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**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA**

In re:

FRONT SIGHT MANAGEMENT, LLC

Debtor.

FRONT SIGHT MANAGEMENT, LLC,
A NEVADA LIMITED LIABILITY
COMPANY

v.

LAS VEGAS DEVELOPMENT FUND
LLC, A NEVADA LIMITED
LIABILITY COMPANY, et al.

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

Adversary Case No. 22-01116-abl

**OPPOSITION TO DEBTOR’S 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)**

The Law Office of Brian D. Shapiro, LLC, by and through its counsel, respectfully submits its OPPOSITION TO DEBTOR’S 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 (“**Opposition**”). This Opposition is based upon the attached points and authorities, the Declaration in Support, incorporates by reference the Oppositions filed by Las Vegas Development Fund, LLC and Jones Lovelock at

1 AECF No 88 and 90, the Declaration in Support at AECF No. 91, and any oral argument that this
2 Court may permit.¹

3
4 DATED 8-18-2022

/s/ Brian D. Shapiro, Esq.

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11 **MEMORANDUM OF POINTS AND AUTHORITIES**

12 **I. GENERAL OVERVIEW**

13 The Law Office of Brian D. Shapiro, LLC ("**Shapiro**") is post-petition bankruptcy counsel
14 for Las Vegas Development Fund and Robert Dzibula, individually. Despite Shapiro being
15 bankruptcy counsel, the Debtor's Motion is requesting in part, a court order confirming that
16 Shapiro violated the automatic stay by proceeding postpetition with a hearing in State Court on
17 the Terminating Sanctions Motion and with entry of the Terminating Sanctions Order. Within this
18 Opposition, Shapiro will only be responding to the relief specifically requested against the law
19 firm. Shapiro requests this Court to deny the Motion with prejudice.

20 **II. FACTS**

- 21
- 22 1. Brian D. Shapiro is the owner and managing member of the Law Office of Brian
23 D. Shapiro, LLC. See generally, Declaration in Support.
 - 24 2. Brian D. Shapiro is a Chapter 7, Chapter 11 and Subchapter V Trustee within the
25 State of Nevada and within that capacity BG Law LLP (and previously known as

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

1 Brutzkus Gubner Rozansky Seror Weber, LLP) represent him in the in the
2 bankruptcy cases of Lucky Dragon Hotel & Casino, LLC (18-10792) and
3 Generation Next (19-17921). Id.

4
5 3. On July 7, 2022, the Debtor, by and through Susan Seflin, Esq., as a partner of the
6 law firm of BG Law LLP, filed an “AMENDED MOTION FOR ENTRY OF AN
7 ORDER CONFIRMING TERMINATING SANCTIONS ORDER IS VOID AS
8 A VIOLATION OF THE AUTOMATIC STAY OR, IN THE ALTERNATIVE,
9 MOTION FOR RELIEF FROM ORDER PURSUANT TO FEDERAL RULE OF
10 CIVIL PROCEDURE 60(b)”. See, AECF No. 51 (“**Motion for Sanctions**”).

11 4. The Motion for Sanctions requested in part that the “Court an {sic} order: (i)
12 confirming the Law Office of Brian D. Shapiro (collectively, the “Stay
13 Violation Parties”) violated the automatic stay by proceeding postpetition with the
14 hearing on the Terminating Sanctions Motion and with entry of the Terminating
15 Sanctions Order.” Id. p. 4, l. 7-10.

16 5. In its conclusion in the Motion for Sanctions, BG Law requests “that the Court
17 enter an order: (i) confirming that the Law Office of Brian D. Shapiro violated
18 the automatic stay by proceeding postpetition with the hearing on the Terminating
19 Sanctions Motion in the State Court Action...”. Id. p. 21, l. 18-21.

