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9 **UNITED STATES BANKRUPTCY COURT**

10 **DISTRICT OF NEVADA**

11 In re

12 Front Sight Management LLC,

13 Front Sight Management LLC, a Nevada Limited
14 Liability Company,

15 Plaintiff,

16 v.

17 Las Vegas Development Fund LLC, a Nevada
18 limited liability company, et al.,

19 Defendants.

20 And all related counterclaims.
21

Case No. 22-11824-abl

Chapter 11

Adv. No. 22-01116-abl

Hearing Date: September 1, 2022

Hearing Time: 9:30 a.m.

22 **REPLY TO OPPOSITION TO AMENDED MOTION FOR ENTRY OF AN ORDER**
 23 **CONFIRMING TERMINATING SANCTIONS ORDER IS VOID AS A VIOLATION OF**
 24 **THE AUTOMATIC STAY OR, IN THE ALTERNATIVE, MOTION FOR RELIEF FROM**
 25 **ORDER PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 60(b) FILED BY LAS**
 26 **VEGAS DEVELOPMENT FUND AND JONES LOVELOCK**
 27
 28

1 Front Sight Management LLC, the chapter 11 debtor in possession and plaintiff herein (the
2 “Debtor”), hereby submits its reply (the “Reply”) to the opposition [Adv. ECF No. 90] (the
3 “Opposition”) filed by Las Vegas Development Funds, LLC (“LVDF”) and Jones Lovelock to the
4 Debtor’s *Amended Motion for Entry of an Order Confirming Terminating Sanctions Order is Void
5 as a Violation of the Automatic Stay or, in the Alternative, Motion for Relief from Order Pursuant to
6 Federal Rule of Civil Procedure 60(b)* [Adv. ECF No. 51] (the “Motion”).¹ In support of the Reply,
7 the Debtor respectfully represents as follows:

8 I. INTRODUCTION

9 In the Opposition, LVDF and Jones Lovelock attempt to hide behind a footnote in the
10 Terminating Sanctions Order, which they drafted, as proof that the order does not apply to the
11 Debtor or the claims that are property of the estate² and, thus, as evidence absolving them of a
12 willful violation of the automatic stay. However, “the Ninth Circuit has definitively held that the
13 applicability of the automatic stay is within the exclusive jurisdiction of the bankruptcy court.” *In re
14 Dingley*, 514 B.R. 591, 597 (B.A.P. 9th Cir. 2014), *aff’d on other grounds*, 852 F.3d 1143 (9th Cir.
15 2017); *In re Gruntz*, 202 F.3d 1074, 1083 (9th Cir. 2000) (“In sum, by virtue of the power vested in
16 them by Congress, the federal courts have the final authority to determine the scope and applicability
17 of the automatic stay.”). It is not for LVDF and Jones Lovelock to make this pronouncement, let
18 alone in a footnote with no analysis. As it is within this Court’s exclusive jurisdiction to determine
19 the scope and applicability of the automatic stay, LVDF and Jones Lovelock should have come to
20 this Court to seek relief from stay prior to continuing to prosecute the State Court Action. *In re
21 Achterberg*, 573 B.R. 819, 831–32 (Bankr. E.D. Cal. 2017) (quoting *Goichman v. Bloom (In re
22 Bloom)*, 875 F.2d 224, 227 (9th Cir. 1989)) (“Creditors who wish to take action against a debtor or
23 property that is subject to the automatic stay ‘[h]ave the burden of obtaining relief from the
24 automatic stay.’). Neither party did so.

25
26 ¹ All initial capitalized terms used herein but not otherwise defined shall have the same meaning
27 ascribed to them in the Motion.

28 ² It should be noted that Andrea Champion drafted the Terminating Sanctions Order—not the State
Court. Adv. ECF No. 91, ¶ 14.

1 Instead, relying solely on their own superficial and erroneous interpretation of the scope and
 2 applicability of the automatic stay, LVDF and Jones Lovelock continued to prosecute claims
 3 postpetition that are property of the estate notwithstanding the Debtor’s numerous written [Adv. ECF
 4 No. 44, Exhibit 7 and 9] and verbal demands that LVDF and Jones Lovelock remedy their stay
 5 violations. As if their blatant stay violations were not bad enough, LVDF and Jones Lovelock place
 6 the blame on the Debtor by arguing that the Debtor’s state court counsel and bankruptcy counsel did
 7 not object to the hearing on the Terminating Sanctions Motion going forward.³ This argument, even
 8 if it were true—which it is not as the Debtor has repeatedly demanded that LVDF and Jones
 9 Lovelock remedy their willful stay violations—in no way excuses their postpetition stay violations
 10 and is irrelevant as actions taken in violation of the stay are void. *See, Burton v. Infinity Capital*
 11 *Mgmt.*, 862 F.3d 740 (9th Cir. 2017). LVDF and Jones Lovelock even go as far to argue that the
 12 Debtor somehow violated the automatic stay. Opposition, 9:5-9.

