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 15 and Plan Proponent

16 **UNITED STATES BANKRUPTCY COURT**
 17 **FOR THE DISTRICT OF NEVADA**

18 In re:

19 Front Sight Management LLC,

20 Debtor.

21 Case No. 22-11824-abl

22 Chapter 11

23 **Hearing Date:** November 18, 2022

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

25 **OBJECTION TO AND REQUEST TO STRIKE IMPROPER MATTER CONTAINED**
 26 **IN THE OBJECTION OF THE OFFICIAL COMMITTEE OF UNSECURED**
 27 **CREDITORS TO CONFIRMATION OF DEBTOR’S SECOND AMENDED**
 28 **CHAPTER 11 PLAN OF REORGANIZATION**

29 Pursuant to Rules 402 and 403 of the Federal Rules of Evidence, Front Sight Management
 30 LLC, the chapter 11 debtor in possession and plan proponent herein (the “Debtor”), hereby submits
 31 its objection to and request to strike portions of the objection [ECF No. 495] (the “Committee
 32 Objection”) to plan confirmation filed by the Official Committee of Unsecured Creditors (the
 33 “Committee”). The matter sought to be stricken is irrelevant, inflammatory and designed to obscure
 34 the fact that notwithstanding the level of cooperation afforded the Committee by the Debtor, the

1 Committee Objection could not identify and has not identified any credible basis for opposing the
2 Debtor's second amended plan [ECF No. 405] (the "Plan").

3 Specifically, the Debtor seeks to strike the portions of the Committee Objection that relate to
4 (i) a settlement in 2008 arising from a class action lawsuit brought in 2005 (identified as the "Class
5 Action"), (ii) allegations that are stale and way beyond any recognized statute of limitations,
6 including the alleged 20+ year failure of the Debtor with respect to the planned development of a
7 resort and (ii) the Debtor's decision to proceed with the lending facility with LVDF, as opposed to
8 financing the development itself, and LVDF's bald allegations of fraudulent transfer.

9 Paragraph 39 of the Unsecured Creditors' Committee's Objections frames the issues as
10 follows:

11 39. Given the now 20+ year failure of the Debtor to make any meaningful
12 progress with respect to the planned resort, the allegations set forth in the Class
13 Complaint, and the allegations raised by LVDF in the LVDF Counterclaims,
the Committee undertook an investigation into potential estate claims and
causes of action that could be asserted against Piazza and the Piazza Trusts.

14 Taken independently or together, these "facts" are wholly irrelevant to the Section 1129(a)
15 analysis this Court must undertake to determine whether to confirm the Plan. 11 U.S.C. §1129(a).
16 Rather, they are designed to color and obfuscate the fact that despite the extreme due diligence
17 conducted by the Committee it found *no* demonstrative evidence of wrongdoing by the Debtor or its
18 principal. None of the prejudicial "facts" identified in the Committee Objection move the needle
19 with respect to the proper inquiry of whether the "plan complies with the applicable provisions of
20 this title" and whether "the plan has been proposed in good faith and not by any means forbidden by
21 law." *Id.*

22 These "facts" comprise the factual foundation for the Committee Objection, and they are
23 wholly irrelevant to the issues presented to this Court. The discussion of these facts are contained
24 primarily in paragraphs 31 through 49. The Debtor believes that the Committee focuses on these
25 issues to cover up the fact that it could find nothing untoward with respect to the fact that the Debtor
26 generated \$41.2 million in net income that was distributed, in part, to the Debtor's equity owners
27 (with a significant portion going to federal and state taxing authorities and excluding contributions).
28

1 If taxes and contributions by Dr. Piazza are taken into account, then there is less than \$20 million of
2 true distributions to the Debtor's insiders over the last ten years. While the Committee alleges that
3 there is a 10-year reach back period for fraudulent transfers, the Committee does not suggest or
4 provide a scintilla of evidence (i) that the Debtor did not have \$41.2 million in net income, (ii) that
5 any distributions during this period were fraudulent—actual or constructive, or (iii) that the Debtor
6 was insolvent at the time the distributions were made. Indeed, it is undisputed that during the four
7 years prior to the Debtor's bankruptcy, Dr. Piazza contributed \$2 million more to the Debtor than he
8 received. Committee Objection, at ¶40.

9 Recognizing an absence of evidence, the Committee seeks to rely on the fact that the Debtor
10 has for some time sought to develop a resort and has failed in its attempts to do so. The mere fact
11 that the Debtor has considered the project for more than 20 years is wholly irrelevant. Likewise, the
12 fact that the Debtor was sued eighteen years ago and settled said lawsuit fifteen years ago says
13 nothing with respect to the bona fides of the Plan.

14 Finally, the attack on the Debtor for deciding to fund the project in a deal with LVDF, as
15 opposed to funding the project itself, and the Committee's reliance on LVDF's disproven allegations
16 of fraudulent transfer is nothing more than Monday morning quarterbacking and an attempt to hide
17 the fact that the Committee's own investigation did not substantiate LVDF's false allegations, nor is
18 there *any* evidence that the Debtor was not earnest in its attempt to build the planned resort.

19 First, it is wholly improper for the Committee to use hindsight as a predicate to their
20 argument. The Committee has not suggested that the Debtor colluded with LVDF or otherwise
21 knew from the outset that LVDF would utterly fail to deliver on its promises. That LVDF did in
22 fact not raise the monies necessary to fund the development is indisputable. But, how does that fact
23 advance the Committee Objection or lend itself to the supposition that the Debtor did not have the
24 intention of building the planned resort?

25 Second, while the Committee identified net income that flowed from the Debtor (while
26 downplaying the significant portion of those funds that went to pay taxes and the personal losses
27 used to offset some of the income), it does not suggest that there is any merit to LVDF's fraudulent
28

1 transfer claims. It decries that the Plan releases Dr. Piazza (which is not true as the Reorganized
2 Debtor is acquiring the putative claims as part of Nevada PF's acquisition of the Debtor's equity
3 under the Plan). Despite a thorough review of the Debtor's financials, tax returns and transactional
4 activity, the Committee does not identify with specificity any claims that exist against Dr. Piazza.
5 At best, the Committee points to LVDF's allegations, but does not suggest that those allegations
6 have any validity. Instead, the Committee suggests that the Debtor would have been better served to
7 reinvest that money into the planned development. Even if this were true, it does not state a
8 cognizable claim against Dr. Piazza. Whatever the reach-back period, the Committee does not aver
9 that any fraudulent transfer claims exist. In other words, the Committee Objection provides no
10 factual basis to not confirm the Plan, let alone because of any alleged fraudulent transfers.

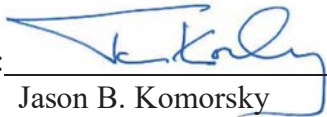
11 A substantive response to the Committee Objections is dealt with in the Debtor's omnibus
12 reply to Plan objections. However, the Court's analysis should not be colored by false, irrelevant,
13 and prejudicial matter that has no rational relationship to the determination of confirmation of the
14 Plan.

15 **CONCLUSION**

16 Accordingly, the Debtor respectfully objects to and asks the Court to strike those portions of
17 the Committee Objection that relate to the Class Action, the amount of time the Debtor contemplated
18 the development project and the Debtor's decision to seek funding from LVDF (including LVDF's
19 unsubstantiated claims of fraudulent transfer) pursuant to Ruled 402 and 403 of the Federal Rules of
20 Evidence.

21 DATED: November 11, 2022

BG Law LLP

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