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UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In re:	)	Case No.: 22-11824-abl
	)	
FRONT SIGHT MANAGEMENT, LLC,	)	Chapter 11
	)	
Debtor.	)	Hearing Date: September 30, 2022
	)	Hearing Time: 9:30 a.m. (PT)

FS DIP, LLC'S OMNIBUS REPLY (I) IN SUPPORT OF APPROVAL OF DEBTOR'S FIRST AMENDED DISCLOSURE STATEMENT DESCRIBING DEBTOR'S FIRST AMENDED CHAPTER 11 PLAN OF REORGANIZATION DATED SEPTEMBER 9, 2022 (ECF NO. 338) AND (II) IN RESPONSE TO VARIOUS OBJECTIONS TO APPROVAL OF DEBTOR'S FIRST AMENDED DISCLOSURE STATEMENT (ECF NOS. 356, 361, 373, AND 374)

FS DIP, LLC, ("**FS DIP**") the debtor-in-possession lender in the above-referenced Chapter 11 case of Front Sight Management, LLC (the "**Debtor**"), by and through its counsel of record, Schwartz Law, PLLC, hereby files *FS DIP, LLC's Omnibus Reply (I) in Support of Approval of Debtor's First Amended Disclosure Statement Describing Debtor's First Amended Chapter 11 Plan of Reorganization Dated September 9, 2022 (ECF No. 338) and (II) in Response to Various Objections to Approval of Debtor's First Amended Disclosure Statement (ECF Nos. 356, 361, 373, and 374)* (the "**Omnibus DIP Reply**"). In support of the Omnibus DIP Reply, FS DIP respectfully states and represents as follows:

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REPLY

I. Relevant Background

1. On May 24, 2022 (the "**Petition Date**"), captioned debtor and debtor-in-possession Front Sight Management, LLC (the "**Debtor**") commenced the captioned case by filing a voluntary petition for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (as amended, the "**Bankruptcy Code**").

2. On July 15, 2022, Debtor filed its *Disclosure Statement Describing Debtor's Chapter 11 Plan of Reorganization Dated July 15, 2022 (ECF No. 271)* (the "**Original Disclosure Statement**") to accompany *Debtor's Chapter 11 Plan of Reorganization Dated July 15, 2022 (ECF No. 270)* (the "**Original Plan**"). The Original Disclosure Statement was originally slated to be heard by the Bankruptcy Court on September 1, 2022, although the date of that initial hearing has since been continued to September 30, 2022. (*See* ECF Nos. 319, 320, and 340).

3. Debtor filed amended versions of the Original Disclosure Statement and the Original Plan on September 9, 2022. (*See* ECF Nos. 337 and 338).

4. The *Notice of Continued Hearing Date on Debtor's Disclosure Statement Describing Debtor's Chapter 11 Plan of Reorganization* (ECF No. 340) advised that the objection deadline on *Debtor's Motion for Entry of Order: (i) Approving the Disclosure Statement; (ii) Approving the Form of Ballots and Proposed Solicitation Procedures; (iii) Fixing the Voting Deadline with Respect to the Debtor's Chapter 11 Plan; (iv) Fixing the Last Date for Filing Objections to the Chapter 11 Plan; and (v) Scheduling a Hearing to Consider Confirmation of the Plan (ECF No. 339)* (the "**Solicitation Procedures Motion**") seeking approval of the *First Amended Disclosure Statement Describing Debtor's First Amended Chapter 11 Plan of Reorganization Dated September 9, 2022 (ECF No. 338)* (the "**Amended Disclosure Statement**") to accompany *Debtor's First Amended Chapter 11 Plan of Reorganization Dated September 9, 2022 (ECF No. 337)* (the "**Amended Plan**") was set for September 23, 2022.