13 No matter how LVDF and Jones Lovelock attempt to re-characterize their postpetition stay
 14 violations, caselaw is clear that “[i]t is not for the debtor, debtor-in-possession, Chapter 7 trustee, or
 15 Chapter 11 trustee to chase the creditor and correct the continuing violation and force the creditor to
 16 begrudgingly comply with federal law.” *Achterberg*, 573 B.R. at 831. **“The responsibility is**
 17 **placed on the creditor to address the continuing violation of the automatic stay because to**
 18 **place the burden on the debtor to undo the violation ‘would subject the debtor to the financial**
 19 **pressures the automatic stay was designed to temporally abate.’”** *Id.* (quoting *In re Johnston*,
 20 321 B.R. 262, 283 (D. Ariz. 2005) (citation omitted) (emphasis added)).

21 LVDF and Jones Lovelock misleadingly argue that the State Court cured any stay violation
 22 before entering the Terminating Sanctions Order. Opposition, 13, n.5. This could not be further
 23 from the truth. The Terminating Sanctions Order establishes liability against the Non-Debtor
 24 Affiliates on LVDF’s fraud claim, intentional interference with contractual relationship claim and
 25 civil conspiracy claim. Each of these claims is property of the Debtor’s estate and is predicated on
 26

27 ³ The Debtor notes that the transcript of the hearing [Adv. ECF No. 90, Exhibit 4, 1-3] belies this
 28 contention. The Debtor’s state court counsel clearly objected to the hearing proceeding based on the
 Debtor’s bankruptcy filing.

1 the *Debtor's* actions—not the individual defendants' actions or, alternatively, rests upon fraudulent
2 transfers to which the estate has exclusive standing to prosecute. For example, a finding that LVDF
3 has established liability as to the fraud claim assumes the truth of the allegations that the Debtor
4 committed fraud with respect to the procurement of the Morales Line of Credit, as that is what is
5 alleged, and that Dr. Piazza was merely acting as the agent and/or alter ego of the Debtor (and not in
6 his own individual capacity). Such a finding may have preclusive effect as to the Debtor, which is
7 particularly harmful to the Debtor as the State Court previously found based on the merits that the
8 Debtor did not improperly use loan proceeds and was not in breach of the construction loan from
9 LVDF. Likewise, both the intentional interference and conspiracy claims rest upon a finding that the
10 Debtor fraudulently transferred funds to the Non-Debtor Affiliates, which are the cornerstone of the
11 allegations in those claims and which claims were vested in the estate when the Debtor's bankruptcy
12 was filed. The Terminating Sanctions Order in contrast is not based on the merits of LVDF's
13 claims, yet essentially negates the State Court's prior conclusions.

14 In the Opposition, LVDF and Jones Lovelock do not address any of the caselaw presented in
15 the Motion, which establishes that all of LVDF's counterclaims are property of the estate. Instead,
16 LVDF and Jones Lovelock argue that the Court should ignore the majority of the allegations in the
17 Counterclaim and only look to the allegations regarding the Morales Line of Credit Allegations. As
18 discussed below, a simple comparison of the Initial Counterclaim and the Counterclaim, attached to
19 the concurrently filed Request for Judicial Notice as **Exhibits A and B**, respectively, reveal that the
20 allegations regarding the intentional interference with contractual relationship claim and civil
21 conspiracy claim are exactly the same notwithstanding the inclusion of the Morales Line of Credit
22 Allegations. Thus, LVDF's argument is disingenuous at best. The allegations in these causes of
23 action have nothing to do with the Morales Line of Credit Allegations—the Morales Line of Credit
24 is not even mentioned in the allegations. Rather, the causes of action are fraudulent transfer claims
25 plead under a different title. Indeed, the fifth cause of action for civil conspiracy seeks the
26 imposition of a constructive trust over the funds allegedly transferred to the Non-Debtor Affiliates
27 (again nothing to do with the Morales Line of Credit). Any funds recovered on these claims are
28

1 property of the Debtor's estate under Section 541(a)(3) as those funds would be "an interest that in
2 property that the trustee recovers under section . . . 550. . . ." 11 U.S.C. § 541(a)(3).

3 As discussed below, LVDF and Jones Lovelock willfully violated the automatic stay and
4 then sought to protect themselves by dropping a footnote in an order they drafted that has no force
5 and effect. LVDF and Jones Lovelock were informed of the Debtor's bankruptcy filing on the
6 Petition Date. Adv. ECF No. 91, ¶ 5. Despite their knowledge, involvement and active participation
7 in the Debtor's bankruptcy case, LVDF and Jones Lovelock continued postpetition to prosecute
8 claims that are property of the Debtor's bankruptcy estate. Accordingly, the Debtor respectfully
9 requests that the Court grant the Motion.

10 **II. THE CLAIMS THAT ARE SUBJECT TO THE TERMINATING SANCTIONS**
11 **ORDER ARE PROPERTY OF THE DEBTOR'S ESTATE AND SUBJECT TO THE**
12 **AUTOMATIC STAY**

13 Without addressing any of the caselaw presented in the Motion, LVDF and Jones Lovelock
14 summarily conclude that the fraud claim, intentional interference with contractual relationship claim
15 and civil conspiracy claim are not property of the estate because of the Morales Line of Credit
16 Allegations. The Debtor submits that, once the matter is framed correctly by review of LVDF's
17 Counterclaim on which the Terminating Sanctions Motion and Terminating Sanctions Order were
18 based, it is clear that not only did LVDF and Jones Lovelock violate the automatic stay but their
19 ongoing failure to remedy this violation is, itself, actionable.

