

1 STEVEN T. GUBNER – NV Bar No. 4624
 2 SUSAN K. SEFLIN – CA Bar No. 213865 –*Pro Hac Vice* Granted
 3 JESSICA S. WELLINGTON – CA Bar No. 324477 –*Pro Hac Vice* Granted
 4 BG LAW LLP
 5 300 S. 4th Street, Suite 1550
 6 Las Vegas, NV 89101
 7 Telephone: (702) 835-0800
 8 Facsimile: (866) 995-0215
 9 Email: sgubner@bg.law
 10 sseflin@bg.law
 11 jwellington@bg.law

12 Attorneys for Chapter 11 Debtor
 13 and Debtor in Possession

14 **UNITED STATES BANKRUPTCY COURT**
 15 **FOR THE DISTRICT OF NEVADA**

16 In re:

17 Front Sight Management LLC,

18 Debtor.

19 Case No. 22-11824-abl

20 Chapter 11

21 **Hearing Date:** September 30, 2022

22 **Hearing Time:** 9:30 a.m.

23 **REPLY TO U.S. TRUSTEE’S OBJECTION AND RESERVATION OF RIGHTS TO THE**
 24 **DEBTOR’S APPLICATION TO EMPLOY GREENBERG TRAUIG, LLP AS**
 25 **SPECIAL COUNSEL PURSUANT TO 11 U.S.C. §§ 327(e), 328 AND 330**
 26 **EFFECTIVE AS OF AUGUST 5, 2022**

27 Front Sight Management LLC, the chapter 11 debtor in possession herein (the “Debtor”),
 28 hereby submits its reply (“Reply”) to the *Objection and Reservation of Rights of the U.S. Trustee to the Debtor’s Application to Employ Greenberg Traurig, LLP as Special Counsel Pursuant to 11 U.S.C. §§ 327(e), 328 and 330 Effective August 5, 2022* [ECF No. 349] (the “Objection”) filed by the United States Trustee (the “US Trustee”) to the Debtor’s *Application to Employ Greenberg Traurig, LLP as Special Counsel Pursuant to 11 U.S.C. §§ 327(e), 328 and 330 Effective August 5,*

1 2022 [ECF No. 329] (the “Application”).¹ By the Application, Front Sight seeks employment of
2 Greenberg Traurig, LLP (“GT”) as its special counsel with respect to preparing terms of membership
3 agreements.

4 In support of the Reply and in further support of the Application, the Debtor respectfully
5 represents as follows:

6 **I. THE APPLICATION ERRONEOUSLY REQUESTED EMPLOYMENT OF GT**
7 **PURSUANT TO 11 U.S.C. §§ 327(e) AND 328**

8 Counsel for the Debtor apologizes as there was a significant error in the Application as it
9 sought employment of GT pursuant to sections 327(e) and 328 of the Bankruptcy Code, which does
10 not reflect GT’s actual employment terms. GT has never previously represented the Debtor (making
11 section 327(e) in applicable), and GT is not requesting or receiving any special treatment of its fees
12 and expenses and will seek to have such fees and expenses approved pursuant to section 330 of the
13 Bankruptcy Code.

14 Also, since GT’s original retention by the Debtor, the Debtor’s chapter 11 plan terms have
15 changed and the Debtor no longer has the need for membership counsel. Therefore, the Debtor has
16 instructed GT to cease working on this matter and to prepare and file a final fee application. The
17 Debtor still requests that the Court approve the Application as GT performed work for the Debtor
18 that was necessary at the time it was performed.

19 **II. GT MEETS THE STATUTORY REQUIREMENTS FOR EMPLOYMENT UNDER**
20 **SECTION 327(a)**

21 In the Objection, the US Trustee states that the Debtor should seek employment of GT under
22 Section 327(a). The Debtor agrees with the US Trustee, and the reference to Section 327(e) in the
23 Application was an error. However, as set forth below, GT and its proposed employment satisfy all
24 the requirements set forth in Sections 327(a) and 330 and GT’s employment is warranted. GT has
25 the requisite skills and experience structuring membership programs in the context of business
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¹ Any capitalized term not defined herein has the same meaning ascribed to it in the Application.

