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UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF NEVADA

In re: FRONT SIGHT MANAGEMENT LLC, Debtor.	Case No.: 22-11824-ABL Chapter 11
FRONT SIGHT MANAGEMENT, LLC, A NEVADA LIMITED LIABILITY COMPANY Plaintiff, v. LAS VEGAS DEVELOPMENT FUND LLC, A NEVADA LIMITED LIABILITY COMPANY, et al., Defendants.	Adv. Case No. 22-01116-ABL Date: September 1, 2022 Time: 9:30 a.m.

REPLY IN SUPPORT OF MOTION FOR RECONSIDERATION PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 54(B)

Dr. Ignatius Piazza ("Dr. Piazza"), Jennifer Piazza ("Jennifer"), VNV Dynasty Trust I, and VNV Dynasty Trust II (collectively, the "Trusts", and with Dr. and Jennifer Piazza, the "Movants"), by and through their counsel, the law firm of Garman Turner Gordon LLP, hereby submit their reply ("Reply") to the *Opposition to Motion for Reconsideration Pursuant to Federal*

Rule of Civil Procedure 54(b) [ECF No. 88] (the "Opposition") filed by Las Vegas Development Fund, LLC ("LVDF") on August 23, 2022.

This Reply is made and based upon the following Memorandum of Points and Authorities, the pleadings and other papers on file herein, judicial notice of which is hereby respectfully requested pursuant to Federal Rule of Evidence 201, and the argument of counsel entertained by the Court at the time of the hearing on the Motion.[1]

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

In reconsidering the Sanctions Order, the Court should not ignore the elephant in the room. The Sanctions Order is a punitive death sanction that effectively delivers LVDF an unopposed judgment for millions of dollars on findings of fraud and alter ego. The Sanctions Order pays no attention to the merits of this four-year dispute, or the consequences of terminating parties' claims and defenses. There is no more severe sanction and as such, jurisprudence cautions that it is only appropriate when necessary to cure prejudice and when lesser sanctions are insufficient. Thus, the Court must determine whether missing a deposition under the circumstances here warrants abandoning the pursuit of truth. As the circumstances do not warrant such a sanction, LVDF flounders and fails to establish the propriety of the sanction requested.

LVDF does not dispute, nor could it, that it does not actually want or need to take Movants' depositions. If it were otherwise, LVDF could have compelled the depositions and/or noticed the 2004 exams that this Court granted. Instead, LVDF only ever asks that default be taken, or in other words, that four years of litigation be nullified and judgment be summarily entered.

Likewise, LVDF does not dispute, nor could it, that any prejudice from the non-appearance at depositions on the eve of bankruptcy can be easily cured through an order compelling the depositions and/or an award of fees. Evidence has not been lost or destroyed, and LVDF cannot even begin to identify any palpable lasting or irreparable harm. Thus, without any actual prejudice,

[1] "Motion" as used herein shall refer to the *Motion for Reconsideration Pursuant to Federal Rule of Civil Procedure 54(B)* [ECF No. 72]. All capitalized undefined terms used herein shall be ascribed the definitions set forth in the Motion unless otherwise indicated.

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there is no purpose behind the sanction other than to punish.

Under these circumstances, no court without substantially more has stricken the pleadings of a party. Movants therefore respectfully submit that such a radical departure from the overwhelming majority of nationwide caselaw is not appropriate or warranted and that the Court should reconsider its Sanctions Order under Fed. R. Civ. P. 54 and enter ancillary necessary and appropriate relief that correctly balances the Movants' conduct with the lack of prejudice suffered by LVDF.

II.
LEGAL ARGUMENT AND ANALYSIS[2]

A. The Motion is Timely.

LVDF first argues that the Motion is untimely because it was not filed within the time frame provided under the state court rules. *See* Opposition, p. 13, l. 24 – p. 14, l. 10. However, as this case was removed from the State Court to this Court, the federal court rules, not the state court rules, apply. *See Kearns v. Ford Motor Co.*, 567 F.3d 1120, 1125 (9th Cir. 2009)*("*It is well-settled that the Federal Rules of Civil Procedure apply in federal court, "irrespective of the source of the subject matter jurisdiction, and irrespective of whether the substantive law at issue is state or federal*"*); *Willy v. Coastal Corp.*, 112 S. Ct. 1076, 1079 (1992); Fed. R. Civ. P. 81(c)("These rules apply to a civil action after it is removed from a state court"); *see also Sexton v. Spirit Airlines, Inc.*, 2022 WL 976914, at *1 (E.D. Cal. Mar. 31, 2022)(applying federal rules retroactively prior to an action's removal). Thus, any reference to the state court rules is misplaced.