20 As set forth in great detail in the Debtor's moving papers (and not repeated here) [Adv. ECF
21 No. 51, at ¶¶ 14-17, and Section IV.A], all of LVDF's claims are either property of the Debtor's
22 estate or, in the case of the fraud claim, necessarily require adjudication as to whether the Debtor
23 committed fraud and implicates issues of alter ego (which is a claim that belongs to the Debtor).
24 The crux of LVDF's Counterclaim is (i) that the Debtor breached the CLA, (ii) that the Debtor (not
25 any of the individual defendants in their individual capacity) entered into a purported sham loan with
26 Morales, and (iii) that the Debtor fraudulently transferred funds to the Non-Debtor Affiliates.

27 In order to succeed on the fraud claim, LVDF necessarily would have to demonstrate that the
28 Debtor committed fraud, as the alleged fraud of Dr. Piazza is not alleged in his individual capacity

1 but as an agent of the Debtor and/or in his capacity as the Debtor's alter ego. For example, the
2 allegations regarding the Morales Line of Credit state:

3 (i) Defendants entering into a comprehensive scheme to defraud LVD
4 Fund by falsely representing that Counter Defendant *Front Sight had entered into a*
5 legitimate and bona fide \$36,000,000 "Loan Agreement – Construction Line of
6 Credit" with Counter Defendant Morales Construction, Inc. ("Morales
7 Construction"), that would have provided sufficient capital to make substantial
8 progress toward completing the project. Opposition, 10:3-7 (emphasis added).

9 (ii) The scheme involved *Front Sight and the Morales Entities entering*
10 *into a fictitious \$36 million loan agreement to give the false appearance that Front*
11 *Sight had access to enough credit to complete the Project.* Opposition, 10:8-11
12 (emphasis added).

13 (iii) In furtherance of the fraudulent scheme, on October 31, 2017, *Front*
14 *Sight entered into the purported "Loan Agreement – Construction Line of Credit."*
15 Opposition, 10:17-19 (emphasis added).

16 (iv) Counter Defendants *Front Sight, Piazza, Meacher, Morales, and the*
17 *Morales Entities caused this "Loan Agreement" to be executed with no intent to ever*
18 *utilize the credit line.* Opposition, 10:20-22 (emphasis added).

19 (v) In return for the Morales Entities entering into the fraudulent Loan
20 Agreement, *Front Sight agreed to contract with the Morales Entities to perform*
21 *construction work on the Project.* Opposition, 11:3-5 (emphasis added).

22 (vi) The Loan Agreement was simply a ruse to lull LVD Fund into
23 soliciting more EB-5 funds, with the intent that the false appearance of *Front Sight*
24 *having a \$36 million line of credit* would result in a greater number of EB-5 investors
25 coming forward. Opposition, 11:6-9 (emphasis added).

26 None of the allegations involve Dr. Piazza acting in his individual capacity. Further, all of
27 the allegations involve the Debtor's conduct. LVDF does not explain how it could obtain a fraud
28 judgment against Dr. Piazza (who they claim is in privity with the Debtor) that would not implicate
malfeasance by the Debtor through one of its agents or, alternatively, how it would have standing to
prosecute claims based upon an alter ego theory. *See Henderson v. Buchanan (In re Western World*
Funding, Inc.), 52 B.R. 743, 784 (Bankr. D. Nev. 1985). In other words, LVDF has not actually
alleged that Dr. Piazza committed any fraud on his own behalf; rather, the fraud claim alleges that
the Debtor committed fraud through its agents. Clearly, that claim against the Debtor (and,
derivatively, its agents acting on its behalf) is subject to the automatic stay.

1 The application of the automatic stay to all of the other claims is even more obvious. Despite
2 LVDF and Jones Lovelock’s attempt to recast these claims, all have as their gravamen the allegation
3 that the Non-Debtor Affiliates siphoned money from the Debtor for their own benefit. They are all
4 disguised fraudulent transfer claims. “Where the injury alleged is primarily to the corporation, and
5 is injury to the plaintiff creditor only insofar as it decreases the assets of the corporation to which he
6 must look for satisfaction of his debt, then the suit is for a tort suffered by the corporation, and
7 properly brought by the trustee.” *AgriBioTech, Inc.*, 319 B.R. 216, 220-21 (D. Nev. 2004) (quoting
8 *In re Western World Funding, Inc.*, 52 B.R. 743, 775 (Bankr. D.Nev. 1985)).

9 To be clear, Debtor does not seek to recast LVDF’s claims for relief but merely to quote
10 them as pled by LVDF. Specifically, as to the third, fourth, fifth, sixth, and seventh causes of action
11 in the Counterclaim [Adv. ECF No. 45, Exhibit 4], LVDF alleges, in relevant part, as follows:

12 92. Dr. Piazza, Jennifer Piazza, and the Trust Defendants induced the Debtor “to
13 improperly use funds for the personal benefit of Counter Defendants Ignatius Piazza,
14 Jennifer Piazza, and VNV Trust Defendants.” (Counterclaim, ¶ 92);

15 98. The Debtor, Dr. Piazza, and Jennifer Piazza misappropriated the loan
16 proceeds and spent the monies “for purposes other than that for which it was
17 intended.” (Counterclaim, ¶ 98);

18 103. Dr. Piazza and Jennifer Piazza conspired with the Debtor and the Trust
19 Defendants, “using Front Sight and VNV Trust Defendants to achieve their unlawful
20 objective of diverting monies from Front Sight that were needed to maintain Front
21 Sight’s solvency and its ability to meet its obligations under the CLA regarding
22 timely completion of the Project and repayment of the loan, for their own individual
23 advantage and benefit.” (Counterclaim, ¶ 103).

