indebtedness owed to
25 Borrower by any managers, subsidiaries, Affiliates or owners of equity interests or debentures).”

26 55. In breach of this provision of the CLA, Counter Defendants Front Sight and Ignatius
27 Piazza have been selling, and continue to sell, “credits,” “points,” “memberships,” “certificates,” and
28 other instruments and products, including the sale of unregistered securities, that create contingent

1 liabilities for Counter Defendant Front Sight and/or include the current or contingent rights to
2 convert said instruments directly or indirectly into ownership interests in Counter Defendant Front
3 Sight or the Project.

4 56. As a result of the multiple breaches outlined above, on January 4, 2019, LVD Fund
5 filed the “Notice of Breach, Default and Election to Sell Under the Deed of Trust” with the Nye
6 County Recorder (DOC #905512, attached hereto as Exhibit 6).

7 57. Counter Defendant Front Sight thereafter has failed to correct any of the previously
8 cited breaches and Events of Default under the CLA, and has further breached the CLA by failing to
9 provide Counter Claimant LVD Fund with financial statements within 75 days of the end of calendar
10 year 2018, as identified in § 5.10 of the CLA, despite Counter Claimant making the demand for said
11 financial statements by letter dated March 25, 2019.

12 **Material Misrepresentations Regarding the Morales Construction Line of Credit**

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

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

23 60. Counter Defendants carried out the fraudulent scheme with the intent that LVD Fund
24 would rely on this false appearance of access to credit and believe that the credit would in fact be
25 utilized for construction of the Project. Counter Defendants further intended that the fictitious loan
26 agreement would give LVD Fund a false sense of security so that it would release funds it was
27 withholding from Front Sight (pursuant to §3.1 of the CLA), and facilitate continued solicitation of
28 additional EB-5 investors by using the loan agreement to give an appearance that Front Sight was

1 putting more money into construction than it really was.

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

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

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

12 “Attached please find fully executed documents between Front Sight
13 Management and our three primary contractors. This Construction Line
14 of Credit and associated Promissory Note extends to Front Sight up to
15 \$36,000,000 in construction credit pursuant to the terms of the
16 agreements . . .

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

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

31 65. Rather than the construction funding coming from the Morales Entities pursuant to
32 the Loan Agreement, the Counter Defendants agreed that the funds were to come solely from LVD
33 Fund. The Loan Agreement was simply a ruse to lull LVD Fund into soliciting more EB-5 funds,
34

1 with the intent that the false appearance of Front Sight having a \$36 million line of credit would
2 result in a greater number of EB-5 investors coming forward.

3 **FIRST CAUSE OF ACTION**

4 **Fraud by Front Sight, Morales, Piazza, Meacher, Morales, and the Morales Entities**

5 67. Counter Claimant repeats and realleges each and every allegation contained in
6 paragraphs 1 through 66 of this Counterclaim as though set forth fully herein at length.

7 68. When Counter Defendants made the misrepresentations set forth above, they knew
8 them to be false.

9 69. Counter Defendants made the misrepresentations knowing that Counter Claimant and
10 members of the Class would rely on said misrepresentations.

11 70. LVD Fund did in fact rely on said misrepresentations to its detriment. Had LVD Fund
12 known the true facts, it would not have released the funds it was holding pursuant to §3.1 of the
13 CLA and would not have solicited additional EB-5 investors for the Front Sight Project.

14 71. As a direct and proximate result of the fraud and intentional misrepresentations made
15 by the Counter Defendants, Counter Claimant LVD Fund has sustained damages well in excess of
16 the fifteen thousand dollar (\$15,000) jurisdictional limit of this court.

17 72. The conduct of Counter Defendants, and each of them, as described herein, was
18 malicious, oppressive, and fraudulent under NRS 42.005, entitling Counter Claimant to an award of
19 punitive damages.

20 73. As a result of Counter Defendants' actions, Counter Claimant has been required to
21 retain the services of an attorney in order to pursue this claim against said Counter Defendants, and
22 each of them, and is therefore entitled to be compensated for any and all costs incurred in the
23 prosecution of this action, including without limitation, any and all reasonable costs and attorney's
24 fees.