20 6. In support of the Motion for Sanctions against Shapiro, the Debtor provided the
21 following facts:

- 22
- 23 • “On May 24, 2022, the Debtor filed a notice of bankruptcy filing in the State Court
24 Action. On May 25, 2022, LVDF and Jones Lovelock proceeded with the hearing
25 on the Terminating Sanctions Motion. **LVDF and Jones Lovelock** further
26 continued to prosecute the State Court Action by seeking entry of an order granting
27 the Terminating Sanctions Motion, which order was entered on June 22, 2022
28 (defined above as the “Terminating Sanctions Order”).” See, Motion p. 3, l. 4-8.
(emphasis added).

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- “[O]n May 25, 2022 (or one day after the petition date), Las Vegas Development Fund LLC (“LVDF”) and its state court counsel **Jones Lovelock**, both of whom had actual knowledge of the Debtor’s bankruptcy filing, proceeded with a hearing on LVDF’s Motion for Case Dispositive Sanctions on Order Shortening Time (the “Terminating Sanctions Motion”) against non-debtor affiliates and related entities (the “Non-Debtor Affiliates”). Id. p. 2, l. 18-22 (emphasis added).
 - By this Motion, the Debtor requests that the Court {sic] an order: (i) confirming that LVDF, Jones Lovelock, and the Law Office of Brian D. Shapiro (collectively, the “Stay Violation Parties”) violated the automatic stay by **proceeding postpetition with the hearing on the Terminating Sanctions Order and with entry of the Terminating Sanctions Order.**” Id. p. 4, l. 7-10. (emphasis added).
 - Neither LVDF, Jones Lovelock, **nor LVDF’s bankruptcy counsel the Law Office of Brian D. Shapiro** sought, let alone obtained, relief from the automatic stay from this Court prior to taking the aforementioned postpetition acts, notwithstanding that each of them had actual knowledge of the Debtor’s pending chapter 11 case and actual knowledge of the Debtor’s position that LVDF’s ongoing actions constituted stay violations. Id. p. 2-3, l. 27-3. (emphasis added).
 - On June 8, 2022, Mr. Shapiro responded to the June 7th Letter, stating that LVDF would not take any further action in the State Court Action on the fraudulent transfer, conversion, and waste claims (the “June 8th Letter”). Id. p. 9, l. 18-22.
7. The transcript of the hearing on the Motion for Terminating Sanctions reflects that Shapiro was not involved. A copy of the transcript is attached hereto as **Exhibit 1.**
8. The order on the terminating sanctions reflects that Shapiro was not involved nor submitted the proposed order. A copy of the order is attached hereto as **Exhibit 2.**

1 **III. LEGAL ARGUMENT**

2 **A. General Law on Section 362(a)**

3 Under Section 362(a), the automatic stay generally arises as soon as a bankruptcy petition
4 is filed. The automatic stay applies to all entities with respect to “the commencement or
5 continuation . . . of a judicial action or proceeding against the debtor that was or could have been
6 commenced” before the bankruptcy was filed. 11 U.S.C. § 362(a)(1). It also applies to “any act
7 to obtain possession of property of the estate . . . or to exercise control over property of the estate.”
8 11 U.S.C. § 362(a)(3). Because it arises “automatically” upon the filing of a bankruptcy petition,
9 the stay applies regardless of whether a party has actual knowledge or even notice that the
10 bankruptcy was filed. See generally 3 COLLIER ON BANKRUPTCY, ¶ 362.02 (Alan N. Resnick
11 and Henry J. Sommer, eds., 16th ed. 2014).

12 Actions taken in violation of the automatic stay are void as a matter of law. See *Gruntz v.*
13 *Cnty. of Los Angeles (In re Gruntz)*, 202 F.3d 1074, 1082 (9th Cir. 2000); *Eden Place, LLC v.*
14 *Perl (In re Perl)*, 513 B.R. 566, 572 (B.A.P. 9th Cir. 2014). Judicial proceedings in violation of
15 the automatic stay also are void. See, *Kalb v. Feuerstein*, 308 U.S. 433, 439 (1940); *Griffin v.*
16 *Wardrobe (In re Wardrobe)*, 559 F.3d 932, 934 (9th Cir. 2009). Parties who violate the automatic
17 stay have an affirmative duty to discontinue any actions, return any property, and otherwise undo
18 any consequences of the violation. See *Sternberg v. Johnson (In re Sternberg)*, 595 F.3d 937, 943
19 (9th Cir. 2010).