5. Debtor's Solicitation Procedures Motion seeking approval of Debtor's First Amended Disclosure Statement drew four separate objections from the following entities: (i) the United States Trustee for Region 17 (the "**U.S. Trustee**") at (ECF No. 356) (the "**U.S. Trustee's Objection**"); (ii) the Official Committee of Unsecured Creditors (the "**Committee**") (ECF No. 361) (the "**Committee's Objection**"); (iii) Las Vegas Development Fund, LLC ("**LVDF**") (ECF No. 373) (the "**LVDF Objection**"); and (iv) Michael Meacher, dba Bankgroup Financial Services ("**Meacher**" and, together with the U.S. Trustee, the Committee, and LVDF, the "**Objecting Parties**") (ECF No. 374) (the "**Meacher Objection**" and, together with the U.S. Trustee's Objection, the Committee's Objection, and the LVDF Objection, the "**Objections**").

II. General Overview and Omnibus Reply

6. It is far easier to criticize a restructuring effort, like that undertaken here by Debtor, than to bring a meaningful alternative to the table. In that vein, the Objections of the Objecting Parties have overlooked one glaring reality facing Debtor, its bankruptcy estate, Debtor's creditors, and all stakeholders in this process: FS DIP and Nevada PF are the only entities with the financial ability, interest, business and operational know-how in Debtor's specialized business space, working relationships with the "Second Amendment" or "2A" community that is most likely to be interested in patronizing businesses like Debtor's business, and wherewithal to keep Debtor's property and business operating as a going concern as described in the First Amended Disclosure Statement and First Amended Plan, for the collective benefit of all stakeholders in this case and the City of Pahrump and its surrounding communities where Debtor currently operates.

7. Simply put, there are no other bidders or alternatives. Indeed, the Objections themselves bear this reality out. For instance, LVDF alleges as follows, "[In August 2012] Debtor was interested in a potential EB-5 raise and LVDF understood that Debtor's interest was motivated by Debtor's principal (Ignatius Piazza) disinterest in signing any personal guarantee or paying a high interest rate *as well as Debtor's inability to obtain other financing*." (ECF No. 373,

pg. 5 of 21, lines 23-26) (emphasis added). According to LVDF's Objection, Debtor's apparently bleak prospects for obtaining financing were purportedly one of the principal driving forces in the alternative financing structure that is at the heart of LVDF's ongoing disputes and litigation with Debtor. And the Court need only recall that LVDF complained about the DIP financing in this case. (*See, e.g.*, ECF No. 35). The Court, fortunately and for good reason, was not detained long in approving the DIP financing. (*See* ECF No. 228). There, as here, there were and are simply no viable alternatives for Debtor to pursue.

8. The Committee's Objection, although thoughtful and in keeping with its statutory role as a fiduciary to unsecured creditors in Debtor's case, is also to the same effect. "While the Committee *recognizes the budgetary constraints in this case*, the last thing the Committee wants is for a solicitation issue to arise when the Court is considering plan confirmation." (ECF No. 361, pg. 3 of 21, ¶ 6) (emphasis added). These acknowledged budgetary constraints exist *with the benefit of the DIP financing* provided by FS DIP. And yet, the Committee objects on the basis that the First Amended Plan purportedly provides proscribed non-debtor releases to insiders in contravention of governing Ninth Circuit law. (*Id.* at pgs. 11-13 of 21, ¶¶ 34-38). The Committee apparently does not believe that adequate investigation of avoidance actions has been accomplished in order to provide adequate information and that this, somehow, amounts to an impermissible release of insiders.

9. With due respect to the Committee, what FS DIP and Nevada PF aim to achieve in acquiring the Chapter V causes of action and other litigation claims belonging to Debtor is the peace of mind and freedom that comes from knowing that litigation or claims are not going to appear out of nowhere as they try to put their newly purchased reorganized business on sound financial and operational footing for the long haul. Not to be glib, but FS DIP and Nevada PF aim and desire to run a reorganized business here, not litigate or be drawn into litigation over the legacy of the past. What FS DIP and Nevada PF are buying are certainty and peace of mind for

themselves and for the "2A" community with which they intend to do a robust business going forward.