25 74. LVD Fund also is entitled to attorney's fees under Section 8.2 of the Construction
26 Loan Agreement for enforcement of the contract.

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SECOND CAUSE OF ACTION
Fraudulent Transfers – NRS §§ 112.180 and 112.190
Against Front Sight, VNV Dynasty Trust I and VNV Dynasty Trust II

75. Counter Claimant repeats and realleges each and every allegation contained in paragraphs 1 through 74 of this Counterclaim as though set forth fully herein at length.

76. Pursuant to the CLA § 5.18, Front Sight was prohibited from making certain related party transactions or transfers if such transfers would impair the ability of Front Sight to repay the construction loan under the CLA.

77. Despite being insolvent at year end 2016, Front Sight made an undocumented “loan to shareholder” of in excess of \$6 million in FY 2016.

78. The “loan to shareholder” was in fact a disguised distribution of over \$6 million for the benefit of the shareholder.

79. From the date of closing of the CLA to the end of 2016, Front Sight made additional transfers to, or for the benefit of, Piazza in the approximate amount of \$2,230,000, all at a time when Front Sight was insolvent.

80. Front Sight made additional transfers to, or for the benefit of, Piazza in the approximate amount of \$7,713,985 in 2017, all at a time when Front Sight was insolvent.

81. Front Sight made additional transfers to, or for the benefit of, Piazza in the approximate amount of \$2,883,127 in 2018, all at a time when Front Sight was insolvent.

82. Front Sight made additional transfers to, or for the benefit of, Piazza in the approximate amount of \$1,484,831 in the first three quarters of 2019, all at a time when Front Sight was insolvent.

83. The above transactions were made with actual intent to hinder, delay, or defraud LVD Fund.

84. Front Sight engaged in the above transactions without receiving reasonably equivalent value in exchange for the transfer at a time when: (1) Front Sight was engaged in a transaction (the CLA and the Project) for which the remaining assets of Front Sight were unreasonably small in relation to the transaction; and (2) in which Front Sight intended to incur, or

1 reasonably should have believed it was incurring, debts that were beyond the ability of Front Sight to
2 pay when due. NRS 112.180.

3 85. The above transactions were: (a) to an insider; (b) the insider retained possession or
4 control of the transferred funds; (c) the transfers were unconsented to by LVD Fund despite the
5 obligations of CLA § 5.18; (d) the transfers were made shortly after Front Sight incurred a
6 substantial debt pursuant to the CLA; and (e) Front Sight was insolvent at the time the transfers were
7 made. NRS 112.180.

8 86. The above transfers are fraudulent transfers as to LVD Fund because they were made
9 after the obligation to LVD Fund was incurred and they were made without receiving a reasonably
10 equivalent value in exchange for the transfer or obligation and Front Sight was insolvent at the time
11 the transfers were made. NRS 112.190.

12 87. The above transfers are further fraudulent transfers as to LVD Fund because the
13 obligation to LVD Fund was incurred before the transfers were made and the transfers were to an
14 insider at a time when Front Sight was insolvent, and the insider (Piazza) knew that Front Sight was
15 insolvent.

16 88. Pursuant to NRS 112.210, LVD Fund seeks: (a) avoidance of the transfers and loan to
17 shareholder; (b) an attachment or garnishment against the asset transferred or other property of the
18 transferee pursuant to NRS 31.010 to 31.460, inclusive, and (c) subject to applicable principles of
19 equity and in accordance with applicable rules of civil procedure: (1) an injunction against further
20 disposition by the debtor or a transferee, or both, of the assets transferred or of other property; (2)
21 appointment of a receiver to take charge of the assets transferred or of other property of the
22 transferee; or (3) any other relief the circumstances may require.

23 **THIRD CAUSE OF ACTION**

24 **Intentional Interference with Contractual Relationships Against Ignatius Piazza,
25 Jennifer Piazza, and VNV Trust Defendants.**

26 89. Counter Claimant repeats and realleges each and every allegation contained in
27 paragraphs 1 through 88 of this Counterclaim as though set forth fully herein at length.