20 The burden of proving a violation of the automatic stay is on the debtor. See *Dawson v.*
21 *Washington Mut. Bank, F.A. (In re Dawson)*, 390 F.3d 1139, 1149 (9th Cir.2004); *Eskanos &*
22 *Adler, P.C. v. Roman (In re Roman)*, 283 B.R. 1, 7–8 (9th Cir. BAP 2002).

1 **B. Shapiro’s Actions Did Not Violate the Stay**

2 Absent from the Motion are any set of facts that would support a good faith argument that
3 Shapiro violated the stay. First, the Debtor concedes that Shapiro is LVDF’s bankruptcy counsel,
4 not state court counsel. Second, as reflected in the transcript and the court order, Shapiro was not
5 involved in the hearing on the motion for terminating sanctions and did not submit the order.
6 Third, the only other act asserted is that Shapiro, as bankruptcy counsel, sent correspondence to
7 Debtor’s counsel. Such correspondence is recited in full below:
8

9 I am in receipt of your letter dated June 7, 2022 and this letter responds to the same.

10 Your letter claims that all of LVDF’s Counterclaims are property of the Debtor’s estate. We
11 disagree. Without conceding nor waiving any of its rights, LVDF will not take any further action in
12 the State Court Case on the fraudulent transfer, conversion, and waste claims based upon the
13 Bankruptcy Estate’s contention that such claims are property of the Front Sight Management
14 Bankruptcy Estate (“Bankruptcy Estate”). However, your letter is incorrect as to the remaining
15 claims for relief. First, as to the alter ego “claim” referenced in your letter, LVDF has not asserted
16 an alter ego claim in the State Court Case; rather, that is a remedy. Nonetheless, LVDF will agree
17 not to take any further action in the State Court Case as to the assertion of an alter-ego remedy.
18 Conversely, the civil conspiracy and fraud claims asserted by LVDF are not property of the
19 Bankruptcy Estate, and the Bankruptcy Estate’s position on those claims is premised on an incorrect
20 reading of the Counterclaims. Put simply, both the civil conspiracy and fraud claims asserted by
21 LVDF relate to the Morales Construction Line of Credit (which LVDF contends is a sham) and the
22 Counterdefendants’ misrepresentations of the same; not any misappropriation of funds by the
23 Piazzas (individually and/or through the VNV Dynasty Trusts). Similarly, the intentional
24 interference with contractual relation claim is not property of the bankruptcy estate. Accordingly,
25 LVDF stands by the decision on the Motion for Case Dispositive Sanctions as to those claims.

26 Despite our disagreement, and as previously addressed in Ms. Champion’s June 3, 2022 letter, the
27 Bankruptcy Estate has a significant fraudulent transfer claim against Ignatius Piazza, as an individual,
28 Ignatius Piazza in his capacity as Trustee and/or beneficiary of VNV Dynast Trust I, Ignatius Piazza in
his capacity as Trustee and/or beneficiary of VNV Dynast Trust II, Jennifer Piazza, as an individual,
Jennifer Piazza, as Trustee and/or beneficiary of VNV Dynast Trust I, Jennifer Piazza, as Trustee and/or
beneficiary of VNV Dynast Trust II (collectively “Piazza Entities”). As you advised that you listened in
on the hearing on the motion for terminating sanctions, you are fully aware that the State Court was
inclined to enter an order for terminating sanctions with a finding of liability against the Piazza Entities.
Accordingly, the Bankruptcy Estate is aware that a finding of liability by virtue of the terminating
sanctions is immediately available for the Bankruptcy Estate.