10. Briefly, if more lawsuits appear out of the woodwork, the fear is that the reorganized business's new customers will think something to the effect of, "Here we go again," given all of the litigation that plagued Debtor's legacy business here. At bottom, there is a pre-history to Debtor's business that is steeped in and, in some ways, tainted by, ongoing, protracted, and (oftentimes) demoralizing litigation that FS DIP and Nevada PF aim to cut off at the root. This has nothing to do with obtaining releases of any of Debtor's insiders or anyone else; rather, it has to do with doing everything FS DIP and Nevada PF can do make a clean and sharp break with Debtor's troubled litigation past (however meritorious or (more likely) meritless that litigation may otherwise have been). And *that* is why the purchase of these litigation claims is an integrated part of the deal – to accomplish a legitimate and understandable business objective.

11. All of this is not to say that FS DIP is not willing to engage with Debtor and the Objecting Parties in continuing efforts to discuss the items raised in the Objections in an effort to achieve negotiated and consensual resolutions of any actual legal impediments to approval of Debtor's First Amended Disclosure Statement. To be clear, FS DIP believes that the First Amended Disclosure Statement contains adequate information with the meaning of 11 U.S.C. § 1125 to allow creditors to make an informed decision on whether to accept or reject Debtor's First Amended Plan. Given the Court-approved timelines governing Debtor's efforts to achieve confirmation of its First Amended Plan, any consensual resolutions of the Objections are likely to keep Debtor on track to achieve its goals within the terms of the Court's previously approved DIP financing. (*See* ECF No. 228).

III. Reply to Each of the Objecting Parties' Objections

a. Reply to LVDF's Objection

12. LVDF's Objection is testament to the need for FS DIP and Nevada PF to purchase

any avoidance and inherited litigation actions from Debtor's estate as more fully described and set forth in Debtor's First Amended Disclosure Statement and Plan. If, for example, LVDF were to find its way onto a litigation steering committee under a confirmed plan, FS DIP fears that there would be endless litigation (however meritless) as far as the eye can see. This is not the benefit of the bargain that the parties struck and that is reflected in the First Amended Plan and Disclosure Statement.

13. To begin, LVDF's Objection loses sight of the fact that these litigation claims form part of the collateral package under the DIP Order and related loan documents possessed by FS DIP, subject only to FS DIP's marshalling obligations under that same order. (*See, e.g.*, ECF No. 228, pg. 13 of 23, ¶ 11). There is no meaningful discussion of the DIP Order in the LVDF Objection. As to LVDF's contention that this purchase of litigation claims is simply an end-run at a proscribed non-debtor release, FS DIP has already addressed those contentions at paragraphs 9-10 above and will not belabor the point.

14. The LVDF Objection then alleges that the contribution of the New Equity Investor has not been market tested. LVDF's reliance on *Bank of America Nat'l Trust & Sav. Ass'n v. 203 N. LaSalle Street P'ship*, 526 U.S. 434 (1999) is misplaced. Here, the New Equity Investor is not a member of Debtor's "old equity" holders. *See id.* at 453-457. Although the New Equity Investor is infusing value that is new to these proceedings, such "new value" is not being infused so that "old equity" can retain property on account of its old equity interests in violation of the absolute priority rule. *See id.*; *see also* 11 U.S.C. § 1129(b)(2)(B)(ii). The New Equity Investor's actions here are do not fall within the strictures of the absolute priority rule. More to the point, the New Equity Investor's participation in these proceedings stemmed from the very type of prepetition market-testing activities LVDF now alleges never took place.

15. LVDF's Objection in this regard also loses sight of the very nature of the type of business and property Debtor operated prepetition. The universe of potential buyers, especially

strategic buyers, that would have (i) the interest, (ii) the operational know-how to operate the property and business, (iii) combined with an outstanding reputation for providing a full suite of "2A" experiences of the highest quality and caliber, and, perhaps most importantly for these purposes, (iv) the financial wherewithal to achieve the objectives set forth in the First Amended Disclosure Statement and Plan is quite small. By way of contrast, Debtor's business and property do not entail the mere collection of rents from income producing property.