24 107. “Based on Counter Defendants’ conduct and inequitable result of allowing the
25 transferred funds to remain in control of Counter Defendants, a constructive trust
26 should be placed on all monies transferred from Front Sight to the VNV Trust
27 Defendants.” (Counterclaim, ¶ 107);

28 113. The Debtor has breached the deed of trust in favor of LVDF by, among other
things, “improper use of loan proceeds; . . . diverting Front Sight assets out of Front
Sight for the benefit of the individual Counter Defendants. . . .”

120. The Debtor, Dr. Piazza, and the Trust Defendants committed corporate waste
by “improperly using funds earmarked for development of the Property for the
personal benefit of Counter Defendants Ignatius Piazza, Jennifer Piazza, and the
VNV Trust Defendants; selling unregistered securities which create substantial legal
and financial liability to Front Sight, misappropriating Front Sight’s assets for the
personal benefit of Ignatius and Jennifer Piazza and other beneficiaries of the VNV

1 Trust Defendants, and selling various instruments which include rights to Front
 2 Sight’s resort property for highly reduced rates which further encumbers the
 Property.”

3 Request for Judicial Notice [Adv. ECF No. 45], at Exhibit 4 (attaching Defendants’ Answer to
 4 Plaintiff’s Counterclaim.

5 Further to this point, the allegations regarding the third cause of action and fifth cause of
 6 action in the Initial Counterclaim and Counterclaim are exactly the same and have nothing to do with
 7 the Morales Line of Credit Allegations. For example, the Initial Counterclaim alleged intentional
 8 interference with contractual relationship based on the Debtor’s alleged breaches of the CLA,
 9 including improper use of loan proceeds. The allegations in the Counterclaim, notwithstanding the
 10 addition of the Morales Line of Credit Allegations, are exactly the same as in the Initial
 11 Counterclaim:

Initial Counterclaim (RJN, Exh. A)	Counterclaim (RJN, Exh. B)
67. Counter Claimant repeats and realleges each and every allegation contained in paragraphs 1 through 66 of this Counterclaim as though set forth fully herein at length.	89. Counter Claimant repeats and realleges each and every allegation contained in paragraphs 1 through 88 of this Counterclaim as though set forth fully herein at length.
68. Front Sight and LVD Fund entered into a written Construction Loan Agreement (Ex. 3), along with a First Amendment in July 2017 (Ex. 4), and a Second Amendment in February 2018. (Ex. 5).	90. Front Sight and LVD Fund entered into a written Construction Loan Agreement (Ex. 3), along with a First Amendment in July 2017 (Ex. 4), and a Second Amendment in February 2018. (Ex. 5).
69. Counter Defendants had knowledge of the valid contract or had reason to know of its existence;	91. Counter Defendants had knowledge of the valid contract or had reason to know of its existence;
70. These Counter Defendants committed intentional acts intended or designed to disrupt the contractual relationship or to cause the contracting party to breach the contract, including but not limited to, inducing Front Sight to improperly use funds for the personal benefit of Counter Defendants Ignatius Piazza, Jennifer Piazza, and VNV Trust Defendants.	92. These Counter Defendants committed intentional acts intended or designed to disrupt the contractual relationship or to cause the contracting party to breach the contract, including but not limited to, inducing Front Sight to improperly use funds for the personal benefit of Counter Defendants Ignatius Piazza, Jennifer Piazza, and VNV Trust Defendants.
71. Front Sight did in fact breach the contract as stated specifically above.	93. Front Sight did in fact breach the contract as stated specifically above.
72. The breach was caused by the wrongful and unjustified conduct;	94. The breach was caused by the wrongful and unjustified conduct.

