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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 **Confirmation Hearing:** November 18, 2022 **Hearing Time:** 9:30 a.m.

DEBTOR'S OMNIBUS REPLY TO OBJECTIONS TO SECOND AMENDED CHAPTER 11 PLAN OF REORGANIZATION AND RELATED MOTION FOR CONFIRMATION OF DEBTOR'S SECOND AMENDED CHAPTER 11 PLAN OF REORGANIZATION

Front Sight Management LLC, the chapter 11 debtor in possession and plan proponent herein (the "Debtor"), hereby submits its reply ("Reply") to the objections (collectively, the "Objections") filed to the Debtor's (i) *Second Amended Chapter 11 Plan of Reorganization* [ECF No. 405] (the "Plan"); and (ii) *Motion for Confirmation of Debtor's Second Amended Chapter 11 Plan of Reorganization* [ECF No. 439] (the "Confirmation Motion").[1]

The following Objections were filed to the Plan and/or Confirmation Motion:

1. The objection and reservation of rights to the Plan [ECF No. 475] (the "UST

[1] Any capitalized term not defined herein has the same meaning ascribed to it in the Plan.

Objection") filed by the United States Trustee ("US Trustee");

2. The opposition to the Confirmation Motion [ECF No. 484] (the "Meacher Objection") filed by Michael Meacher ("Meacher") *dba* Bankgroup Financial Services; and

3. The objection to the Plan [ECF No. 495] (the "Committee Objection") filed by the Official Committee of Unsecured Creditors (the "Committee") appointed in this case.

In support of the Reply, the Debtor respectfully represents as follows:

INTRODUCTION

As set forth in the *Certification of Acceptance and Rejection of Chapter 11 Plan* [ECF No. 518] (the "Ballot Summary") filed in support of the Plan, four of the five classes entitled to vote on the Plan voted to accept the Plan as follows: (i) Class 1 Secured Claim of Las Vegas Development Fund LLC ("LVDF"); (ii) Class 3 Secured Claim of M2 EPC; (iii) Class 4 Secured Claim of Top Rank Builders / Morales Construction ("Morales"); and (iv) Class 6 – General Unsecured Claims. Only one voting class rejected the Plan, the Class 2 Secured Claim, even though the Plan provides for Meacher to receive a first priority lien against a $3.3 million reserve, an amount equal to the full amount of Meacher's filed claim.

Notwithstanding the acceptance of the Plan by 3 of the 5 Committee members, and the overall acceptance of the Plan by the Committee's constituency, Class 6 general unsecured creditors, the Committee still contests confirmation of the Plan and continues to rack up unnecessary legal fees for all parties in this case. The Committee Objection is based mainly on outdated and unsupported supposition that is wholly irrelevant to the Court's inquiry into whether the Plan meets the requirements for confirmation under Section 1129. It is far easier to criticize a restructuring effort, then to bring a meaningful alternative to the table. The Debtor's Plan, based upon an agreement with Nevada PF, LLC ("Nevada PF"), is far better than all alternatives for the Debtor, its estate, creditors and employees under the time restrictions in this case (DIP financing expires on November 29, 2022), and given that there is no viable, feasible alternative to support the Debtor's post-confirmation business operations or to otherwise fund an alternative plan. As set forth in the Debtor's omnibus reply [ECF No. 387] to the objections to the Debtor's disclosure statement, the Debtor intended in this bankruptcy case to propose new membership terms with built in daily fees and annual fees, which, if accepted by enough of its members, would have allowed the Debtor to propose a Debtor/member-based plan of reorganization that retained memberships and member benefits. However, after conducting a survey of all members, the Debtor did not have sufficient support from its members to make that type of plan of reorganization feasible.

