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UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF NEVADA

In re:	Case No.: 22-11824-abl
FRONT SIGHT MANAGEMENT, LLC,	Chapter 11
Debtor.	<u>Confirmation Hearing</u> Date: November 18, 2022 Time: 9:30 a.m.

JOINDER TO THE 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

FS DIP, LLC ("**FS DIP**"), the debtor-in-possession lender to Front Sight Management, LLC (the "**Debtor**"), and Nevada PF, LLC, a Nevada limited liability company d/b/a PrairieFire ("**PrairieFire**"), the proposed New Equity Investor under the Debtor's *Second Amended Chapter 11 Plan of Reorganization* [ECF No. 405] (as amended, modified, or supplemented, the "**Plan**"),[1] hereby submit this joinder to the *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* [ECF No. 519] and further argues as follows:

A. <u>The Litigation Claims and Consulting Agreement Are Not Severable.</u>

1. The Debtor's Plan provides that in exchange for 100% of the new equity interests of the Debtor to be issued on the Effective Date, PrairieFire, an affiliate of FS DIP, will contribute

[1] Capitalized terms not otherwise defined herein shall have those meanings ascribed to them in the Plan.

$19.575 million in cash (the "**Cash Contribution**") and cause the outstanding amount of FS DIP's secured DIP Financing, totaling approximately $5.2 million,[2] to be contributed to the Debtor's estate, for total consideration of at least $24.775 million (the "**New Value Contribution**"). In short, the Plan provides for a sale of the Debtor to PrairieFire in exchange for cash and a credit bid of the post-petition debt secured by substantially all assets of the Debtor.

2. While the New Value Contribution was subject to overbids, none were received. *See* Plan, pgs. 39-47 (describing auction and bidding procedures); *id.*, 40:7-12 (prescribing an Initial Bid Deadline for Qualifying Bids of 4:00 p.m. on November 4, 2022).

3. In its objection to confirmation of the Plan, the Committee complains that the holders of Class 6 General Unsecured Claims—who voted to *accept* the plan—are not receiving a sufficient distribution. The Committee argues that 1) the release of claims against Ignatius Piazza ("**Piazza**") and other insiders should be carved out of the sale to PrairieFire and transferred to a trust for the benefit of unsecured creditors, and 2) the compensation and other consideration to be provided to Piazza pursuant to a Consulting Agreement between PrairieFire and Piazza should instead be paid to the unsecured creditors.[3]

4. The Committee's objections should be overruled because the Plan is not a cafeteria in which creditors can pick and choose according to their preferences. Under the Plan, PrairieFire will acquire the New Equity Interests of the Debtor and all of the Debtor's Assets, including all Litigation Claims, if any, against Piazza and other insiders, which claims revest in the

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[2] PrairieFire will cause FS DIP's secured claim to be contributed in the amount of the DIP Financing (inclusive of all interest and fees) as of the Effective Date, which may affect the total amount of the New Value Contribution.

[3] *See Objection of the Official Committee of Unsecured Creditors to Confirmation of Debtor's Second Amended Chapter 11 Plan of Reorganization* [ECF No. 495] (the "**Committee Objection**"), at pg. 3, ¶¶ 3, 4.

Reorganized Debtor upon the Effective Date.[4] Thus, PrairieFire is paying $24.775 million to acquire everything, including whatever claims the Debtor may have against its insiders, and the right to prosecute or release those claims.

5. Retention of the Litigation Claims is an important component of the consideration package for PrairieFire's agreement to pay the New Value Contribution and acquire the Debtor as a going concern. Retention of the Litigation Claims is an essential part of an integrated transaction between the Debtor, FS DIP, PrairieFire, and Piazza that will allow PrairieFire to gain control of the Debtor's operations and assets free and clear of claims outside of the Plan, avoid litigation, and obtain valuable non-compete, non-solicitation and non-disparagement provisions in a Consulting Agreement with Piazza. The Consulting Agreement is also an essential component of the integrated transaction, as the value that PrairieFire ascribes to the Debtor and its Assets is contingent upon non-competition, non-solicitation and non-disparagement agreements from Piazza. As such, the proposed Plan cannot be accomplished without the retention of the Litigation Claims and the Consulting Agreement with Piazza.