To the extent that any claims are property of the Bankruptcy Estate, it is in **the best interest of the Bankruptcy Estate** to have such terminating sanctions and a finding of liability against the Piazza Entities granted by the State Court and an appropriate order entered. (emphasis in original).

Importantly, within the State Court Case, the Court entered a restraining order prohibiting the Piazza Entities from transferring any of its assets. Hence, the Bankruptcy Estate can capitalize on that order by

1 immediately moving forward against the Piazza Entities. Despite our disagreement as to the scope of the
2 automatic stay, my Client is agreeable to enter into a stipulation to terminate the stay for the limited
3 purpose of the Debtor and my Client prosecuting the motion for terminating sanctions against the Piazza
Entities.¹

4 The entry of an order of terminating sanctions and liabilities is right around the corner. Therefore, we
5 request that you ask the Debtor for authority for your firm to enter into such stipulation. I recognize that
6 Mr. Piazza, as Front Sight's principal, may be reluctant to enter into such stipulation as he, his wife and
7 his trusts are the targets of a finding of liability by virtue of the terminating sanctions. However, your firm,
8 as the proposed representative of the Bankruptcy Estate, has a fiduciary duty to the Bankruptcy Estate *not*
Mr. Piazza. As such, if the Bankruptcy Estate does not authorize your firm to proceed, then my Client has
authorized my office to file a motion to terminate the stay for that limited purpose. In that event, I request
that you consent to an order shortening time on the motion to terminate stay so it can be heard on the same
date and time as the final hearing on the DIP Motion.

9 I await your reply by June 9, 2022 at 4:00 p.m. If I do not hear back from you by such date and time, then
10 I will be filing such motion with a request for order shortening time noting your non- consent.

11 I wait your reply by June 9, 2022.

12
13 ¹ To be clear, LVDF does not concede that the automatic stay applies to all claims and counterclaims
14 asserted in the State Court Case. In particular, I note that Ms. Champion's letter made clear that LVDF's
15 position is that Front Sight's affirmative claims against LVDF and the other Defendants are not subject
to the automatic stay. Your letter does not address that point and therefore, we understand you are in
agreement.

16 See, AECF No. 44, p. 21-22.

17
18 The Debtor has completely failed to meet its burden of proof to assert that Shapiro violated
19 the stay. The act of LVDF's bankruptcy counsel, in the context of a bankruptcy proceeding,
20 advising the Debtor's bankruptcy counsel of his client's legal position, is not a violation of the
21 Stay.

22 Again, the Debtor has the burden of proving that Shapiro violated the Stay. There are no
23 set of facts contained within the Motion which provide any support that Shapiro violated the Stay.
24 Therefore, the request for this Court to make a judicial determination that Shapiro violated the
25 Stay should be denied with prejudice.

1 **IV. CONCLUSION**

2 Shapiro, as LVDF’s bankruptcy counsel, did not violate the Stay. Shapiro, as bankruptcy
3 counsel, has corresponded with the Debtor’s counsel and has made legal arguments within this
4 bankruptcy proceeding. Such actions do not constitute a violation of Section 362.

5 The Motion contains no set of facts that could give rise to any finding that Shapiro violated
6 the automatic stay. Rather, the Debtor admits that Shapiro is post-petition bankruptcy counsel
7 for LVDF and that State Court counsel for LVDF was Jones Lovelock. As bankruptcy counsel,
8 Shapiro did not make any appearance in the State Court Proceeding, did not argue for Terminating
9 Sanctions within the State Court and did not submit the proposed order. Indeed, the Debtor does
10 not assert that he did.

11 From Shapiro’s perspective, the Motion is frivolous and should be denied with prejudice.

12 DATED 8-17-2022

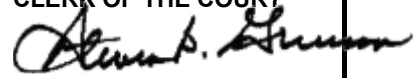
/s/ Brian D. Shapiro, Esq.

BRIAN D. SHAPIRO, ESQ.