28 90. Front Sight and LVD Fund entered into a written Construction Loan Agreement (Ex.

1 3), along with a First Amendment in July 2017 (Ex. 4), and a Second Amendment in February 2018.
2 (Ex. 5).

3 91. Counter Defendants had knowledge of the valid contract or had reason to know of its
4 existence;

5 92. These Counter Defendants committed intentional acts intended or designed to disrupt
6 the contractual relationship or to cause the contracting party to breach the contract, including but not
7 limited to, inducing Front Sight to improperly use funds for the personal benefit of Counter
8 Defendants Ignatius Piazza, Jennifer Piazza, and VNV Trust Defendants.

9 93. Front Sight did in fact breach the contract as stated specifically above.

10 94. The breach was caused by the wrongful and unjustified conduct.

11 95. As a direct and proximate result of Counter Defendants' intentional acts to induce
12 Front Sight to breach the CLA, Counter Claimant sustained damages in the amount to be proven at
13 trial.

14 96. As a result of Counter Defendants' actions, Counter Claimant has been required to
15 retain the services of an attorney in order to pursue this claim against said Counter Defendants, and
16 each of them, and is therefore entitled to be compensated for any and all costs incurred in the
17 prosecution of this action, including without limitation, any and all reasonable costs and attorney's
18 fees.

19 **FOURTH CAUSE OF ACTION**

20 **Conversion Against Front Sight, Ignatius Piazza and Jennifer Piazza**

21 97. Counter Claimant repeats and realleges each and every allegation contained in
22 paragraphs 1 through 96 of this Counterclaim as though set forth fully herein at length.

23 98. Through these Counter Defendants' conduct described above, Counter Defendants
24 obtained Counter Claimants' property and have wrongfully asserted dominion over Counter
25 Claimant's property; to wit: misappropriating and spending the loan proceeds under the CLA for
26 purposes other than that for which it was intended.

27 99. Counter Defendants' wrongful conduct was in denial of, inconsistent with, and in
28 defiance of Counter Claimant's rights and title to its money and/or property.

1 100. As a result of Counter Defendants' actions, Counter Claimant has been required to
2 retain the services of an attorney in order to pursue this claim against said Counter Defendants, and
3 each of them, and is therefore entitled to be compensated for any and all costs incurred in the
4 prosecution of this action, including without limitation, any and all reasonable costs and attorney's
5 fees.

6 **FIFTH CAUSE OF ACTION**
7 **Civil Conspiracy Against All Counter Defendants**

8 101. Counter Claimant repeats and realleges each and every allegation contained in
9 paragraphs 1 through 100 of this Counterclaim as though set forth fully herein at length.

10 102. As set forth above, Counter Defendants Ignatius Piazza and Jennifer Piazza, both in
11 their individual capacity and in their capacity as Trustees and/or beneficiaries of the VNV Trust
12 Defendants, acted together in concert, in their individual capacities, to accomplish their unlawful
13 objectives for the purpose of harming Counter Claimant.

14 103. While acting in their individual capacities and in their capacity as Trustees and/or
15 beneficiaries of the VNV Trust Defendants, Ignatius Piazza and Jennifer Piazza conspired with Front
16 Sight and the VNV Trust Defendants, using Front Sight and VNV Trust Defendants to achieve their
17 unlawful objective of diverting monies from Front Sight that were needed to maintain Front Sight's
18 solvency and its ability to meet its obligations under the CLA regarding timely completion of the
19 Project and repayment of the loan, for their own individual advantage and benefit.

20 104. As a direct and proximate result of the Counter Defendants' acts, Counter Claimant
21 has been damaged in an amount to be proven at trial.

22 105. Counter Defendants' conduct was malicious, oppressive, and fraudulent under NRS
23 42.005, entitling Counter Claimant to an award of punitive damages.

24 106. As a result of Counter Defendants' actions, Counter Claimant has been required to
25 retain the services of an attorney in order to pursue this claim against said Counter Defendants, and
26 each of them, and is therefore entitled to be compensated for any and all costs incurred in the
27 prosecution of this action, including without limitation, any and all reasonable costs and attorney's
28 fees.