The Plan is the best possible result (a) for the Debtor (in that it will remain a going concern and approximately one hundred employees will keep their jobs), (b) for members (in that they will receive a base membership in the reorganized debtor for free for 2023 and 2024 and discounts to other memberships), (c) for the community of Pahrump (in that there will not be 100 people immediately laid off), and (d) for general unsecured creditors (in that there will be approximately $3 million set aside to distribute to what is now estimated to be between $11 million and $15 million in claims). The alternative to Plan confirmation is conversion and an asset sale as the Debtor's DIP financing expires on November 29, 2022. If the Plan is not confirmed on November 18, 2022, then this case will revert to a Section 363 sale pursuant to the DIP financing order and accompanying asset purchase agreement [ECF No. 150], with a sale price of $19 million (which is considerably less than the approximately $25 million provided by Nevada PF to acquire the shares of the Debtor through the Plan). An asset sale and/or conversion is not in the best interests of the Debtor or its creditors, the majority of whom voted to accept the Plan.

The Debtor notes that it was disappointed by the accusations and innuendo in the Committee Objection bereft of any facts, and that the Committee has appeared to be working <u>against</u> the Debtor's efforts to reorganize while simultaneously failing to provide any alternative source of financing or alternative purchaser or equity investor. The Debtor and its insiders have no connection to Nevada PF, and the Debtor's insiders' first choice was to stay in control of the Debtor and propose a member based plan. However, the Debtor does not have the necessary member support and the best viable alternative was to structure the Plan with Nevada PF whereby the Debtor's current equity holders lose 100% of their interest in the Debtor. The Committee Objection "makes much ado about nothing" in that it (a) grossly misrepresents the amount of unsecured claims in this case, (b) grossly misrepresents the Debtor's alleged claims against its insiders (i.e., (i) five to ten years ago when the Debtor was profitable and significant taxes were paid on those profits and other taxes were offset by personal losses, the Debtor's insiders took distributions at a time when the Debtor was not insolvent and (ii) fails to account for how the claims could be prosecuted under the Plan as Nevada PF is acquiring them all), (c) grossly misrepresents that the Plan violates the absolute priority rule (when it does not), and (d) makes false accusations that the Debtor artificially impaired classes. The Committee also initially scheduled a deposition of Ignatius Piazza on November 11, 2022 – the date that this Reply is due – without meeting and conferring with the Debtor or Dr. Piazza in advance – a deposition that should have taken place months ago and not at a time when it takes the Debtor's professionals' time away from Plan confirmation to defend an unnecessary deposition scheduled after the Committee Objection was due. When Committee Counsel was first employed, counsel for the Debtor provided a copy of the transcript from the first day hearings in this case – which transcript is full of salacious accusations against Dr. Piazza. In Committee Counsel's first interim fee application, **25.2** hours were billed under "Insider Investigation" (i.e., from June through August 31, 2022, counsel for the Committee performed almost no insider investigation). The deadline for DIP financing has always been November 29, 2022. It is outrageous that Committee counsel first served a deposition notice of Dr. Piazza on **October 31, 2022** – or four and a half months after they were employed, with a deposition date of November 11, 2022 (or 7 days before the confirmation hearing). Furthermore, **three of the five** Committee members voted to accept the Plan, and yet Committee counsel filed the Committee Objection, scheduled a deposition of Dr. Piazza (now scheduled for November 14, 2022), and served informal information requests to Debtor's counsel Friday evening October 14, 2022 requesting a large amount of documents and correspondence. Committee counsel's actions in the last month have caused the Debtor's professionals to incur significantly more fees in this case – and the Debtor can only imagine the additional fees incurred by Committee counsel. Committee counsel's actions have already resulted in $500,000 that was originally intended to be allocated to unsecured creditors to be allocated to administrative expenses (i.e., Committee counsel's fees are expected to be at least half a million more than the originally estimated $500,000 allocated to them in the DIP financing budget).

What has happened over the last month with respect to the Committee is atrocious and should not be countenanced by the Court or the US Trustee. It is gamesmanship at its finest – with a massive potential cost to the Debtor, its employees, its members, and its creditors. Committee counsel seems to be intent on attempting to coerce Nevada PF and/or Dr. Piazza into (a) giving control of distributions and claim objections to Committee counsel, and (b) making a larger contribution to general unsecured creditors. However, Nevada PF has already agreed to contribute at least $1.875 million more towards Plan confirmation that was contained in the original deal (i.e., (i) the $500,000 allocated to professional fees – necessary only because of Committee counsel fees, (ii) $500,000 added to the original $2.5 million contribution to Class 6, (iii) $750,000 added to the LVDF reserve, and (iv) approximately $125,000 added to Stretto's budget for serving all 80,000 active members with mail notice of the Plan.) There are no additional funds available to fund this Plan. Instead of searching for an alternative equity investor under the Plan or finding other alternatives for this Debtor (as the Debtor's professionals have encouraged them to do repeatedly throughout this case), Committee counsel has inundated the Debtor with last minute discovery relating to topics that it was aware of since its retention in June 2022.