Initial Counterclaim (RJN, Exh. A)	Counterclaim (RJN, Exh. B)
73. As a direct and proximate result of Counter Defendants' intentional acts to induce Front Sight to breach the CLA, Counter Claimant sustained damages in the amount to be proven at trial.	95. As a direct and proximate result of Counter Defendants' intentional acts to induce Front Sight to breach the CLA, Counter Claimant sustained damages in the amount to be proven at trial.
74. As a result of Counter Defendants' actions, Counter Claimant has been required to retain the services of an attorney in order to pursue this claim against said Counter Defendants, and each of them, and is therefore entitled to be compensated for any and all costs incurred in the prosecution of this action, including without limitation, any and all reasonable costs and attorney's fees.	96. As a result of Counter Defendants' actions, Counter Claimant has been required to retain the services of an attorney in order to pursue this claim against said Counter Defendants, and each of them, and is therefore entitled to be compensated for any and all costs incurred in the prosecution of this action, including without limitation, any and all reasonable costs and attorney's fees.
The same is true for the fifth cause of action for civil conspiracy:	
Initial Counterclaim (RJN, Exh. A)	Counterclaim (RJN, Exh. B)
79. Counter Claimant repeats and realleges each and every allegation contained in paragraphs 1 through 78 of this Counterclaim as though set forth fully herein at length.	101. Counter Claimant repeats and realleges each and every allegation contained in paragraphs 1 through 100 of this Counterclaim as though set forth fully herein at length.
80. As set forth above, Counter Defendants Ignatius Piazza and Jennifer Piazza, both in their individual capacity and in their capacity as Trustees and/or beneficiaries of the VNV Trust Defendants, acted together in concert, in their individual capacities, to accomplish their unlawful objectives for the purpose of harming Counter Claimant.	102. As set forth above, Counter Defendants Ignatius Piazza and Jennifer Piazza, both in their individual capacity and in their capacity as Trustees and/or beneficiaries of the VNV Trust Defendants, acted together in concert, in their individual capacities, to accomplish their unlawful objectives for the purpose of harming Counter Claimant.
81. While acting in their individual capacities and in their capacity as Trustees and/or beneficiaries of the VNV Trust Defendants, Ignatius Piazza and Jennifer Piazza conspired with Front Sight and the VNV Trust Defendants, using Front Sight and VNV Trust Defendants to achieve their unlawful objective of diverting monies from Front Sight that were needed to maintain Front Sight's solvency and its ability to meet its obligations under the CLA regarding timely completion of the Project and repayment of the loan, for their own individual advantage and benefit.	103. While acting in their individual capacities and in their capacity as Trustees and/or beneficiaries of the VNV Trust Defendants, Ignatius Piazza and Jennifer Piazza conspired with Front Sight and the VNV Trust Defendants, using Front Sight and VNV Trust Defendants to achieve their unlawful objective of diverting monies from Front Sight that were needed to maintain Front Sight's solvency and its ability to meet its obligations under the CLA regarding timely completion of the Project and repayment of the loan, for their own individual advantage and benefit.
82. As a direct and proximate result of the Counter Defendants' acts, Counter Claimant has been damaged in an amount to be proven	104. As a direct and proximate result of the Counter Defendants' acts, Counter Claimant has been damaged in an amount to be proven at trial.

Initial Counterclaim (RJN, Exh. A)	Counterclaim (RJN, Exh. B)
at trial.	
83. Counter Defendants’ conduct was malicious, oppressive, and fraudulent under NRS 42.005, entitling Counter Claimant to an award of punitive damages.	105. Counter Defendants’ conduct was malicious, oppressive, and fraudulent under NRS 42.005, entitling Counter Claimant to an award of punitive damages.
84. As a result of Counter Defendants’ actions, Counter Claimant has been required to retain the services of an attorney in order to pursue this claim against said Counter Defendants, and each of them, and is therefore entitled to be compensated for any and all costs incurred in the prosecution of this action, including without limitation, any and all reasonable costs and attorney’s fees.	106. As a result of Counter Defendants’ actions, Counter Claimant has been required to retain the services of an attorney in order to pursue this claim against said Counter Defendants, and each of them, and is therefore entitled to be compensated for any and all costs incurred in the prosecution of this action, including without limitation, any and all reasonable costs and attorney’s fees.
85. Based on Counter Defendants’ conduct and the inequitable result of allowing the transferred funds to remain in control of Counter Defendants, a constructive trust should be placed on all monies transferred from Front Sight to the VNV Trust Defendants, as prayed for below.	107. Based on Counter Defendants’ conduct and the inequitable result of allowing the transferred funds to remain in control of Counter Defendants, a constructive trust should be placed on all monies transferred from Front Sight to the VNV Trust Defendants, as prayed for below.

The Debtor does not mean to belabor the point, but it bears repeating that all of LVDF’s claims are estate claims or are made against the Debtor such that they were stayed as a result of the Debtor’s bankruptcy filing.⁴ LVDF and Jones Lovelock’s attempt to recast their pleading as something it is not is simply belied by the allegations contained therein.

III. LVDF AND JONES LOVELOCK’S RELIANCE OF THE STATE COURT’S DETERMINATION ON WHAT CLAIMS ARE PROPERTY OF THE ESTATE IS MISPLACED

LVDF and Jones Lovelock’s reliance on the language in the Terminating Sanctions Order, which states that the order does not relate to the Debtor or claims that are property of the Debtor’s estate, is superficial and disingenuous given that Jones Lovelock drafted the order and the language is accompanied by no analysis whatsoever. “[T]he Ninth Circuit has definitively held that the applicability of the automatic stay is within the exclusive jurisdiction of the bankruptcy court.” *Dingley*, 514 B.R. at 597. “[B]y virtue of the power vested in them by Congress, the federal courts have the final authority to determine the scope and applicability of the automatic stay.” *In re*

⁴ LVDF’s claims, even if legitimate, result in no recovery to LVDF as they are estate claims.