Attorney for Law Office of Brian D. Shapiro, LLC

EXHIBIT 1

Electronically Filed
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Steven D. Grierson
CLERK OF THE COURT



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,

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

25 Dana L. Williams
Transcriber

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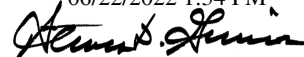
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EXHIBIT 2



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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 Defendant/Counterclaimant Las Vegas Development Fund, LLC (“LVDF”), Defendant Robert W.
2 Dziubla, Defendant Jon Fleming, Defendant Linda Stanwood, Defendant EB Impact Capital
3 Regional Center, LLC (“EB5IC”), Defendant EB5 Impact Advisors, LLC (“EB5IA”) (collectively,
4 the “Lender Parties”). Because Front Sight Management LLC (“Front Sight”) filed a petition for
5 bankruptcy on May 24, 2022, the Court did not hear argument on, or consider, that portion of the
6 Motion that relates to Front Sight or that is otherwise stayed based on Front Sight’s bankruptcy
7 petition.¹ Having considered the briefing and having heard oral argument of the parties through their
8 respective counsel with regard to the Counterdefendants, the Court now makes the following
9 Findings of Fact and Conclusions of Law.

10 Insofar as any conclusions of law is deemed to have been or include a finding of fact, such a
11 finding of fact is hereby included as a factual finding. Insofar as any finding of fact is deemed to
12 have been or to include a conclusion of law, such is included as a conclusion of law herein.

13 **FINDINGS OF FACT**

14 1. Since March 2021, the Lender Parties have attempted to depose the
15 Counterdefendants.

16 2. The Lender Parties repeatedly requested available dates for the Counterdefendants
17 from March 2021 through May 2022.

18 3. In response to those requests, the Counterdefendants sometimes ignored the Lender
19 Parties’ requests and failed to provide available dates for their depositions or sometimes provided
20 available dates (sometimes, months farther out than what was requested by the Lender Parties).

21 4. By the end of 2021, and after the Lender Parties repeatedly re-noticed the
22 Counterdefendants’ depositions at their request and/or after Counterdefendants’ motions for
23 protective orders to continue their deposition(s) were granted, the parties agreed that the Lender
24 Parties would depose the Counterdefendants the week of January 17, 2022—dates the
25

26
27 ¹ The Court’s ruling does not apply to LVDF’s second cause of action for fraudulent transfers because such
28 action is property of the bankruptcy estate of Front Sight Management, LLC. While the parties disagree as to whether
the Court’s ruling applies to LVDF’s fourth cause of action for conversion and seventh cause of action for waste, LVDF
has agreed not to take any action on those claims pending clarification from the bankruptcy court.

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1 Counterdefendants provided.

2 5. In December 2021, the Counterdefendants informed the Lender Parties that they did
3 not intend to appear for their depositions. The Lender Parties made clear that the Counterdefendants
4 did not have the option of simply failing to appear for depositions and informed the
5 Counterdefendants if they did not provide alternative dates, and simply failed to appear for
6 depositions, they would seek case dispositive sanctions.

7 6. At the January 12, 2022 hearing before the Court, the Lender Parties informed the
8 Court that the parties were having an issue with the depositions set for the week of January 17, 2022,
9 and the Court indicated that it could, and would, set an order to show cause hearing on January 24,
10 2022 if the parties could not resolve the issue.

11 7. Following the hearing, the parties agreed that the Lender Parties would re-notice the
12 Counterdefendants' depositions and, to allow the parties the time needed to complete depositions, to
13 extend discovery.

14 8. On January 21, 2022, the parties executed and submitted a Stipulation and Order to
15 the Court wherein the parties represented to the Court that they would work together to find "**firm**"
16 deposition dates for the Counterdefendants, Front Sight, and each of Front Sight's experts. The Court
17 relied on the parties' representations in granting their request to extend discovery and signed the
18 order to extend discovery and continue trial.

19 9. The parties subsequently agreed that the Lender Parties would re-notice the
20 Counterdefendants' depositions on the week of March 14, 2022—dates the Counterdefendants
21 provided.