As set forth in the Confirmation Motion and below, the Plan meets the requirements for confirmation under Section 1129. The Objections do not change that analysis.

I. THE ABSOLUTE PRIORITY RULE DOES NOT APPLY BECAUSE CLASS 6 VOTED TO ACCEPT THE PLAN

In their Objections, the Committee and Meacher allege that Dr. Piazza stands to retain substantial value under the Plan, and therefore, the Plan violates the absolute priority rule. Meacher cites to *In re DBSD N. Am., Inc.*, 634 F.3d 79 (2d Cir. 2011), which is inapposite to the facts here. In *DBSD*, under the proposed chapter 11 plan, the existing shareholder would receive shares and warrants in the reorganized entity. *Id.* at 86. Here, as set forth in the Disclosure Statement and Plan, Dr. Piazza and the Debtor's other insiders (a) are not retaining any equity in the Reorganized Debtor, and (b) <u>waive their claims of $2.364 million</u> against the Debtor (and are therefore not receiving any value thereon). Thus, Dr. Piazza and the Debtor's other insiders are not receiving or retaining property under the Plan on account of their "old equity" interests.

With regard to the provision in the Consulting Agreement regarding a payment from the Reorganized Debtor to Dr. Piazza of the difference between LVDF and Meacher's asserted claims and the amount of their allowed claims after deduction for attorneys' fees incurred by the Reorganized Debtor, at this point, the prospect of Dr. Piazza gaining anything is speculative and hypothetical at best. Furthermore, Dr. Piazza is the only party capable of overseeing the litigation with LVDF and Meacher and to the extent the Reorganized Debtor seeks to share any reduction in the claim with Dr. Piazza for overseeing the litigation, that compensation is not on account of "old equity" interests.

In addition, under the Consulting Agreement, Dr. Piazza will not hold a management position with the Reorganized Debtor but will, among other things, assist with marketing, prosecuting objections to claims and certain Causes of Action. Furthermore, Nevada PF is requiring Dr. Piazza to enter into a complicated tax reorganization (at his expenses) for the benefit of Nevada PF, and a very broad 10 year cooperation agreement, and nationwide non-competition, non-interference and non-disparagement agreement. Dr. Piazza is entitled to receive compensation for providing these services and restrictive covenants to the Reorganized Debtor. Such compensation is not on account of his old equity interests.

Even assuming *arguendo* that Dr. Piazza was receiving or retaining property under the Plan, the absolute priority rule does not apply in this case. The absolute priority rule, codified in Section 1129(b)(2)(B), prohibits junior stakeholders from receiving or retaining property under a reorganization plan unless senior stakeholders either are paid in full or consent to the distribution to the junior class of claimants. *See Czyzewski v. Jevic Holding Corp.*, 580 U.S. 451, 137 S. Ct. 973, 984, 197 L. Ed. 2d 398 (2017); *Norwest Bank Worthington v. Ahlers*, 485 U.S. 197, 202, 108 S. Ct. 963, 966, 99 L. Ed. 2d 169 (1988). As set forth in the concurrently filed Ballot Summary, Class 6 voted to accept the Plan. Accordingly, even if Dr. Piazza was receiving or retaining property under the Plan (which he is not), Class 6 has consented to such distribution. Thus, the absolute priority rule does not apply, and the objections based thereon are moot. *See In re New Midland Plaza Assocs.*, 247 B.R. 877, 895 (Bankr. S.D. Fla. 2000) ("Here, all impaired unsecured creditors' classes with standing to assert the rule have voted to accept the Plan; therefore, the absolute priority rule under 11 U.S.C. § 1129(b)(2)(B)(ii) and cases decided under the rule, including *LaSalle*, do not apply."); *In re United Marine, Inc.,* 197 B.R. 942 (Bankr. S.D. Fla. 1996) (finding that a dissenting unsecured creditor in an accepting class cannot assert the absolute priority rule).