6. Further, neither the best interests test nor the absolute priority rule are implicated by these provisions of the Plan. First, despite over 260,000 creditors, members and parties-in-interest receiving notice, no one came forward to submit a bid for any assets of the Debtor or its estate, including hypothetical fraudulent transfer claims arising, if at all, more than four years before the Petition Date. Thus, the value of the Litigation Claims has been market tested by the Plan solicitation process. Second, the absolute priority rule is irrelevant to the Consulting Agreement because the Consulting Agreement does not allow Piazza to receive or retain any value that would otherwise be paid to the Debtor or available for distribution to creditors. The remuneration payable to Piazza under the Consulting Agreement is not part of the purchase price.

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[4] *See Second Amended Disclosure Statement Describing Debtor's Second Amended Chapter 11 Plan of Reorganization* [ECF No. 406] (the "**Disclosure Statement**"), at pgs. 66-67; Plan, at pg. 45 (providing that confirmation of the Plan "revests all property of the Debtor's Estate in the Reorganized Debtor, including, but not limited to, any Litigation Claims and the LVDF Litigation …"). PrairieFire submits Mr. Piazza is necessary to the prosecution of the LVDF and Meacher claims. Further, PrairieFire is acquiring all of the estate's claims and defenses (including litigation recoveries), taking the risk of the prosecution of those claims, including the related legal fees and costs, which together abates the arguments Piazza is receiving inappropriate value under the Consulting Agreement.

See In re Jartran, Inc., 44 B.R. 331, 382 (Bankr. N.D. Ill. 1984) (consideration paid to certain creditors and minority shareholders in settlement of claims peripherally impacting the debtor did not violate absolute priority rule where nothing in the record indicated that, but for the settlement payments, the funds would be designated as additional contribution to the debtor).

B. <u>The Debtor's Plan Maximizes the Recoveries for Unsecured Creditors.</u>

7. No party has come forward to overbid the New Value Contribution of $24.775 million, and FS DIP and PrairieFire are the only entities with the financial ability, interest, business and operational know-how in the Debtor's specialized business space, with working relationships within the "2A" community that are most likely to be interested in patronizing the Debtor's business, and the wherewithal to keep Debtor's property and business operating as a going concern for the collective benefit of all stakeholders in this case and the City of Pahrump and its surrounding communities in which Debtor operates.

8. If the Plan is not confirmed on or before December 1, 2022, the Debtor's unsecured creditors will probably recover nothing because it will constitute an event of default under the Final DIP Order, which would lead to conversion of the Debtor's Chapter 11 case to one under Chapter 7 of the Bankruptcy Code and a sale of the Debtor's Assets pursuant to which FS DIP or PrairieFire serves as the stalking horse bidder for a purchase price that is the greater of: (i) $14 million, plus the amount due and owing under the DIP Financing as of the Effective Date, or (ii) $19 million, with no requirement to provide benefits to the members.[5] Thus, failing to confirm the Plan would immediately reduce the purchase price for the Debtor's Assets by at least $5 million before consideration of the value being provided to the members under the Plan. The membership benefits being provided under the Plan, including waivers of various fees, reduced course costs, reduced training costs, and reduced annual fees, represent a considerable investment and commitment to the Debtor's going concern and substantial value to the Debtor's creditors.

For the reasons set forth above and in the Debtor's Reply, FS DIP and PrairieFire respectfully submit that the Plan should be confirmed.

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[5] *See* Purchase and Sale Agreement & Escrow Instructions dated June 15, 2022, ECF No. 150 at pg. 7 of 19.

Dated this 11th day of November 2022.

Respectfully Submitted,

/s/ *Samuel A. Schwartz*

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