1 107. Based on Counter Defendants' conduct and the inequitable result of allowing the
2 transferred funds to remain in control of Counter Defendants, a constructive trust should be placed
3 on all monies transferred from Front Sight to the VNV Trust Defendants, as prayed for below.

4 **SIXTH CAUSE OF ACTION**
5 **Judicial Foreclosure Against Front Sight**

6 108. Counter Claimant repeats and realleges each and every allegation contained in
7 paragraphs 1 through 107 of this Counterclaim as though set forth fully herein at length.

8 109. In July 2017, Counter Defendant Front Sight for good and valuable consideration
9 executed and delivered the original Promissory Note to LVD Fund. On November 14, 2017, Counter
10 Defendant Front Sight executed and delivered the Amended and Restated Promissory Note to LVD
11 Fund. (Exhibit 7).

12 110. To secure the Note, on October 13, 2016, Counter Claimant LVD Fund recorded a
13 Deed of Trust titled "Construction Deed of Trust, Security Agreement, Assignment of Leases and
14 Rents, and Fixture Filing," in the official records of Nye County, Nevada, as "DOC #860867."
15 (Exhibit 1). On January 12, 2018, the "First Amendment to Construction Deed of Trust, Security
16 Agreement and Fixture Filing," was recorded in the official records of Nye County, Nevada, as
17 "DOC #886510." (Exhibit 2).

18 111. Counter Claimant LVD Fund is the owner and the holder of the note for value and has
19 performed all obligation under the Promissory Note.

20 112. The encumbered Property is now owned by and in possession of Counter Defendant
21 Front Sight.

22 113. Counter Defendants have breached the Deed of Trust as discussed in detail above,
23 which include but are not limited to: improper use of loan proceeds; failure to provide government
24 approved plans; material delays in construction; material changes to cost, scope, and timing of the
25 construction; refusal to comply with regarding Senior Debt; failure to provide monthly project costs;
26 failure to notify Lender of events of default; refusal to allow Lender to inspect books and records;
27 diverting Front Sight assets out of Front Sight for the benefit the individual Counter Defendants;
28 refusal to allow site inspections; failure to give Lender annual financial statements; and failure to

1 provide EB5 documentation.

2 114. As of January 4, 2019 there remained due and owing under the Note approximately
3 \$345,787.24 (excluding principal) as described in the Notice of Breach and Election to Sell Under
4 the Deed of Trust. (Exhibit 6). Counter Defendants reserve the right to amend this Counterclaim up
5 to the time of trial to include any additional amounts which become due and remain unpaid as a
6 result of additional damages caused by Counter Defendants.

7 115. Counter Claimant is entitled to an order directing a foreclosure sale in the subject
8 Property to abrogate any and all interest or claims that Counter Defendants might have in the subject
9 Property.

10 116. As a result of Counter Defendants' actions, Counter Claimant has been required to
11 retain the services of an attorney in order to pursue this claim against said Counter Defendants, and
12 each of them, and is therefore entitled to be compensated for any and all costs incurred in the
13 prosecution of this action, including without limitation, any and all reasonable costs and attorney's
14 fees.

15 **SEVENTH CAUSE OF ACTION**
16 **Waste Against Front Sight, Ignatius Piazza, and the VNV Trust Defendants**

17 117. Counter Claimant repeats and realleges each and every allegation contained in
18 paragraphs 1 through 116 of this Counterclaim as though set forth fully herein at length.

19 118. Counter Claimant LVD Fund (Lender) has a lien encumbering the subject Property.

20 119. Counter Defendant Front Sight (Borrower) has possession of the Property.

21 120. Waste was committed to the property in bad faith, impairing its value, including but
22 not limited to improperly using funds earmarked for development of the Property for the personal
23 benefit of Counter Defendants Ignatius Piazza, Jennifer Piazza, and the VNV Trust Defendants;
24 selling unregistered securities which create substantial legal and financial liability to Front Sight,
25 misappropriating Front Sight's assets for the personal benefit of Ignatius and Jennifer Piazza and
26 other beneficiaries of the VNV Trust Defendants, and selling various instruments which include
27 rights to Front Sight's resort property for highly reduced rates which further encumbers the Property,
28 either directly or indirectly.