Accordingly, the Plan does not violate Section 1129(b)(2)(B)(ii) and it should be confirmed.

II. THE DEBTOR DID NOT IMPROPERLY CLASSIFY CLASS 3 AND CLASS 4 AS IMPAIRED AND THE PLAN HAS BEEN PROPOSED IN GOOD FAITH

In their Objections, the Committee and Meacher allege that the Debtor inappropriately classified Classes 3 and 4 as impaired. Section 1122(a) "requires that all claims within a class be substantially similar. It does not require all substantially similar claims to be placed in the same class." *In re Islet Scis., Inc.*, 640 B.R. 425, 458 (Bankr. D. Nev. 2022). The Debtor classified Classes 3 and 4 as impaired because each of the Claimants' legal, equitable or contractual rights are changed under the Plan. *In re L & J Anaheim Assocs.*, 995 F.2d 940, 942, n.2 (9th Cir. 1993) (explaining the definition of impairment). Classes 3 and 4 will be paid over time and without interest. Accordingly, Classes 3 and 4 are properly identified as impaired under the Plan, and such treatment is allowed pursuant to Section 1122(a). In addition, even under the case law cited in the Objections, advantageous and/or beneficial treatment of claims under a chapter 11 plan of reorganization is not prohibited. *See In re L & J Anaheim Assocs.,* 995 F.2d 940 (9th Cir. 1993).

The Committee and Meacher argue without any supporting evidence that the Reorganized Debtor has sufficient cash to pay the holders of Classes 3 and 4 in full on the Effective date, and the treatment provided is solely to artificially satisfy the requirement of Section 1120(a)(10). Section 1129(a)(10) provides that if a plan proponent chooses to impair classes of claims in its proposed plan, then at least one impaired class of claims must accept plan treatment. 11 U.S.C. § 1129(a)(10). Here, in addition to Classes 3 and 4, impaired Classes 1 and 6 have voted to accept the Plan. Thus, the requirement under Section 1129(a)(10) has been met even if Classes 3 and 4 were not impaired.

As set forth in the Confirmation Motion, the Debtor has not structured the proposed treatment of Classes 3 and 4 in bad faith. Rather, the Debtor has acted in good faith in an attempt to negotiate upfront payments for most of its creditors, but the Debtor was unable to do so with respect to every creditor. The Reorganized Debtor needs sufficient working capital to continue the Debtor's operations post-confirmation. Class 3 and Class 4 claims total $125,000, which is not an insignificant amount considering that the Reorganized Debtor anticipates that it will need approximately $700,000 in working capital to meet the Debtor's operating needs. Under these circumstances, it is reasonable and appropriate to pay Classes 3 and 4 over time rather than in full on the Effective Date.

Thus, the Plan meets the requirement of Section 1129(a)(10), and the Plan was not proposed in bad faith.

III. THE INSIDER RELEASE IS PERMISSIBLE AND IS A VALID EXERCISE OF THE REORGANIZED DEBTOR'S BUSINESS JUDGMENT

In their Objections, the Committee and Meacher argue that the Plan impermissibly provides releases to non-debtor, third parties. The Plan provides that the Reorganized Debtor will retain all claims against the Debtor's insiders, including its current equity holders, and such claims shall revest in the Reorganized Debtor upon the Effective Date. As set forth more fully in FS DIP's omnibus reply [ECF No. 388] to the objections to the Debtor's First Amended Disclosure Statement, the Reorganized Debtor is purchasing the avoidance actions and litigations claims for purposes of ensuring that the Reorganized Debtor will be able to emerge from bankruptcy on solid footing and without the burden and the stigma of the prepetition litigation. The Reorganized Debtor does not want the Debtor's extremely troubled and contentious litigation past to interfere with its business operations and its customers' confidence going forward. The Reorganized Debtor'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.