1 *Gruntz*, 202 F.3d 1074, 1083 (9th Cir. 2000). “[M]odifying the automatic stay is not the act of a
2 state court merely interpreting federal law; it is an intervention in the operation of an ongoing federal
3 bankruptcy case, the administration of which is vested exclusively in the bankruptcy court. *Rooker–*
4 *Feldman* does not allow a state court to interfere with the core administrative functions of an
5 operative bankruptcy. Just as federal district courts are not part of the state appellate system, neither
6 are state courts granted supervisory or appellate jurisdiction over federal courts.” *Id.* at 1084. “Any
7 state court modification of the automatic stay would constitute an unauthorized infringement upon
8 the bankruptcy court's jurisdiction to enforce the stay.” *Id.* at 1082.

9 The state court had no jurisdiction to rule on the validity of the automatic stay or take any
10 action to modify the automatic stay. *See, Burton v. Infinity Capital Management, supra*, 862 F.3d at
11 747 (“Any state court modification of the automatic stay would constitute an unauthorized
12 infringement upon the bankruptcy court’s jurisdiction to enforce the stay”)(citing *Gruntz*, 202 F.3d
13 at 1082). That the State Court signed off on the order submitted by LVDF and Jones Lovelock does
14 not somehow mean that the claims subject to the Terminating Sanctions Order were not subject to
15 the automatic stay. LVDF and Jones Lovelock double down on the reliance on the Terminating
16 Sanctions Order in lieu of conducting a fulsome analysis because, as demonstrated above, the three
17 causes of action subject to the Terminating Sanctions Order in the light of the allegations were
18 clearly subject to the automatic stay. Indeed, even if the non-bankruptcy court had conducted an
19 actual jurisdictional determination (which it did not), if such analysis was erroneous the parties run
20 the risk that the entire action later will be declared void *ab initio* because actions taken in violation
21 of the stay are void. *See Schwartz v. United States*, 954 F.2d 569, 570–71 (9th Cir. 1992); *NLRB v.*
22 *Edward Cooper Painting, Inc.*, 804 F.2d 934, 940 (6th Cir. 1986). If a state court and the
23 bankruptcy court reach differing conclusions as to whether the automatic stay bars maintenance of a
24 suit in the non-bankruptcy forum, the bankruptcy forum's resolution controls. *See e.g., Chao v.*
25 *Hospital Staffing Services, Inc.*, 270 F.3d 374, 384 (6th Cir. 2001); *Raymark Indus. v. Lai*, 973 F.2d
26 1125, 1132 (3d Cir. 1992). But, and for the avoidance of doubt, the State Court conducted no
27 analysis that could, or would, provide cover for LVDF and Jones Lovelock.

28

1 This is exactly the risk that LVDF and Jones Lovelock have taken in this case. Rather than
2 come to this Court and seek relief from the automatic stay, they took willful actions in violation of
3 the stay hoping that their own pronouncements placed into the Termination Sanctions Order they
4 drafted would somehow shield them from liability. However, it is well established that an
5 “ignorance of the law” or advice of counsel is not a *bona fide* defense to a willful violation of the
6 automatic stay. *Achterberg*, 573 B.R. at 831. Nor is reliance on a state court’s determination,
7 especially when unaccompanied by any analysis. *In re Ozenne*, 337 B.R. 214, 221 (B.A.P. 9th Cir.
8 2006). Simply put, LVDF and Jones Lovelock’s reliance on the language in the Terminating
9 Sanctions Order is not a defense to a willful violation of the automatic stay and is irrelevant. It is
10 within this Court’s exclusive jurisdiction to determine the scope and applicability of the automatic
11 stay.

12 **IV. THE EXISTENCE OF A STAY VIOLATION IS NOT SUBJECT TO REASONABLE** 13 **DISPUTE**

14 In the Opposition, LVDF and Jones Lovelock argue that they did not violate the automatic
15 stay because: (i) the State Court did not proceed against the Debtor nor property of the estate; (ii) the
16 parties did not argue about the fraudulent transfer action; (iii) LVDF did not request a finding that
17 Dr. Piazza is the alter ego of the Debtor; and (iv) by letter, LVDF reiterated to the Debtor that it was
18 not proceeding on the fraudulent transfer action, conversion, waste claim and alter ego remedy.
19 Opposition, 8:3-9. These arguments have no merit.

20 First, the transcript of the hearing on the Terminating Sanctions Motion [Adv. ECF No. 90,
21 Exhibit 4], reveals that the State Court proceeded on all of LVDF’s claims, including the fraudulent
22 transfer, conversion and waste claims. The State Court did not parse through the claims or undertake
23 any analysis as to what claims are property of the Debtor’s estate. Jones Lovelock argued that the
24 automatic stay did not apply to any of the claims against the Non-Debtor Affiliates, the State Court
25 accepted this argument and proceeded to rule on the Terminating Sanctions Motion as to all of
26 LVDF’s claims. It is well settled that “[j]udicial proceedings in violation of th[e] automatic stay are
27 void.” *Phoenix Bond & Indemnity Co. v. Shamblin (In re Shamblin)*, 890 F.2d 123, 125 (9th Cir.
28 1989) (emphasis added). The hearing on the Terminating Sanctions Motion is a judicial proceeding

1 and it violated the automatic stay. As such, it is void. Likewise, the Terminating Sanctions Order is
2 void as it was entered as a result of a void judicial proceeding.