The applicable federal rules are Fed. R. Civ. P. 54 and LR 59-1, which require that motions for reconsideration of interlocutory orders be brought "within a reasonable time" and that such motions may be granted at any time prior to the entry of a final order in the case. Here, the Motion

[2] LVDF spends the majority of the Opposition disputing the reasons for the earlier continued depositions (at times, in violation of Fed. R. Evid. 408) and misrepresenting purported prior warnings from the Court. Suffice it to say, the parties disagree on which party caused the earlier continuances and, as further discussed in footnote 13 herein, the prior warnings that were provided. Nonetheless, there can be no dispute that the continuances were agreed to and that there were no prior failures to attend. However, for the avoidance of doubt, by not responding point by point to the factual misstatements, the Movants are not conceding their accuracy or otherwise waiving their rights with respect thereto.

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was filed less than four weeks after entry of the Sanctions Order and removal of the State Court Case and therefore, within a "reasonable time." Even if that were not the case, this Court still has the inherent power to revise prior orders. Fed. R. Civ. P. 54 (empowering federal courts with the ability to "revise [any interlocutory order] ***at any time*** before the entry of a judgment."). Moreover, the Sanctions Order should have never been entered in the first place as doing so was a violation of the automatic stay. Debtor had already correctly filed a motion to determine that the Sanctions Order is void and, when granted, will render this Motion moon. As such, and especially as the Motion was only filed in an abundance of caution given the stay violation, the Motion is timely.

B. The Court Has Jurisdiction Over the Adversary Proceeding and Therefore, the Motion.

LVDF's argument about whether this Court has jurisdiction is misplaced in these pleadings. This Court will determine whether it has jurisdiction over this Adversary Proceeding in connection with the Remand Motion, which was heard (and the record closed) on July 25, 2022. LVDF's attempts to introduce new jurisdictional arguments after the Remand Motion was already taken under submission is improper and inappropriate.

Nonetheless, because it was raised by LVDF, the Movants are obligated to respond, albeit briefly. As set forth in the Movants' opposition to LVDF's motion to remand the Adversary Proceeding,[3] this Court has original and exclusive jurisdiction over the claims in this case because: the claims are property of the estate, they are core, and the claims are premised on purported fraudulent transfers. However, even if this Court does not find the claims to be core, the claims are certain to have an effect on Debtor's estate (after all, they are premised entirely on a loan the Debtor obtained and any liability of the Movants would be derivative) and therefore, are "related to" the Chapter 11 Case.

LVDF's newest jurisdictional argument appears to be based on *Pacor v. Higgins*, 743 F.2d 984 (3rd Cir. 1984). *See* Opposition, p. 15, ll. 6-22. Specifically, LVDF contends that because the

[3] By this reference, the Movants' incorporate the jurisdictional arguments made in their *Opposition to Motion to Remand* [ECF No. 64] (the "Remand Opposition") as if fully set forth herein.

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court in *Pacor* "concluded that the action did not fall within the 'related to' jurisdiction because '[a]t best, it is a mere precursor to the potential claim for identification by Pacor against Mansville,'"[4] that there is no related to jurisdiction here. LVDF's reliance on *Pacor* is confusing. As noted in the Opposition, this case is distinguishable from *Pacor* because, unlike in *Pacor,* the Debtor here was named in the underlying case, the claims are estate claims, and the entire State Court Action has been removed to this Court. Moreover, the claims upon which liability was purportedly established through the Sanctions Order (such as fraud and civil conspiracy) are the very same claims pending against the Debtor. Furthermore, LVDF also contends that Debtor "would likely be found to be in privity with its principal, Dr. Ignatius Piazza." *See* Opposition, p. 15, ll. 10-11. Thus, the outcome will determine "rights, liabilities, and course of action of the debtor" and fall directly within the defined "related to" jurisdiction under *Pacor.*[5]

In any event, the Court does not need to complete a separate jurisdictional analysis for this Motion. The Court will make that determination in connection with the Remand Motion. If the Court declines to remand the case, as it should, the Court clearly has jurisdiction over the parties before this Court, especially given that the claims are estate claims.