1 reorganizations under chapter 11 of the Bankruptcy Code necessary to represent the Debtor in this
2 case. GT's significant experience restructuring memberships justify approval of the Application.

3 Although the language of Section 327(a) refers only to professionals employed by a trustee,
4 the section also applies to professionals employed by a chapter 11 debtor in possession pursuant to §
5 1107(a), which provides in relevant part, "a debtor in possession shall have all the rights ... and
6 powers, and shall perform all the functions and duties ... of a trustee serving in a case under this
7 chapter." *See, e.g., In re Diamond Mortgage Corp.*, 135 B.R. 78, 88 (Bankr. N.D. Ill. 1990) (stating
8 that § 327(a) applies to professionals retained by a chapter 11 debtor in possession).

9 Section 327(a) of the Bankruptcy Code provides in pertinent part "the trustee, with the
10 court's approval, may employ one or more attorneys, accountants, appraisers, auctioneers, or other
11 professional persons, that do not hold or represent an interest adverse to the estate, and that are
12 disinterested persons, to represent or assist the trustee in carrying out the trustee's duties under this
13 title." 11 U.S.C. § 327(a). Section 327(a) permits the Debtor to employ professional persons, such
14 as attorneys, provided such professionals (1) "do not hold or represent an interest adverse to the
15 estate" and (2) are "disinterested persons." *In re Haley*, 950 F.2d 588, 590 (9th Cir. 1991). GT
16 satisfies both requirements.

17 **A. GT Does Not Hold or Represent an Interest Adverse to the Estate**

18 As set forth in the Declaration of Jim Mace filed concurrently with the Application [ECF No.
19 330] (the "Mace Decl."), "GT does not represent any other entity having an adverse interest in
20 connection with this case, and does not hold or represent an interest adverse to the interests of the
21 estate." Mace Decl., ¶ 18. "[N]either [Jim Mace], GT, nor any of its Shareholders, employees
22 (including those working on this engagement) or associates: . . . have an interest materially adverse
23 to the interest of the estate or of any class of creditors or equity security holders, by reason of any
24 direct or indirect relationship to, connection with or interest in the Debtor or for any other reason."
25 Mace Decl., ¶ 21. Nothing in the Objection contradicts this sworn testimony. Accordingly, GT
26 meets the first requirement of Section 327(a) because it does not hold or represent any interest
27 adverse to the estate.
28

1 **B. GT is Disinterested**

2 The Bankruptcy Code defines “disinterested person” as one who: “(A) is not a creditor, an
3 equity security holder, or an insider; (B) is not and was not, within 2 years before the date of the
4 filing of the petition, a director, officer, or employee of the debtor; and (C) does not have an interest
5 materially adverse to the interest of the estate or of any class of creditors or equity security holders,
6 by reason of any direct or indirect relationship to, connection with, or interest in, the debtor, or for
7 any other reason.” 11 U.S.C. § 101(14).

8 Here, it is undisputed subsections (A) and (B) and (C) do not apply to GT. As set forth in the
9 Mace Decl., GT does not hold any debt or equity securities of the Debtor (¶ 21), GT is not and was
10 not, within two years before the date of the filing of the Petition herein, a director, officer or
11 employee of Debtor (¶ 21), and GT does not represent any interest adverse to that of the estate, the
12 Debtor or its creditors (¶ 21). Accordingly, GT meets the second requirement of Section 327(a) and
13 is “disinterested” within the meaning of Section 101(14) of the Bankruptcy Code. Thus, GT meets
14 all of the requirements of Section 327(a), and thus, the Application should be approved under
15 Section 327(a).

16 **C. GT Seeks Employment Under 330**

17 As set forth in the Mace Declaration, in connection with the Debtor’s case, “staff and
18 professionals at GT will be billed at hourly rates subject to approval by this Court pursuant to
19 sections 330 and 331 of the Bankruptcy Code.” Mace Decl., ¶ 9. Any reference to Section 328 was
20 an error. GT is not seeking Court approval of anything other than its employment and understands
21 that Section 330 governs payment of its fees and expenses. *Id.* GT will comply with the procedures
22 set forth in the *Order Establishing Procedures for Interim Monthly Compensation and*
23 *Reimbursement of Expenses for Professionals* [ECF No. 318] governing professionals employed by
24 the estate and understands that its compensation is subject to review by this Court. Mace Decl., ¶¶
25 14, 16.