22 10. A day before the Lender Parties' depositions of the Counterdefendants was to
23 commence, the parties reached a tentative settlement agreement.

24 11. On March 17, 2022, the parties appeared for a status check before the Court. At that
25 hearing, the parties agreed that they would work towards a final settlement, including working
26 through EB-5 issues, and the parties further represented that if they could not reach a final settlement,
27 the parties would proceed with the Counterdefendants' depositions.

28 12. That tentative settlement agreement was never formalized. The parties dispute the

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1 reason that settlement agreement was not reached.

2 13. On April 6, 2022, the parties executed and submitted a Stipulation and Order
3 Extending Discovery and Continuing Trial to the Court wherein the parties represented to the Court
4 discovery needed to be extended so that the Lender Parties could complete depositions and that the
5 depositions of Mrs. Piazza, Mr. Piazza, VNV I and VNV II had been set on “**firm**” settings of April
6 25, 2022, April 26, 2022, April 28, 2022, and May 11, 2022, respectively. The Court relied on the
7 parties’ representations in granting their request to extend discovery and signed the order to extend
8 discovery and continue trial.

9 14. Due to a scheduling conflict, the parties subsequently agreed that the Lender Parties
10 would depose VNV II on May 16, 2022—a date which the parties mutually agreed to.

11 15. Pursuant to the parties’ agreement, the Lender Parties subsequently re-noticed the
12 Counterdefendants depositions on April 25, 2022, Mrs. Piazza; April 26, 2022, Mr. Piazza; April 28,
13 2022 VNV I; and May 16, 2022, VNV II—the dates that the Counterdefendants provided and the
14 Lender Parties agreed to.

15 16. On April 22, 2022, the parties appeared before the Court for a status check. Counsel
16 for the Counterdefendants did not advise the Court or the Lender Parties during that hearing that Mrs.
17 Piazza (or any other party) would be unavailable for their duly noticed depositions that week.

18 17. Mrs. Piazza, Mr. Piazza, the Trustee(s) of VNV I, and the Trustee(s) of VNV II all
19 failed to appear for their duly noticed depositions.

20 18. At no point before the duly noticed depositions of the Counterdefendants did the
21 Counterdefendants ever provide the Lender Parties with a reason for their non-appearance, nor did
22 they advise the Lender Parties that something prevented them from appearing at their duly noticed
23 deposition.

24 19. Instead, each day of the Counterdefendants’ duly noticed depositions (and only with
25 the exception of VNV II), only minutes before the duly noticed depositions, counsel for the
26 Counterdefendants notified the Lender Parties, by email, that the Counterdefendants were not
27 appearing for their depositions. No explanation was provided for their failures to appear.

28 20. On May 13, 2022, after the Motion had been filed with the Court, the parties appeared

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1 before the Court on LVDF’s Application for Temporary Restraining Order and Motion for
2 Preliminary Injunction to Prevent Transfer, Waste, and Destruction of LVDF’s Security and
3 Collateral. At that hearing, the Lender Parties noted that Mrs. Piazza, Mr. Piazza, Front Sight, and
4 VNV I had all failed to appear at their duly noticed deposition. When asked by the Court, the
5 Counterdefendants conceded they had no explanation for Mrs. Piazza, Mr. Piazza, Front Sight and
6 VNV I’s failures to appear.

7 21. At no point during that hearing did the Counterdefendants advise the Court or the
8 Lender Parties that the Trustee(s) of VNV II would be unavailable for its duly noticed deposition that
9 coming Monday, May 16, 2022.

10 22. On May 16, 2022, the Trustee(s) of VNV II also failed to appear for its duly noticed
11 deposition without explanation.

12 23. At no point did any of the Counterdefendants file a motion for protective order to
13 prevent their duly noticed depositions from going forward.

14 24. At the hearing on the Motion, the Court repeatedly asked why the Counterdefendants
15 failed to appear at their depositions. No explanation or reason was given.