C. LVDF Ignores the Standard for Reconsideration Under Fed. R. Bank. P. 54(b) and LR 54-1, and Therefore, Fails to Refute the Movants' Arguments.

LVDF acknowledges that the Movants (properly) seek relief under Fed. R. Civ. P. 54(b) because, as LVDF concedes, "there is no final judgment as to the Movants." *See* Opposition, p. 15, ll. 27-28. Nonetheless, in its next breath, LVDF discusses the standards for reconsideration under Fed. R. Civ. P. 59 and 60, not Fed. R. Civ. P. 54. To be clear, under Fed. R. Civ. P. 54(b), an interlocutory judgment "may be revised at any time before the entry of a judgment adjudicating all the claims and all the parties' rights and liabilities," and under LR 59-1 and prevailing caselaw, "…the court possesses the inherent power to reconsider an interlocutory order for cause, so long

[4] *See* Opposition, p. 15, ll. 10-11.

[5] LVDF's conclusion that the Debtor is not impacted because, based on LVDF's own (flawed) analysis, it did not seek entry of judgment on bankruptcy estate claims in violation of the stay is incorrect. As set forth in the Remand Opposition, the claims asserted in the State Court Action are all estate claims or otherwise stayed by Section 362.

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as the court retains jurisdiction." LR 59-1(a). While the local rule further provides that:

> Reconsideration ***also may*** be appropriate if (1) there is newly discovered evidence that was not available when the original motion or response was filed, (2) the court committed clear error or the initial decision was manifestly unjust, or (3) if there is an intervening change in controlling law

these enumerations are an expansion, not a limit, on the Court's inherent power to reconsider orders for cause.

Ignoring the unambiguous rules, LVDF argues that "case law provides that reconsideration of an interlocutory order is ***only appropriate***" if one the three enumerations set forth above are met. *See Opposition*, p. 16, ll. 24-25 (emphasis added). Not only is this contrary to the rules, even the cases LVDF cites shows this is incorrect. To be sure, each case cited by LVDF in support of this proposition conducts an analysis of reconsideration of a final order under Fed. R. Civ. P. 59. *See Kona Enters., Inc. v. Estate of Bishop*, 229 F.3d 877, 890 (9th Cir. 2000)(addressing a final order for which reconsideration was sought pursuant to Fed. R. Civ. P. 59); *Hernandez v. IndyMac Ban*k, No. 2:12-cv-00369-MMD0CWH, 2017 U.S. Dist. LEXIS 64795, 2017 WL 1550233 (D. Nev. Apr. 28, 2017)(addressing reconsideration of a summary judgment under Fed. R. Civ, P. 59); *Sch. Dist. No. 1J, Multnomah Cnty., Or. v. ACandS, Inc*., 5 F.3d 1255, 1262 (9th Cir. 1993)(same); *Turner v. Burlington N. Santa Fe R. Co*, 228 F.3d 1058, 1063 (9th Cir. 2003)(reciting standard for reconsideration under Fed. R. Civ. P. 59). As the Sanctions Order is not to be reconsidered under Fed. R. Civ. P. 59, but rather Fed. R. Civ. P. 54(b), these cases are inapplicable.

Instead, and as stated in the Motion but ignored by LVDF, under the Fed. R. Civ. P. 54 standard, the Court "is free to reconsider and reverse its decision for any reason it deems sufficient, even in the absence of new evidence or an intervening change in or clarification of the substantive law." *Estate of Henson v. Wichita Cty*., 988 F. Supp. 2d 726, 730 (N.D. Tex. 2013) (quoting *Lavespere v. Niagara Mach. & Tool Works, Inc*., 910 F.2d 167, 185 (5th Cir. 1990)), *Washington v. Garcia*, 977 F. Supp. 1067, 1068–69 (S.D. Cal. 1997); *Sport Squeeze Inc. v. Pro-Innovative Concepts Inc*., No. 97-CV-115 TW (JFS), 1999 WL 696009, at *9 (S.D. Cal. June 24, 1999). As also set forth in the Motion, and as also ignored by LVDF, there is ample cause to reconsider the

