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13 *Attorneys for Las Vegas Development Fund*

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

17 In re:

Case No. BK-S-22-11824-ABL
Chapter 11

18
19 FRONT SIGHT MANAGEMENT, LLC
20 Debtor.

**MOTION TO ALLOW AMENDMENT TO
PROOF OF CLAIM**

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22 Las Vegas Development Fund, by and through its counsel, the Law Office of Brian D.
23 Shapiro, LLC and Jones Lovelock, respectfully submits its Motion to Allow Amendment to Proof
24 of Claim. (“Motion”). This Motion is supported by the following Memorandum of Points and
25 Authorities, the declaration in support, incorporates by reference the Motion to Clarify and
26 Reconsider filed with Adversary Proceeding 22-01116-abl as applicable to the fraud claim, and
27 any oral argument that this Court may entertain at the time of the hearing on the Motion.
28

MEMORANDUM OF POINTS AND AUTHORITIES

I. Preliminary Statement

Prior to Front Sight Management, LLC (“**Front Sight**”) filing bankruptcy, Las Vegas Development Fund, LLC (“**LVDF**”) and Front Sight were involved in four-years of state court litigation. During the litigation, LVDF asserted counter claims against Front Sight for Fraud, Fraudulent Transfers, Conversion, Civil Conspiracy, Judicial Foreclosure, and Waste (“**Counter Claims**”).¹ Immediately after the filing of the bankruptcy case, the State Court litigation was removed to the Bankruptcy Court which created an adversary proceeding 22-01116-abl (“**Adversary Proceeding**”). LVDF filed a motion to terminate the stay and a motion to remand which were denied. The Bankruptcy Court specifically found that the Fraudulent Transfer and Waste claims were property of the Bankruptcy Estate. The Parties are continuing to litigate the matter within the confines of the Adversary Proceeding.

LVDF timely filed its proof claim. The proof of claim attached documents to support its secured claim in the Real Property (per the confirmed plan, LVDF’s claim has now attached to the funds in the reserve account). Pursuant to a stipulation, LVDF filed an amended proof of claim. The amended claim attached a declaration in support and additional documentation to support its secured claim and LVDF incorporated by reference its Counter Claims.

LVDF is requesting this Court to allow the filing of its amended proof of claim to assert the fraud claim that was within its Counter Claims.

¹ Although titled “Counterclaims,” LVDF also filed various third-party claims against third-party defendants Ignatius Piazza, Jennifer Piazza, the VNV Dynasty Trust I, the VNV Dynasty Trust II, Michael Meacher, Efrain Rene Morales-Moreno, Morales Construction Inc., All American Concrete & Masonry Inc., and Top Rank Builders Inc.

1
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3 **II. Facts²**

4 The following facts are based upon the pleadings on file in both the main bankruptcy case and the
5 Adversary Proceeding.³

- 6 1. On March 30, 2021, LVDF, within the State Court proceeding, filed its Answer to Front Sight's
7 Second Amended Complaint and Unredacted First Amended Counter Claim. See, AECF No.
8 4-5 and a copy is attached hereto as **Exhibit 1**.
- 9 2. The Counter Claim asserted causes of action against Front Sight for Fraud, Fraudulent
10 Transfers, Conversion, Civil Conspiracy, Judicial Foreclosure, and Waste as well as various
11 claims against other third parties. Id.
- 12 3. On May 24, 2022, Front Sight filed its Chapter 11 Voluntary Petition. See, ECF No. 1
- 13 4. On June 23, 2022, Front Sight filed a notice of removal of the Front Sight v. LVDF State Court
14 Proceeding which created Adversary Case No. 22-01116. See, ECF No. 176 and AECF No.
15 1.
- 16 5. On June 27, 2022, LVDF filed a motion for relief to proceed with the State Court Litigation in
17 Conjunction with Motion to Remand. See, ECF No. 206.
- 18 6. On June 27, 2022, LVDF filed a Motion for Remand. See, AECF No. 4.
- 19 7. Oppositions to the Motion for Relief were filed by Front Sight, the VNV Dynasty Trust I,
20 VNV Dynasty Trust II, Jennifer Piazza, and Ignatius Piazza. See, ECF No. 256, 257
- 21
22
23
24

25 ² ECF Nos refer to pleadings filed in the main bankruptcy case 22-11824-abl and AECF Nos. refer to pleadings filed
26 in the adversary case number 22-01116-abl.