Through the Consulting Agreement to be entered into by the Reorganized Debtor and Dr. Piazza, the Reorganized Debtor (through its acquisition of such claims under the Plan) has agreed to release avoidance claims against the Debtor's insiders and claims for turnover of property of the Debtor's estate. Although the Debtor does not believe that this constitutes a settlement between the Debtor and its insiders (as the Reorganized Debtor will be owned 100% by Nevada PF, is purchasing the claims, and can do whatever it wants with them), even if it were, it could be approved. As the Committee correctly notes, a debtor's release of claims against a third party is not *per se* impermissible. Such releases can be approved if it represents a valid exercise of the debtor's business judgment and satisfies the fair, reasonable, and adequate standard set forth in *In re A & C Properties*, 784 F.2d 1377, 1381 (9th Cir. 1986). The factors courts consider in determining whether that standard has been met include:

> (a) The probability of success in the litigation;
>
> (b) The difficulties, if any, to be encountered in the matter of collection;
>
> (c) The complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and
>
> (d) The paramount interest of the creditors and a proper deference to their reasonable views in the premises.

Id.

Here, each of the factors are met. First, if the Reorganized Debtor (or any other party) were to bring an avoidance action against the Debtor's insiders it is unlikely that the litigation would be successful. Although the Committee notes that the Debtor's insiders may have received distributions from the Debtor in the approximate amount of $25 million from 2012 through 2020 (which distributions the Debtor was entitled to make), the Committee disingenuously fails to take into account contributions by Dr. Piazza to the Debtor. In the four-year period from before the Petition Date (i.e., 5/24/2018 through 5/24/2022), the Debtor's insiders contributed over $2 million more to the Debtor than the amount that was distributed to them. While the Debtor's records reflect that insider transfers occurred in the three years before that (i.e., 5/24/2015 through 5/23/2018), the Debtor's records also reflect that the Debtor was solvent at the time and that significant income taxes were paid on the Debtor's profits from those distributions (i.e., $1.3 million for the period from 5/24/2015 through 5/23/2016, $4.9 million for the period 5/24/2016 through 5/23/2017 and $2.5 million for the period from 5/24/2017 through 5/23/2018). IRS tax transcripts (which were provided to Committee counsel) reflect that tax return examinations were completed for the perioids from 2014 through 2019, and no discrepancies were found.

In order to prevail in an avoidance action, a party would need to prove that the distributions to the Debtor's insiders were actually fraudulent or constructively fraudulent. It is extremely unlikely that a party would be able to prove that the distributions were constructively fraudulent because the Debtor was solvent, profitable, and paying its debts as they came due. Until Fall 2021, the Debtor was even current on its obligation to LVDF. The Committee has not even alleged that the Debtor was insolvent, nor could it because the Debtor has provided extensive financial information to the Committee demonstrating that it was solvent. Similarly, it is extremely unlikely that a party could prove that the Debtor made the distributions with the actual intent to hinder, delay, or defraud its creditors at a time when the Debtor was solvent, profitable, and paying its debts. What creditor was the Debtor trying to defraud?

In the Committee Objection, the Committee does not even attempt to provide the Court with any evidence as to why it believes there are "colorable" avoidance claims. Rather, the Committee has attempted to hide the fact that apparently despite the extreme due diligence conducted by the Committee's financial advisors they found ***no*** demonstrative evidence of wrongdoing by the Debtor or its principal. Despite a thorough review of the Debtor's financials, tax returns and transactional activity, along with appraisals conducted during the periods where there were net distributions, the Committee does not identify with specificity any claims that exist against the Debtor's insiders. At best, they point to LVDF's allegations, but do not suggest that those allegations have any validity.[2] Rather, the Committee suggests that the Debtor would have been better served to reinvest that money into the planned development rather than entering into an agreement with LVDF or making legally permissible distributions. Even if this hindsight driven argument were true, it does not state a cognizable claim against the Debtor's insiders. Whatever the reach-back period, the Committee does not aver that any fraudulent transfer claims exist. Simply put, the Committee has failed to present any controverting evidence or to establish any basis that the distributions are avoidable.

Second, whether any judgment would be collectible is speculative and highly dependent on the amount of the judgment.