16. The ability to continue to operate Debtor's property and prepetition business for the collective benefit of all stakeholders, including the people of Nye County, Pahrump, Nevada, and the communities and families that depend on Debtor for work (Nevada PF currently expects to retain the majority of Debtor's employees), the infusion of tourist-based revenue, increased tax revenues, and so forth, as well as Debtor's prepetition Members (at least those who elect to continue on this journey with the New Equity Investor) may not mean much to LVDF. That much is clear from the Court's docket. But the prospect of having a world-class "2A" experience in Pahrump/Nye County along the lines envisioned by the New Equity Investor represents a concrete, well-planned, well-financed, once-in-a-generation-type event that can set an entire Nevada county and community on an entirely different and better economic trajectory.

17. Plans, by their very nature, are forward-looking documents. LVDF's Objection is backward-looking, dwelling on past litigation outcomes and disappointments. In whatever way this may benefit LVDF, it does not benefit the other stakeholders in Debtor's case. The bottom line is Debtor's First Amended Plan and Disclosure Statement offer everyone a path forward, including LVDF in the form of a cash reserve in the full amount of LVDF's filed proof of claim. LVDF's arguments based on the alleged lack of market testing are simply without merit and should be overruled.

18. As to the alleged lack of disclosure regarding insider and non-insider claims, LVDF's Objection suffers from similar infirmities. LVDF has apparently spent the better part of

the last four (4) years in state court litigation with Debtor. Now that a plan has been placed before LVDF that provides a *cash reserve* in the full amount of LVDF's filed proof of claim, LVDF's Objection focuses, again, on litigation. FS DIP respectfully submits that Debtor's efforts have been focused on the plan process and efforts to maximize value for all concerned, not investigating litigation claims forming part of FS DIP's collateral package under the DIP Order and that are to be transferred to the New Equity Investor under the First Amended Plan, in any event. These are not valid reasons for holding up the plan process, at least not in FS DIP's view.

19. As to the alleged lack of disclosure of agreements with insiders, it is worth noting that Debtor's principal, Ignatius Piazza, is not assuming any of the roles expressly within the ambit of 11 U.S.C. § 1129(a)(5).

20. LVDF's Objection then pivots to arguments that the First Amended Plan is, allegedly, unconfirmable on its face and, therefore, approval of the First Amended Disclosure Statement should be denied. It is FS DIP's position that the provision of a cash reserve in the full amount of LVDF's filed proof of claim renders LVDF's claim unimpaired within the meaning of 11 U.S.C. § 1124. Indeed, LVDF argues that the impairment of M2 EPC and Top Rank Builders/Morales Construction are being "artificially impaired" because such claims are slated to be paid in full under the First Amended Plan.

21. As to the issue of alleged "artificial impairment" of claims, FS DIP respectfully submits that beneficial/advantageous claims are permissible under the very authorities cited by LVDF. *See In re L & J Anaheim Assocs.,* 995 F.2d 940 (9th Cir. 1993). LVDF's argument in this regard is simply submitted without the benefit of any evidence to support this contention and otherwise lacks merit. It should, therefore, be overruled on these grounds.

22. As to the solicitation issues with respect to the Members, respective counsel for Debtor and FS DIP have been in discussions on this issue. FS DIP does not oppose solicitation of the Members.

23. At bottom, LVDF's Objection to Debtor's Solicitation Procedures Motion and approval of Debtor's First Amended Disclosure Statement is without merit and should be overruled. In that vein, to the extent that LVDF's objections to approval of the First Amended Disclosure Statement are deemed objections to confirmation of Debtor's First Amended Plan, such objection should be overruled and reserved for the confirmation hearing.

b. Reply to the Committee's Objection

24. The Committee begins its Objection by noting that the most glaring deficiency in terms of disclosure is allegedly the impermissible non-debtor releases effected by the First Amended Plan. Again, for the reasons already set forth above, the New Equity Investor is acquiring the avoidance actions and inherited litigation claims for purposes of ensuring that the reorganized debtor entity will be able to emerge from bankruptcy on solid footing and without the burden and the stigma of the prepetition litigation. The New Equity Investor's purchase of the litigation claims and avoidance action claims as part of an integrated transaction is designed to achieve a business objective, not to effectuate an impermissible release.