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Sanctions Order: (1) it was issued in violation of the automatic stay; (2) it was issued based on Movants' one-time non-appearance at depositions before an order compelling attendance was sought or obtained and immediately prior to the filing of the bankruptcy,[6] (3) it was issued without the State Court discussing on the record or first imposing lesser available sanctions, and (4) it was issued without considering the lack of prejudice to LVDJ,[7] which will still need to have its claim heard before this Court. Furthermore, the unique procedural posture of this case gives rise to cause for reconsideration. Debtor has commenced the Chapter 11 Case (which is did *before* the Sanctions Order was heard), and all claims brought against the Movants are derivative and/or related to claims against Debtor, and therefore estate property and under the jurisdiction of this Court. The LVDF claim is also before the Court, and will be addressed on its merits. Given that the Movants can still be deposed, and LVDF's claim will be heard (which highlights the lack of prejudice to LVDF), the Sanctions Order will do nothing more than subvert justice and lead to inconsistent and incompatible judgments on the very same claims. Under the circumstances, cause exists to reconsider the Sanctions Order.

D. Even Under the (Incorrect) Standard Analyzed by LVDF, Reconsideration is Warranted.

Even if analyzed under the factors discussed in the Opposition, the Sanctions Order is still properly reconsidered as: (1) the court committed clear error and the initial decisions was manifestly unjust; (2) there is a change in controlling law (state law to federal law); and (3) as

[6] LVDF argues extensively that there was a court order setting deposition dates. *See generally,* Opposition, pp. 3. LVDF goes so far as contending that "the state court noted that one of the facts that weighed heaviest in its decision was that the depositions were set pursuant to a court order." However, this is intentionally misleading. The purported orders referenced by LVDF are orders extending discovery. *See* Ex. 1 to Opposition at APP 346-358 and 511-524. The orders were limited in scope, as they only reset discovery deadlines and trial dates. Thus, while there was a reference in the stipulation preceding the order setting deposition dates, the Court did not order "firm deposition dates." *See* Ex. 4 to the Opposition, p. 52, l. 9 - p. 54, l. 13.

[7] Even if the Court did properly consider prejudice based on the then pending trial date, there can be no question that the prejudice has been remedied given that LVDF has filed a proof of claim before this Court and the merits of the claim will have to be determined by this Court in the context of the Chapter 11 Case.

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permitted by the *Multnomah* case cited by LVDF,[8] "there [are] also [ ] other, highly unusual, circumstances warranting reconsideration."

1. The State Court Committed Clear Error and the Sanctions Order was Manifestly Unjust.

LVDF argues that the Court did not commit clear error because it considered the *Young* factors, which are the degree of willfulness of the offending party, the extent to which the non-offending party would be prejudiced by a lesser sanction, the severity of the sanction of dismissal relative to the severity of the discovery abuse, whether any evidence has been irreparably lost, the feasibility and fairness of alternative, less severe sanctions, the policy favoring adjudication on the merits, whether sanctions unfairly operate to penalize a party for the misconduct of his or her attorney, and the need to deter both the parties and future litigants from similar abuses. *Young v. Johnny Ribeiro Building*, 106 Nev. 88, 787 P.2d 777 (1990) (the "Young Factors"). However, even if the State Court did consider the *Young* Factors (which is arguable as they were not thoroughly discussed by the State Court at the hearing and, instead, shoehorned into the order drafted solely by LVDF and submitted to the State Court over Debtor's objection that it was a stay violation), they were applied incorrectly resulting in a manifestly unjust result. Critically, the Court was most focused on the lack of an explanation for the non-appearance, which the Court viewed as a degree of willfulness by the offending part, but largely appeared to ignore the remaining eight factors.

Of most importance, and as set forth in the Motion (but ignored by LVDF), "the most critical factor to be considered in case-dispositive sanctions is whether a party's discovery violations make it impossible for a court to be confident that the parties will ever have access to the true facts." *Connecticut Gen. Life Ins. Co.*, 482 F.3d at 1097; *O'Neal v. Las Vegas Metro. Police Dep't*, 2020 WL 8614249, at *3 (D. Nev. Nov. 3, 2020), *report and recommendation adopted*, 217CV02765APGEJY, 2021 WL 666959 (D. Nev. Feb. 19, 2021). LVDF has not explained why it cannot obtain the information it seeks, especially where LVDF obtained orders for 2004 exams

[8] *See* Opposition, p. 17, ll. 1-3.

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nearly three months ago but has chosen not to proceed. There is no prejudice to LVDF who will be required to (especially because it filed a proof of claim in this case) have its claim determined by this Court.