26 **D. GT’s Hourly Rates Are Reasonable**

27 The Debtor submits that GT’s hourly rates are reasonable given the experience of GT’s
28 professionals and paucity of attorneys who specialize in memberships.

1 Reasonable hourly rates should be determined according to “the prevailing market rates in the
2 relevant community.” *Sam K. ex rel Diane C. v. Haw. Dep’t of Educ.*, 788 F.3d 1033, 1041 (9th Cir.
3 2015) (quoting *Van Skike v. Dir., Office of Workers’ Comp. Programs*, 557 F.3d 1041, 1046 (9th
4 Cir. 2009)). The court may consider fees awarded by others in the same locality for similar cases
5 and may rely on its “own knowledge of customary rates and [its] experience
6 concerning reasonable and proper fees.” *Id.* (quoting *Ingram v. Oroudjian*, 647 F.3d 925, 928 (9th
7 Cir. 2011)).

8 As set forth in the Application, GT has extensive experience structuring membership
9 programs in the context of business reorganizations under chapter 11 of the Bankruptcy Code in
10 various jurisdictions, and the Debtor was unable to find comparable professionals. GT’s hourly rates
11 as set forth in the Mace Decl. are commensurate with the experience of each of its professionals and
12 with prevailing market rates charged by other attorneys with similar experience for similar work.
13 Accordingly, the Debtor submits that GT’s hourly rates are reasonable and should be approved by
14 the Court.

15 **III. CONCLUSION**

16 Based on the foregoing, and for the reasons set forth in the Application and Mace
17 Declaration, the Debtor respectfully requests that the Court enter an order approving the
18 Application substantially in the form of the revised proposed order attached hereto as **Exhibit 1**,
19 and granting to the Debtor such other and further relief as the Court deems just and proper under the
20 circumstances.

21 DATED: September 23, 2022

BG LAW LLP

22
23 By: /s/ Susan K. Seflin

Susan K. Seflin

Jessica S. Wellington

24 Attorneys for Chapter 11 Debtor and
25 Debtor in Possession
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EXHIBIT “1”

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BG LAW LLP
300 S. 4th Street, Suite 1550
Las Vegas, NV 89101
Telephone: (702) 835-0800
Facsimile: (866) 995-0215
Email: sgubner@bg.law
sseflin@bg.law
jwellington@bg.law

Attorneys for Chapter 11 Debtor
and Debtor in Possession

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEVADA

In re:

Front Sight Management LLC,

Debtor.

Case No. 22-11824-abl

Chapter 11

Hearing Date: September 30, 2022
Hearing Time: 9:30 a.m.

**ORDER GRANTING DEBTOR’S APPLICATION TO EMPLOY GREENBERG TRAURIG,
LLP AS ITS SPECIAL COUNSEL PURSUANT TO 11 U.S.C. §§ 327(a) AND 330**

On September 30, 2022 at 9:30 a.m., a hearing was held before the Honorable August Landis, Chief United States Bankruptcy Judge for the District of Nevada, for the Court to consider the application [ECF No. 329] (the “Application”) filed by Front Sight Management LLC, the

1 chapter 11 debtor in possession herein (the “Debtor”), to employ Greenberg Traurig, LLP (“GT”) as
2 its special bankruptcy counsel pursuant to 11 U.S.C. §§ 327(a) and 330. Appearances were as duly
3 noted on the record at the hearing.

4 The Court, having read and considered the Application and all evidence filed in support of
5 the Application; having further read and considered the objection [ECF No. 349] to the Application
6 filed by the United States Trustee and the Debtor’s reply thereto [ECF No. ____] (the “Reply”); the
7 Court having considered the argument and representations of counsel at the hearing and other
8 matters which the Court may properly take judicial notice, including, without limitation, the record
9 in this case as reflected on the docket; the Court having set forth its findings and conclusions on the
10 record pursuant to Rule 52 of the Federal Rules of Civil Procedure and Rule 7052 of the Federal
11 Rules of Bankruptcy Procedure; the Court having found that notice of the Application was sufficient
12 under the circumstances and no other or further notice is required; the Court having determined that
13 the legal and factual bases set forth in the Application establish just cause for the relief sought
14 therein; and after due deliberation and sufficient cause appearing therefor,