16 25. The Counterdefendants’ Opposition to the Motion provides no explanation
17 whatsoever for their failures to appear at duly noticed “firm date” depositions.

18 **CONCLUSIONS OF LAW**

19 1. A deponent must attend the deposition as noticed unless the deponent obtains a
20 protective order from the Court. NRCP 26(c); *see also Nationstar Mortg., LLC v. Flamingo Trails*
21 *No. 7 Landscape Maint. Ass’n*, 316 F.R.D. 327, 336 (D. Nev. 2016) (stating that the duty to appear
22 at a deposition “is relieved only by obtaining either a protective order or an order staying the
23 deposition pending resolution of the motion for protective order).

24 2. The Nevada Supreme Court has recognized that the district courts have the power to
25 sanction bad behavior; both pursuant to NRCP 37 and within the court’s equitable power. *See* NRCP
26 37; *see also e.g., Bahena v. Goodyear Tire & Rubber Co.*, 126 Nev. 243, 235 P.3d 592 (2010).

27 3. NRCP 37(d)(1)(A) specifically provides that the Court may sanction a party if that
28 party fails to attend his own deposition. Sanctions for a party’s failure to attend their own deposition

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1 includes, but is not limited to, striking pleadings in whole or in part, dismissing the action or
2 proceeding in whole or in part, or rendering a default judgment against the disobedient party. NRC
3 37(d)(3); *see also* NRC 37(b)(1).

4 4. The Nevada Supreme Court has repeatedly upheld sanctions for extreme discovery
5 abuses including, but not limited to, parties failing to appear for deposition without first obtaining a
6 protective order. *See Foster v. Dingwall*, 126 Nev. 56, 61, 227 P.3d 1042, 1046 (Nev. 2010); *see*
7 *also Bahena*, 126 Nev. 243, 235 P.3d 592.

8 5. When considering what discovery sanctions should be imposed, the Court considers
9 the following non-exhaustive factors: the degree of willfulness of the offending party, the extent to
10 which the non-offending party would be prejudiced by a lesser sanction, the severity of the sanction
11 of dismissal relative to the severity of the discovery abuse, whether any evidence has been irreparably
12 lost, the feasibility and fairness of alternative, less severe sanctions, the policy favoring adjudication
13 on the merits, whether sanctions unfairly operate to penalize a party for the misconduct of his or her
14 attorney, and the need to deter both the parties and future litigants from similar abuses. *Young v.*
15 *Johnny Ribeiro Building*, 106 Nev. 88, 787 P.2d 777 (1990).

16 6. At the hearing on the Motion, the Court repeatedly asked the Counterdefendants why
17 they did not appear for their duly noticed depositions and the Counterdefendants provided no
18 justification for the failures to appear. The Court finds that the Counterdefendants' failure to appear
19 for duly noticed depositions was willful and intentional.

20 7. Had the Counterdefendants had a justification for their failure to appear, they would
21 have provided that justification either in advance of the deposition, at the time of the depositions, or
22 at the hearing on the Motion. No justification, whatsoever, was provided.

23 8. In addition, the Court finds it notable that each of the Counterdefendants—Mrs.
24 Piazza, Mr. Piazza, VNV I, and VNV II—failed to appear for duly noticed depositions set on different
25 dates. If, hypothetically, something prevented Mrs. Piazza from appearing from her duly noticed
26 deposition on April 25, 2022, that would not have impacted Mr. Piazza's ability to appear on April
27 26, 2022, VNV I's ability to appear on April 28, 2022, and so forth.

28 9. In light of the Counterdefendants' failure to provide any explanation, and the fact that

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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.

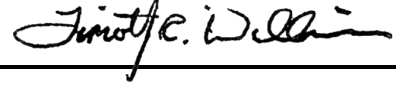
22 15. The Court has been previously advised, on multiple occasions, by the Lender Parties
23 that they anticipated the Counterdefendants would not appear for depositions. On each of those
24 occasions, the Court, while never previously presented with a motion for sanctions, has advised the
25 Counterdefendants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