Third, the Debtor ascribed no value to these claims in its Liquidation Analysis because the cost of litigation would far outweigh any recovery. Indeed, LVDF has been litigating alleged

[2] Highlighting the Committee's lack of any facts that would support avoidance claims, the Committee cites to a lawsuit against the Debtor and Dr. Piazza filed in 2005 and settled in 2008. But, the Committee does not credibly connect the dots as to that historical fact and any wrongdoing by Dr. Piazza today. It is merely cited by the Committee as a distraction from the fact that there is no evidence to support avoidance claims.

fraudulent transfer claims against the Debtor's insiders for over four years pre-petition with nothing to show for it but alleged millions of dollars in attorneys' fees.

Fourth, each class of creditors accepted the Plan, except for Meacher. The release of the avoidance claims was disclosed to the Debtor's creditors and the majority of creditors still voted to accept the Plan. As set forth above, the releases are integral to the Plan because the Reorganized Debtor wants a fresh start and does not want to be faced with further litigation concerning the pre-petition conduct of the Debtor's prior management. This is an important term within the broader PF Nevada integrated transaction. Confirmation of the Plan is in the best interests of creditors because it provides meaningful distributions to each Class, including to general unsecured creditors, which distributions would be significantly less, if at all, in a Chapter 7 liquidation, and it provides a free two year base membership to the Debtor's members.

Accordingly, each of the *A&C Properties* factors are met. The releases are a valid exercise of the Reorganized Debtor's business judgment and approval of the Plan is in the best interests of the Debtor's creditors.

IV. THE MEACHER OBJECTION

In the Meacher Objection, Meacher objects to the Plan because the Plan does not provide for post-confirmation interest. Meacher cites to Section 1129(b)(2)(A)(i)(II) in support of his argument. However, Section 1129(b)(2)(A)(i)(II) is not applicable under the Plan. The Plan does not provide that Meacher is to retain his asserted lien in the Debtor's firearms. Rather, the Plan provides Meacher with the indubitable equivalent of his asserted lien by providing substitute collateral. Specifically, the Plan provides that Meacher will have a first priority lien to the same extent and validity of his existing asserted lien against a $3.3 million reserve account.

With respect to secured claims, Section 1129(b)(2)(A) sets forth three different ways for a chapter 11 plan to be fair and equitable. To be fair and equitable, the chapter 11 plan must satisfy the requirements of only one of the provisions in Section 1129(b)(2)(A)(i)–(iii). Here, the Plan satisfies the requirements of Section 1129(b)(2)(A)(iii), which provides a plan is "fair and equitable" if, with respect to a class of secured claims, it provides "for the realization by such holders of the indubitable equivalent of such claims." 11 U.S.C. § 1129(b)(2)(A)(iii). Where the plan changes a secured creditor's rights in the collateral, providing the indubitable equivalent requires that the plan provide substitute collateral or other assurances that the creditor's risk is not increased. *In re Arnold & Baker Farms*, 85 F.3d 1415, 1422 (9th Cir.1996) (citation omitted).

The Plan provides substitute collateral to Meacher such that Meacher's risk is not increased. The Plan provides that Meacher's asserted lien will attach to the reserve account to the same extent and validity of his asserted existing lien against the Debtor's firearms. Thus, the Debtor has met the requirements of Section 1129(b)(2)(A)(iii) and the Plan is fair and equitable with respect to the treatment of the Meacher Secured Claim.

Meacher additionally objects to the Plan to the extent that it provides for the Court to retain exclusive jurisdiction. This objection is not well founded. The Retention of Jurisdiction provision, Article III.F of the Plan, does not provide for exclusive jurisdiction. The provision specifically states that the retention of jurisdiction over the enumerated matters is in addition to jurisdiction which exists in any other court.

Thus, the Court should overrule the Meacher Objection and confirm the Plan.