1 121. As a direct and proximate result of the waste committed by Counter Defendants,
2 Counter Claimant has been injured in an amount to be proven at trial.

3 122. Counter Claimant is entitled to treble damages under NRS 40.150.

4 123. Counter Defendants' conduct was malicious, oppressive, and fraudulent under NRS
5 42.005, entitling Counter Claimant to an award of punitive damages.

6 124. As a result of Counter Defendants' actions, Counter Claimant has been required to
7 retain the services of an attorney in order to pursue this claim against said Counter Defendants, and
8 each of them, and is therefore entitled to be compensated for any and all costs incurred in the
9 prosecution of this action, including without limitation, any and all reasonable costs and attorney's
10 fees.

11 **PRAYER FOR RELIEF**

12 WHEREFORE, all material allegations of Plaintiff's Second Amended Complaint having
13 been denied, affirmative defenses having been stated, and counterclaims asserted, these responding
14 Defendants now pray as follows:

15 1. That Plaintiff take nothing by way of its Second Amended Complaint on file herein
16 and that the same be dismissed with prejudice;

17 2. For Judgment in favor of Counter Claimants against Counter Defendants, and each of
18 them, in an amount in excess of Fifteen Thousand Dollars (\$15,000.00), subject to proof at trial;

19 3 For appointment of a receiver over Counter Defendant Front Sight;

20 4. For an accounting from Counter Defendant Front Sight from October 6, 2016
21 forward, of any and all money paid and received, from all sources;

22 5. For an accounting from the Counter Defendant VNV Trusts from October 6, 2016
23 forward, of any and all money received from Counter Defendant Front Sight, and for all money
24 distributed by the Counter Defendant Trusts since October 6, 2016.

25 6. For imposition of a constructive trust over the money transferred by Counter
26 Defendant Front Sight to the VNV Trust Defendants in violation of Section 5.18 of the CLA,
27 because the retention of said funds by the Counter Defendant Trusts against Counter Claimant LVD
28 Fund's interests would be inequitable, and a constructive trust is essential to the effectuation of

1 justice, and that restrictions be placed on such funds that limit their use to paying for the costs and
2 expenses relating to completion of the Project.

3 7. For injunctive relief pursuant to NRS 33.010 or as otherwise permitted by law or
4 equity to enjoin Counter Defendant Front Sight from engaging in acts that further encumber
5 the Property and increase Counter Defendant Front Sight's actual or contingent liabilities in
6 violation of the CLA, including the sale of "credits," "points," "memberships," "certificates," or any
7 other instruments or products, including the sale of unregistered securities, that create contingent
8 liabilities for Counter Defendant Front Sight and/or include the current or contingent right to convert
9 said instruments directly or indirectly into ownership interests in Counter Defendant Front Sight or
10 the Project.

11 8. For punitive damages pursuant to NRS 42.005.

12 9. For disgorgement of the funds misappropriated by Counter Defendant Front Sight and
13 distributed to the other Counter Defendants;

14 10. For attorneys' fees and cost of suit incurred herein; and

15 11. For such other and further relief as the Court may deem just and proper.

16 DATED this 30th day of March, 2021.

17 HOGAN HULET PLLC

18
19 By: /s/ Kenneth E. Hogan
20 KENNETH E. HOGAN

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CERTIFICATE OF SERVICE

I certify that I am an employee of HOGAN HULET PLLC and that on the 30th day of March, 2021, service of the foregoing **DEFENDANTS’ ANSWER TO PLAINTIFF’S SECOND AMENDED COMPLAINT; AND UNREDACTED 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
CATHERINE HERNANDEZ
ALDRICH LAW FIRM, LTD.
7866 West Sahara Avenue
Las Vegas, Nevada 89117

Email:
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Attorneys for Plaintiff
FRONT SIGHT MANAGEMENT
LLC

/s/ Kenneth E. Hogan
Employee of HOGAN HULET PLLC