The proper avenue if LVDF truly wanted to obtain the information would have been, and should have been, to seek an order to compel the discovery. The clear remedy now is for LVDF to proceed with the 2004 examinations it has scheduled or proceed with depositions.[9] LVDF does not want to do so because LVDF knows that a trial on the merits would result in a drastically different outcome than a finding of liability. LVDF's actions (or its inactions) make clear that the Sanctions Order (obtained in violation of the stay) was nothing more than an attempt to avoid the merits. Simply, LVDF does not, and has never intended to, try this case on the merits,[10] and the Sanctions Order represents nothing more than LVDF's efforts to avoid doing so.

Furthermore, despite the self-serving statements LVDF placed in the Sanctions Order it submitted in violation of the stay (but which were not discussed by the Court at the hearing), the State Court did not properly evaluate lesser available sanctions.[11] Such an analysis includes: "[1] whether the court has considered lesser sanctions, [2] whether it tried them, [3] and whether it warned the recalcitrant party about the possibility of case-dispositive sanctions." *Connecticut Gen. Life Ins. Co. v. New Images of Beverly Hills*, 482 F.3d 1091, 1096 (9th Cir. 2007). The State Court simply did not indicate if it considered lesser sanctions, it certainly did not try them prior to issuing case terminating sanctions, and while the Court may have noted in a discussion on a different motion that failing to appear for deposition may result in "potential sanctions," at no point were

[9] LVDF argues that discovery is closed, but ignores the impact of the chapter 11 filing and automatic stay.

[10] Tellingly, LVDF goes out of its way to make clear that the likelihood of prevailing on the merits is irrelevant and should not be considered by this Court. *See* Opposition, p.21, ll. 1-10.

[11] While there was a comment in the order drafted by LVDF's counsel that lesser sanctions would not remedy the situation, because there was no discussion of it by the Court, it is unclear how that conclusion was, or could have been, reached.

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the Movants advised that case-dispositive sanctions[12] could be issued.

It is manifestly unjust that four years of active participation in the case is eliminated, and liability determined, based solely on the first-time failure to appear for a deposition on the eve of a bankruptcy filing (which, again, served to stay the State Court Action in its entirety), all while LVDF has chosen not to proceed with the examinations that it contends it needed so critically as to justify case terminating sanctions.

2. The Bankruptcy Filing Constitutes an Intervening Change in Controlling Law.

LVDF contends that there has not been an intervening change in controlling law, and that the Movants are improperly completing an analysis under federal law. *See* Opposition, p. 18, ll. 21-25). However, the Adversary Proceeding has been removed and it is federal law that now governs. *See Kearns*, 567 F.3d at 1125; Fed. R. Civ. P. 81(c). As made clear in the Motion, the Bankruptcy Court must now treat the Sanctions Order as its own and review whether reconsideration is appropriate under the laws that now govern the case. Thus, there has been an

[12] There was no prior warning of case terminating sanctions. LVDF seeks to convince this Court otherwise by taking discussions during hearings out of context. LVDF first suggests that there was an order to show cause hearing set if the Movants did not attend their depositions. *See* Opposition, p. 6. The actual discussion on the record demonstrates that LVDF asked: "is there a time available that we can set on an order to show cause if we aren't able to figure that out in the next 24 hours." *See* Ex.7 to the Opposition, p. 104, l. 23 – p. 105, l. 1. The "that" being referenced is whether dates would be provided before or after the close of discovery. *Id.* Notably, the parties did "figure it out" and no order to show cause was issued. LVDF also claims that the State Court warned the Movants that the failure to appear at their depositions would result in case terminating sanctions and that "the state court gave that explanation …because the Movants already indicated (on numerous occasions) that they may not appear for depositions." *See* Opposition, p. 7, ll. 7-12. However, contrary to the representation, the quote cited by LVDF was not an admonishment or warning to the Movants, and was without any reference to the Movants. Finally, while the Sanctions Order reads that "the Court, while never previously presented with a motion for sanctions, has advised the Counter defendants that a failure to appear for duly noticed depositions may result in ***potential sanctions***," *see* Order, p. 7, ¶ 15 (emphasis added). Nothing in the record indicates that the Court advised the Movants of case terminating sanctions prior the deposition being missed. But even if the Court advised that the law generally permits sanctions for missing a deposition, that pronouncement of law does not support case terminating sanctions after four years of litigation.

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intervening change in controlling law.