V. THE COMMITTEE OBJECTION

The Debtor has attempted to work consensually with the Committee throughout this case and was disappointed by the tone of the Committee Objection, and by the Committee's attempt to deflect from its own failure to complete its insider investigation(s) in a timely manner. The Debtor believes that most, if not all, of the Committee's concerns are addressed throughout this Reply. To reiterate, if the Debtor is unable to obtain Court approval of the Plan at the November 18, 2022 hearing because the Committee has failed to reasonably negotiate with the Debtor, its insiders (based on wildly inflated and unsubstantiated potential insider claims) and Nevada PF, the Debtor will not be able to meet the Plan confirmation deadlines in the DIP financing order and will be required to move forward with a 363 sale with the $19 million stalking horse agreement [ECF No. 150]. This is simply not in the best interests of Class 6 Claimants, who have voted to accept the Plan.

The Committee argues that the Plan fails to meet the best interest test under Section 1129(a)(7) because the Plan provides insufficient value to Class 6 Claimants. The Committee contends without any supporting evidence that unsecured creditors will not receive more than in a chapter 7 liquidation because the Liquidation Analysis fails to ascribe any value to estate claims against the Debtor's insiders and the $3 million allocated to general unsecured creditors includes the cost of reconciling and prosecuting objections to claims. These arguments lack merit.

The Debtor does not believe that there are any material discrepancies in its Liquidation Analysis, except that administrative claims are substantially higher because the Committee's counsel has far exceeded its budget. The Liquidation Analysis intentionally does not include a valuation for estate claims against the Debtor's insiders because the Debtor believes that such claims have no value for the reasons discussed above. With respect to the costs of prosecuting claim objections, by the time of the Effective Date, most claim objections will have been filed and claims will already have been reconciled, i.e., paid for during the course of the case and not from the $3 million allocated to Class 6 under the Plan. Meaning the Debtor has done the "considerable" work already regarding claim reconciliation.

Contrary to the Committee's unsupported assertion that a 10% to 30% distribution to unsecured creditors is implausible, as of the date this Reply is filed, the Debtor has filed objections to all but approximately $15 million of general unsecured claims. By the time of the Confirmation Hearing, the Debtor will have filed objections that, if sustained, will bring the general unsecured claims pool to approximately $11 million. Based on the claims filed since the rejection bar date notice was served, the Debtor expects that there will be approximately $11 million in claims up to a maximum of $15 million in general unsecured claims. With $15 million of general unsecured claims, and $2.7 million to distribute (assuming $300,000 in attorneys' fees), that would be an 18% distribution. If total general unsecured claims are $11 million (assuming $300,000 in attorneys' fees), then that would be a 24.5% distribution. Both distributions are significantly higher than the projected 9.5% best case scenario distribution under a chapter 7 liquidation (which when adjusted for the increased administrative expenses would likely be far smaller), and are not illusory. Thus, the Plan meets the requirement of Section 1129(a)(7).

The Committee additionally argues that the Debtor has not demonstrated that the Plan is feasible. Nevada PF will be filing evidence of feasibility to address the Committee Objection. However, the Debtor notes that it was provided with a letter from Northern Trust dated November 8, 2022 that FS DIP (an affiliate of Nevada PF) maintains deposit, custody, investment and/or brokerage accounts with Northern Trust in an amount exceeding $27 million.

VI. THE UST OBJECTION

The Debtor will add additional language to the Exculpations and Releases that limits the Exculpations and Releases to the period between the Petition Date and the Effective Date of the Plan.

The Debtor will remove the language from the Continuing Stay/Injunction provision regarding asserting a setoff against the Debtor.

The Debtor agrees to include a provision in the Confirmation Order that states that no provision in the Plan constitutes a nonconsensual non-debtor, third party release.

The Debtor agrees with the US Trustee that quarterly fees do not require an allowance process. The confirmation order will provide that quarterly fees are assessed fees that do not require allowance and will be paid for periods when this case remains open, in chapter 11, and has not been converted or dismissed.

Additionally, the confirmation order will include the US Trustee's requested language regarding monthly operating reports and confirmation reports, and the Notice of Occurrence of the Effective Date.

VII. CONCLUSION

Based on the foregoing reasons, the Debtor respectfully submits that the requirements for confirmation of the Plan have been met, and the Court should confirm the Plan subject to the revisions set forth above.

DATED: November 11, 2022

BG LAW LLP

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