25. As to the alleged violation of the absolute priority rule, the mere prospect of Dr. Piazza gaining anything at this point is speculative and hypothetical and can be defended against such assertions on, among other grounds, as an interclass gift from FS DIP to Dr. Piazza should the need to do so arise. Moreover, any alleged value being retained is not being retained on account of purported "old equity" interests. At this point, the Committee's Objection in this regard does not present any real impediment to confirmation of Debtor's First Amended Plan or approval of the Solicitation Procedures Motion and First Amended Disclosure Statement.

26. As to whether the $500,000.00 initial outlay will be sufficient to continue Debtor's business operations, the Committee's Objection misses the mark. The Membership Plan of Reorganization, with its waivers of various initiation and other fees, represents a considerable and, depending on the number of Members who continue to patronize the reorganized business,

formidable investment and commitment to Debtor's continued business operations. Specifically, if the Court takes into account Nevada PF's proposal (as attached to the Disclosure Statement) to waive initiation fees, reduce course class costs, reduce training costs, and reduce annual fees for Debtor's existing members, substantial value is being channeled to creditors. If all of Debtor's 250,000 members took full advantage of the benefits Nevada PF is offering for the first 2 years of PrairieFire's operations, the members savings exceed $3 BILLION.

27. FS DIP is also confident that, notwithstanding the Committee's concerns regarding the ultimate amount of allowed claims in the general unsecured claims pool, that those creditors will fare far better under Debtor's First Amended Plan than they would under a Chapter 7 liquidation – certainly as a financial matter. Also, this does not begin to take into account, however, the added benefit to Members from the Debtor's business and property being reorganized into a world class "2A" experience. And it is important here to keep in mind that what is required is adequate information, not perfect information. The business plan following reorganization has been set forth in sufficient detail to allow creditors to make a reasonably informed judgment as to whether to vote to accept to reject the First Amended Plan.

28. On the issue of added solicitation of the members, FS DIP supports the solicitation of the Members as previously discussed, and agreed as an improvement to its acquisition price to fund the increased solicitation costs up to $125,000.00. As to the Committee's final concern regarding the alleged overall lack of sufficient disclosures, it is FS DIP's position that the First Amended Disclosure Statement contains adequate information within the meaning of 11 U.S.C. § 1125.

29. As to the alleged lack of adequate disclosure regarding what the Committee describes (albeit incorrectly) as artificial impairment of secured creditor claims, FS DIP respectfully asserts and maintains that this is really a confirmation objection as the Committee has been able to obtain to a reasonably certain degree what the First Amended Plan provides in

terms of the treatment of the various classes (again, even if the Committee has reached it's ultimate legal conclusion on this point in error); however, the Committee has mischaracterized a permissible beneficial impairment as an artificial impairment undertaken only to effectively gerrymander the plan. And that is simply not the case.

30. FS DIP respectfully submits that risk factors associated with the First Amended Plan provide adequate information within the meaning of 11 U.S.C. § 1125 for creditors to make an informed judgment on whether to vote to accept or reject the First Amended Plan. Plainly speaking, the deal set forth in the First Amended Plan is the only game in town. If the First Amended Plan is not confirmed, creditors will be left in a worse, not better, position. And this realization only touches on the financial aspects affecting creditors. In terms of being unable to access Debtor's property on a reorganized basis as a "2A" facility, the fallout to Debtor's Members, to say nothing of Debtor's employees (again, the majority of whom Nevada PF expects to retain) and the people of Nye County and Pahrump, Nevada will be enormous, and the ripple effects of Debtor's forced liquidation may be felt far beyond the parties that are immediately before the Court.

c. Reply to the Meacher Objection

31. To begin, the First Amended Disclosure Statement provides adequate information within the meaning of 11 U.S.C. § 1125 on the treatment of Meacher's alleged claim, and there is nothing inconsistent about it. The First Amended Plan provides a cash reserve in the amount of $3.3 million for the Meacher claim. Indeed, the collateral allegedly securing Meacher's claim is apparently valued at $214,569. This gives Meacher a range of values in which his alleged secured claim may be valued, and how much of the cash reserve he may be able to obtain if his claim is ultimately allowed by the Bankruptcy Court. There is simply nothing inadequate about these disclosures or inconsistent about this treatment, and Meacher's potential claim is more than adequately protected.