15 **IT IS HEREBY ORDERED AS FOLLOWS:**

- 16 1. The Application is GRANTED subject to the clarifications set forth in the Reply and
17 this Order.
- 18 2. The Debtor is authorized to employ GT as its special bankruptcy counsel pursuant to
19 11 U.S.C. §§ 327(a) and 330 effective as of August 5, 2022 on the terms set forth in the Application.
- 20 3. The Court shall retain jurisdiction to hear and determine all matters arising from the
21 implementation of this Order.

22 **IT IS SO ORDERED.**

23 **[Remainder of Page Left Intentionally Blank]**
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CERTIFICATE OF SERVICE

I declare that I am over the age of 18 years and not a party to the within action. I am employed in the County of Los Angeles and my business address is 21650 Oxnard Street, Suite 500, Woodland Hills, California 91367.

On September 23, 2022, I served the following document:

REPLY TO U.S. TRUSTEE’S OBJECTION AND RESERVATION OF RIGHTS TO THE DEBTOR’S APPLICATION TO EMPLOY GREENBERG TRAUERIG, LLP AS SPECIAL COUNSEL PURSUANT TO 11 U.S.C. §§ 327(E), 328 AND 330 EFFECTIVE AS OF AUGUST 5, 2022

BY ELECTRONIC MAIL

Those designated "[NEF]" on the Court docket were served with the Notice by the Court via Electronic Mail, as follows:

- JASON BLUMBERG Jason.blumberg@usdoj.gov
- CHAPTER 11 - LV USTPRegion17.lv.ecf@usdoj.gov
- DAWN M. CICA dcica@carlyoncica.com, nrodriguez@carlyoncica.com;crobertson@carlyoncica.com;dmcica@gmail.com;dcica@carlyoncica.com;tosteen@carlyoncica.com;3342887420@filings.docketbird.com
- WILLIAM C DEVINE william@devine.legal, courtney@devine.legal;devinewr72773@notify.bestcase.com
- THOMAS H. FELL tfell@fennemorelaw.com, clandis@fennemorelaw.com;CourtFilings@fennemorelaw.com
- PHILIP S. GERSON Philip@gersonnvlaw.com
- STEVEN T GUBNER sgubner@bg.law, ecf@bg.law
- RAMIR M. HERNANDEZ rhernandez@wrightlegal.net, jcraig@wrightlegal.net;nvbkfilings@wrightlegal.net
- JASON B KOMORSKY jkomorsky@bg.law
- BART K. LARSEN BLARSEN@SHEA.LAW, 3542839420@filings.docketbird.com
- NICOLE E. LOVELOCK nlovelock@joneslovelock.com, ljanuskevicius@joneslovelock.com
- EDWARD M. MCDONALD edward.m.mcdonald@usdoj.gov
- TRACY M. O'STEEN tosteen@carlyoncica.com, crobertson@carlyoncica.com;nrodriguez@carlyoncica.com;ccarlyon@carlyoncica.com
- TERESA M. PILATOWICZ tpilatowicz@gtg.legal, bknotices@gtg.legal
- SAMUEL A. SCHWARTZ saschwartz@nvfirm.com, ecf@nvfirm.com;schwartzsr45599@notify.bestcase.com;eanderson@nvfirm.com;samid@nvfirm.com
- SUSAN K. SEFLIN sseflin@bg.law
- BRIAN D. SHAPIRO brian@brianshapirolaw.com, kshapiro@brianshapirolaw.com;6855036420@filings.docketbird.com
- STRETTO ecf@cases-cr.stretto-services.com, aw01@ecfcbis.com,pacerpleadings@stretto.com
- U.S. TRUSTEE - LV - 11 USTPRegion17.lv.ecf@usdoj.gov
- JESSICA S. WELLINGTON jwellington@bg.law

I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made. I declare under penalty of perjury under the laws of the United States of America and the State of California that the foregoing is true and correct.

Executed September 23, 2022, at Woodland Hills, California.

/s/ Jessica Studley
JESSICA STUDLEY