3 Second, it makes no difference that the parties did not argue about the fraudulent transfer
4 claims at the hearing on the Terminating Sanctions Motion. LVDF and Jones Lovelock requested
5 that the State Court find that LVDF has established liability against the Non-Debtor Affiliates on all
6 of LVDF's claims, including the fraudulent transfer claims. The fraudulent transfers claims are
7 indisputably property of the Debtor's estate. Continuing to prosecute estate claims postpetition is a
8 willful violation of the automatic stay.

9 Third, through the Terminating Sanctions Order, the State Court found that LVDF
10 established liability as to its first, third and fifth claims against Dr. Piazza. This finding necessarily
11 means that all of the allegations in the Counterclaim against Dr. Piazza, including the alter ego and
12 fraudulent transfer allegations, are assumed true. While Jones Lovelock may not have specifically
13 argued about the alter ego allegations at the hearing on the Terminating Sanctions Motion, by
14 requesting the State Court enter the Terminating Sanctions Order, LVDF is continuing to prosecute
15 the alter ego claims, which are property of the Debtor's estate. This is clearly a violation of the
16 automatic stay.

17 Fourth, again, LVDF proceeded against all claims at the hearing on the Terminating
18 Sanctions Motion. The fact that LVDF has now agreed not to take any actions as to some of its
19 claims—after the Debtor's repeated demands that LVDF and Jones Lovelock remedy their stay
20 violations—does not cure the stay violations. LVDF and Jones Lovelock have continued to violate
21 the automatic stay by seeking entry of the Terminating Sanctions Order and failing to take any action
22 to undo their stay violations.

23 The automatic stay is self-executing, effective upon the filing of the bankruptcy
24 petition. See 11 U.S.C. § 362(a); *The Minoco Group of Companies v. First State Underwriters*
25 *Agency of New England Reinsurance Corp. (In re The Minoco Group of Companies)*, 799 F.2d 517,
26 520 (9th Cir. 1986). The automatic stay sweeps broadly and “effect[s] an immediate freeze of
27 the status quo by precluding and nullifying post-petition actions, judicial or nonjudicial, in
28 nonbankruptcy for a against the debtor or affecting the property of the estate.” *Mwangi v. Wells*

1 *Fargo Bank, N.A. (In re Mwangi)*, 764 F.3d 1168, 1173 (9th Cir. 2014). “The automatic stay is just
2 that, automatic, with no obligation on a debtor to affirmatively enforce the stay for it to be effective.
3 When a creditor has notice of a bankruptcy case, it is the creditor's burden to determine the extent of
4 the automatic stay and seek such relief as is appropriate.” *Achterberg*, 573 B.R. at 830.

5 There are numerous authorities in the Ninth Circuit supporting the position that a creditor and
6 its counsel must “take affirmative action to terminate or undo any action that violates the automatic
7 stay.” *Johnston*, 321 B.R. at 283 (finding creditor and its counsel willfully violated the automatic
8 stay by taking no affirmative action to vacate or stay a state court order entered in violation of the
9 stay). *See also e.g., In re Dyer*, 322 F.3d 1178, 1192 (9th Cir. 2003) (holding that when a creditor
10 has knowledge of a violation of the automatic stay, that creditor has an affirmative duty
11 to undo the violation); *Eskanos & Adler, P.C. v. Leetien*, 309 F.3d 1210, 1215 (9th Cir. 2002)
12 (same); *In re H Granados Commc'ns, Inc.*, 503 B.R. 726, 737 (9th Cir. BAP 2013) (explaining that
13 once a creditor and its counsel are aware of a debtor's bankruptcy, the onus is on the creditor to cease
14 all efforts related to the debtor in its pending state-court action without further order from the
15 bankruptcy court and to remedy the impact of existing stay violations); *Achterberg*, 573 B.R. at 831
16 (“A party who takes an action in violation of the stay not only has an obligation to cease the
17 continuing violation, but also has an affirmative duty to remedy the violation.”); *In re Gray*, 567
18 B.R. 841, 846 (Bankr. W.D. Wash. 2017) (“Failure to take affirmative action to stay or vacate a state
19 court order, entered without knowledge of the stay or even without the request of the creditor, can be
20 a willful violation of the stay.”); *Copeland*, 441 B.R. at 360 (failing to take reasonable steps to
21 remedy an action that violates the stay is a continuing stay violation).

22 Not only did LVDF and Jones Lovelock violate the automatic stay by proceeding with the
23 hearing on the Terminating Sanctions Motion and by seeking entry of the Terminating Sanctions
24 Order, but their failure to remedy these stay violations is itself a willful violation of the automatic
25 stay. Accordingly, the Court should grant the Motion.

1 **V. THE DEBTOR IS ENTITLED TO RELIEF FROM THE TERMINATING**
2 **SANCTIONS ORDER**

3 In the Opposition, LVDF and Jones Lovelock argue that the Debtor does not have standing to
4 seek relief from the Terminating Sanctions Order because the Debtor is not a party to the order.
5 They state that a non-party may seek relief from an order only if it is directly affected and if the
6 order was procured by fraud. This is not the rule in the Ninth Circuit.