32. Concerns regarding the alleged use of book value versus another valuation metric are not issues for the First Amended Disclosure Statement. Those issues are best resolved as part of the claims administration process. Meacher's claim is ultimately classified as unimpaired because a cash reserve has been set aside in the full amount of the Meacher claim.

33. The characterization of Meacher as a former insider of Debtor under 11 U.S.C. § 101(31) simply sets for Debtor's position on the subject as the statutory list of insiders is non-exclusive. *See* 11 U.S.C. §§ 101(31) and 102(3). Meacher's disagreement on the subject bears out the point that adequate information has been provided given that Meacher sharply disagrees with Debtor's position. Simply put, Meacher's main point of contention is "what" Debtor has disclosed and not whether adequate information has been disclosed.

34. Again, Dr. Piazza's role in the reorganized Debtor entity does not fall within 11 U.S.C. § 1129(a)(5), so the level of disclosure as to his role currently set forth in the First Amended Disclosure Statement provides adequate information within the meaning of 11 U.S.C. § 1125.

35. For these reasons, as well as those that the Court may further entertain at the hearing scheduled for Debtor's Solicitation Procedures Motion, the Meacher, Committee, and LVDF Objections to approval of the First Amended Disclosure Statement should be overruled.

d. Reply to the U.S. Trustee's Objection

36. First, even though neither the First Amended Disclosure Statement nor Plan include provisions that trigger the application of Bankruptcy Rule 3016(c), FS DIP does not have any problem if Debtor reasonably highlights language in the plan and disclosure statement as long as it is clear that such highlighting and agreement are not treated as any form of admission – judicial, evidentiary, or otherwise – or give rise to any form of an estoppel that can be asserted against Debtor that the plan includes such impermissible releases. If the impulse behind the U.S. Trustee's Objection in this regard is aimed at disclosure, the above-proposed resolution should

be found to be satisfactory by the U.S. Trustee.

37. Further, FS DIP does not have any opposition to further clarification in the plan and disclosure statement necessary to address the issue of U.S. Trustee fees under 28 U.S.C. § 1930(a)(6) and 11 U.S.C. § 1129(a)(12).

38. As FS DIP has already represented above, it does not have any opposition to solicitation of Debtor's Members or the insertion of provisions in both the First Amended Plan and Disclosure Statement that direct creditors and other parties in interest to Debtor's filed monthly operating reports for further information relevant to Debtor's bankruptcy case.

39. Finally, the U.S. Trustee's concerns regarding the ultimate disposition of avoidance and inherited actions, as well as risk factors, have already been discussed above, and that discussion shall not be repeated or belabored here.

CONCLUSION

40. For the reasons set forth above, as well as based on any further argument the Court may entertain at the hearing to consider the adequacy of Debtor's First Amended Disclosure Statement and Solicitation Procedures Motion, FS DIP respectfully submits that the both of those items should be approved and all Objections thereto should be overruled.

Dated this 27th day of September, 2022.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 27th day of September, 2022, I caused service of a true and correct copy of the foregoing **FS DIP, LLC'S OMNIBUS REPLY (I) IN SUPPORT OF APPROVAL OF DEBTOR'S FIRST AMENDED DISCLOSURE STATEMENT DESCRIBING DEBTOR'S FIRST AMENDED CHAPTER 11 PLAN OF REORGANIZATION DATED SEPTEMBER 9, 2022 (ECF NO. 338) AND (II) IN RESPONSE TO VARIOUS OBJECTIONS TO APPROVAL OF DEBTOR'S FIRST AMENDED DISCLOSURE STATEMENT (ECF NOS. 356, 361, 373, AND 374)** to be made electronically via the Court's CM/ECF system upon the following parties at the e-mail addresses listed below:

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