Federal law does not support a draconian penalty of eliminating four years of actively participating in a case based on what amounts to a one time non-appearance. This is demonstrated by the very cases that LVDF cites for the argument that federal courts strike pleadings "when [a] disobedient party willfully failed to attend their deposition after being ordered and admonished that a failure to resulted in severe sanctions":[13]

- *U.S. v. Uptergrove*, Case No. 1:06-cv-01640-AWI-GSA, 2008 U.S. Dist. LEXIS 22610, at *26-27 (E.D. Cal. March 7, 2008) – Defendants' answer stricken only after Defendants failed to appear, after several opportunities, at the Scheduling Conference; Defendants refused to accept service of the Court's orders; Defendants repeatedly filed pleadings noting that they were "sovereign members of the sovereign people of the sovereign republic of California," and that the Court therefore lacked jurisdiction; Defendants refused to accept service of discovery and never responded thereto; and the Court entered at least two orders (one after a motion to compel following an initial non-appearance at a deposition) that Defendants were required to appear on a date certain noting that failure to comply "may result in the imposition of additional sanctions, including, but not limited to, contempt, striking their answer, and an entry of default judgment."

- *In re Lebbos*, 385 B.R. 737, 754-755 (Bank. E.D. Cal. 2008): Default Judgment issued only after court first set aside earlier defaults issued months earlier; the court gave defendant multiple chances to retain substitute counsel for over six months after his counsel sought to withdraw; defendant filed multiple frivolous motions *pro se* seeking to dismiss case, transfer venue, and disqualify judge instead of filing long overdue answers; and defendant had repeatedly failed to produce documents.

- *In re Price*., APN 08-03155-KRH, 2009 Bankr. LEXIS 4457, at 11-12 (Bankr. E.D. Va. Apr. 13, 2009): Court issued terminating sanctions only after determining monetary penalties were insufficient because defendant was a chapter 7 debtor and did not have assets sufficient to pay penalties.

- *U.S. v. De Frantz*, 708 F.2d 310, 311-12 (7th Cir. 1983): Defendant failed to appear for deposition and government moved for default judgment. Court denied request providing an order requiring defendant to appear at a scheduled date. Only upon ignoring Court's order following initial request for terminating sanctions did court grant request for default judgment.

Thus, while severe sanctions are not unheard of in cases with extreme conduct, such as in the cases reference above, they are unheard of when a party fails to attend a deposition for the first

[13] *See* Opposition, fn. 11

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time, when lesser sanctions were not first imposed, where no prejudice will result to the other party, and where the party sanctioned has been actively participating in the case for four years.

3. The Circumstances of Entry of the Sanctions Order are Highly Unusual, Warranting Reconsideration.

LVDF concedes in its Opposition that, in addition to all of the other factors that courts can consider (even under LVDF's incorrect interpretation of the standard), that "there may also be other, highly unusual, circumstances warranting reconsideration." *See* Opposition, p. 17, ll. 1-2 (*quoting School Dist. No. IJ, Multnomah Cnty., Or. V. ACandS, Inc*., 5 F.3d 1255 (9th Cir. 1993). The circumstances by which the parties have found themselves before this Court on this Motion are nothing less than highly unusual. First, LVDF sought case terminating sanctions for a one-time non-appearance as its first avenue of recourse, ignoring entirely the typically required meet and confer and motion to compel requirements. Second, Debtor filed the Chapter 11 Case shortly after the non-appearance. Third, LVDF pursued its Sanctions Motion after Debtor's bankruptcy filing and in violation of the automatic stay. Fourth, LVDF submitted an order to the State Court notwithstanding that the Debtor repeatedly admonished LVDF that it was violating the stay. Fifth, LVDF obtained an order from this Court to conduct examinations of the Movants, which would permit LVDF to obtain the very information that it contends it was prejudiced for not having, and then, despite nearly three months having passed, has chosen to not conduct the examinations. Sixth, this Court will determine how much LVDF is owed and will conduct a hearing on the merits. As this Court will be required to hear the merits of LVDF's claim, and LVDF will still be obtaining the information in contends it has been prejudiced for not having, the Sanctions Order will serve no purpose other than to create inconsistent judgments and irreconcilable outcomes. Based on the unusual circumstances before this Court, reconsideration is warranted.

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III.
CONCLUSION

Despite litigating the case actively for over four-years, based on failures to attend their scheduled depositions one time, the State Court issued the most draconian of sanctions and struck the Movants' answers. This is an unfair penalty resulting in an unjust outcome. Therefore, there is sufficient cause to reconsider the Sanctions Order. Therefore, the Motion should be granted.

DATED this 25th day of August, 2022.

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