7 “When a district court is faced with a motion by a nonparty to vacate a judgment, the court
8 applies the same standards used when a nonparty attempts to appeal from the judgment itself.”
9 *Almoguera v. Allstate Ins. Co.*, 923 F.2d 861 (9th Cir. 1991). “Nonparties cannot appeal unless they
10 actually participated in proceedings before the district court and the equities weigh in favor of
11 hearing the appeal.” *Id.* “A nonparty must, of course, also have a personal stake in the outcome of
12 the litigation discernible from the record.” *Id.* !!!!

13 Moreover, “[t]he provision allowing one who is in ‘privity’ with a party to move for relief is
14 an exception to the general rule that a nonparty lacks standing to make such a motion.” *In re La*
15 *Sierra Fin. Servs., Inc.*, 290 B.R. 718, 728–29 (B.A.P. 9th Cir. 2002). “‘Privity’ . . . is a legal
16 conclusion ‘designating a person so identified in interest with a party to former litigation that he
17 represents precisely the same right in respect to the subject matter involved.’” *United States v.*
18 *Schimmels (In re Schimmels)*, 127 F.3d 875, 881 (9th Cir. 1997) (quoting *Southwest Airlines Co. v.*
19 *Tex. Int’l Airlines, Inc.*, 546 F.2d 84, 94 (5th Cir. 1977) and defining “privity” for purposes of claim
20 preclusion). *See also Kem Mfg. Corp. v. Wilder*, 817 F.2d 1517, 1520 (11th Cir. 1987) (“[T]he term
21 legal representative was intended to reach only those individuals who were in a position tantamount
22 to that of a party or whose legal rights were otherwise so intimately bound up with the parties that
23 their rights were directly affected by the final judgment.”). “A party in privity is bound in the same
24 way the party is bound.” *La Sierra Fin. Servs., Inc.*, 290 B.R. at 728–29.

25 The Debtor meets these standards. The Debtor would have standing to appeal the
26 Terminating Sanctions order because it (i) actually participated in the proceedings before the State
27 Court; (ii) has a personal stake in the outcome of the litigation as the allegations all involve the
28 Debtor’s conduct; and (iii) the equities weigh in favor of this Court considering the Debtor’s request

1 for relief from the Terminating Sanctions Order. The Debtor is in privity with the Non-Debtor
 2 Affiliates and is directly affected by the entry of the Terminating Sanctions Order. The Terminating
 3 Sanctions Order establishes liability against the Non-Debtor Affiliates on LVDF's fraud claim,
 4 intentional interference with contractual relationship claim and civil conspiracy claim. Each of these
 5 claims is property of the Debtor's estate and is predicated on the *Debtor's* actions—not the
 6 individual defendants' actions. Thus, a finding that LVDF has established liability as to these claims
 7 assumes the truth of the allegations that the Debtor committed fraud, that the Debtor breached the
 8 CLA and that the Debtor fraudulently transferred funds to the Non-Debtor Affiliates. Such a finding
 9 may have preclusive effect as to the Debtor, which is particularly harmful to the Debtor as the State
 10 Court previously found based on the merits that the Debtor did not improperly use loan proceeds and
 11 was not in breach of the construction loan from LVDF. The Terminating Sanctions Order in contrast
 12 is not based on the merits of LVDF's claims, yet essentially negates the State Court's prior
 13 conclusions. The Debtor and likely its creditors will be adversely affected if the Court does not
 14 modify or vacate the Terminating Sanctions Order. Accordingly, the Debtor has standing to seek
 15 relief under Rule 60(b), and the Motion should be granted.

16 VI. CONCLUSION

17 Based on the foregoing, the Debtor respectfully requests that the Court enter an order:
 18 (i) confirming that LVDF and Jones Lovelock violated the automatic stay by proceeding postpetition
 19 with the hearing on the Terminating Sanctions Motion in the State Court Action; (ii) confirming that
 20 entry of the Terminating Sanctions Order violated the automatic stay; (iii) that the Terminating
 21 Sanctions Order is void *ab initio*; and (iv) that LVDF and Jones Lovelock violated the automatic stay
 22 by failing to remedy these stay violations. Alternatively, the Debtor requests relief from the
 23 Terminating Sanctions Order pursuant to Civil Rule 60(b)(4) and (b)(6).

24 DATED: August 25, 2022

BG Law LLP

25 By: /s/ Jason B. Komorsky

26 Steven T. Gubner
 27 Jason B. Komorsky
 28 Susan K. Seflin
 Jessica S. Wellington

Attorneys for Chapter 11 Debtor and Plaintiff

CERTIFICATE OF SERVICE

On **August 25, 2022**, I, Jessica Studley, served the following document(s) on the below referenced persons and/or entities via the Courts CM/ECF List.

- **REPLY TO OPPOSITION TO AMENDED MOTION FOR ENTRY OF AN ORDER CONFIRMING TERMINATING SANCTIONS ORDER IS VOID AS A VIOLATION OF THE AUTOMATIC STAY OR, IN THE ALTERNATIVE, MOTION FOR RELIEF FROM ORDER PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 60(b) FILED BY LAS VEGAS DEVELOPMENT FUND AND JONES LOVELOCK**

The Court's CM/ECF List:

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

DATED: August 25, 2022

BG LAW LLP

By: /s/ Jessica Studley
JESSICA STUDLEY