27 ³Pursuant to FRE 201(b), LVDF requests this Court take judicial notice of documents filed in this bankruptcy
28 proceeding or otherwise maintained in the public records. See *U.S. v. Wilson*, 631 F.2d 118, 119 (9th Cir. 1980).
See also *Burbank-Glendale-Pasadena Airport Auth. v. City of Burbank*, 136 F.3d 1360, 1364 (9th Cir. 1998) (taking
judicial notice of court filings in a state court case where the same plaintiff asserted similar claims); and *In re Blas*,
614 B.R. 334, 339 n.27 (Bankr. D. Alaska 2019)(“This court may take judicial notice of the dockets of other
courts.”).

1 8. Oppositions to the Motion for Remand were filed by Front Sight, the Unsecured Creditors
2 Committee, the VNV Dynasty Trust I, VNV Dynasty Trust II, Jennifer Piazza, and Ignatius
3 Piazza. See, AECF No. 57, 63, 64

4 9. On August 8, 2022, LVDF filed its proof of claim. See, Claim No. 284.

5 10. On September 15, 2022, this Court entered an order denying the motion for relief from stay.
6 See ECF No. 346.

7 11. On September 15, 2022, this Court entered an order denying the motion for remand. See,
8 AECF No. 108.

9 12. On November 3, 2022, LVDF, the Debtor and the Piazza Entities entered into a stipulation
10 which in part:

- 11 • Resolved the treatment of LVDF's claim in the Chapter 11 plan.
- 12 • The Debtor, LVDF, and the Piazzas shall, no later than the conclusion of the
13 Confirmation Hearing, request that the Bankruptcy Court set a firm trial date at the
14 earliest possible date to resolve the LVDF Claim, the Claim Objections, and the
15 Adversary Proceeding.
- 16 • If a settlement is not reached at the Settlement Conference, the Parties shall stipulate
17 to a mutually agreeable discovery and briefing schedule related to the Claim
18 Objections and the Adversary Proceeding and if unable to stipulate, then the Court
19 shall enter a discovery and briefing schedule related to the Claim Objections and the
20 Adversary Proceeding.
- 21 • The briefing schedules shall set forth the deadlines for LVDF to file an opposition, if
22 necessary, to the Claim Objections.

23 See, ECF No. 474

24 13. On December 23, 2022, LVDF and Front Sight entered into a stipulation in both the main case
25 and Adversary Proceeding with the following provisions.

- 26 • LVDF intended to file an amended proof of claim by December 23, 2022
- 27 • Front Sight shall file its Amended Claim Objection by December 30, 2022
- 28 • LVDF shall file its opposition to the Amended Claim Objection by January 20, 2023

- The Parties shall be permitted to conduct discovery in the Adversary Proceeding and on the Amended Claim Objection.

See, ECF No. 621 and 651 and AECF No. 132 and 137

14. On December 23, 2022, LVDF filed its amended proof of claim. The amended proof of claim provides a declaration in support with supplemental information to support its secured claim and incorporates by reference its Counter Claim. See, Claims Register #284-2.

15. On December 30, 2022, Front Sight filed an amended claim objection and asserted in part that the claim was late filed. See, ECF No. 628, p. 24.

16. On January 11, 2022, this Court entered and order approving the stipulations between Front Sight and LVDF pertaining to the amended proof of claim and scheduling conference in both the Main Case and Adversary Proceeding.

See, ECF No. 651 and AECF No. 137.

III. Legal Argument

No bankruptcy rule addresses amended proofs of claims, but in the absence of prejudice to an opposing party, this Court should follow the policy long established in Ninth Circuit case law liberally allowing amendment to a creditor's proof of claim. *Anderson-Walker Industr. v. Lafayette Metals (In re Anderson-Walker Industr.)*, 798 F.2d 1285, 1287 (9th Cir. 1986) citing *In re Franciscan Vineyards*, 597 F.2d 181, 182 (9th Cir. 1979).

In the context of an informal proof of claim, the Ninth Circuit has stated that in absence of prejudice to an opposing party, the bankruptcy courts, as courts of equity, should freely allow amendments to proofs of claim that relate back to the filing date of the informal claim when the purpose is to cure a defect in the claim as filed or to describe the claim with greater particularity. *In re Sambo's Restaurants, Inc.*, 754 F.2d 811, 816-17 (9th Cir. 1985). For these documents to constitute an informal proof of claim, they must state an explicit demand showing the nature and amount of the claim against the estate, and evidence an intent to hold the debtor liable. Id., citing to *In re Franciscan Vineyards, Inc.*, 597 F.2d 181, 183 (9th Cir. 1979) (per curiam), cert. denied, 445 U.S. 915, 100 S.Ct. 1274, 63 L.Ed.2d 598 (1980) (Franciscan Vineyards).

1 The Ninth Circuit explicated further in *In re Roberts Farms, Inc.*, 980 F.2d 1248, 1251-52 (9th Cir.
2 1992), in a case involving formal proofs of claim: “We have a long established liberal policy that
3 permits amendments to a proof of claim. The crucial inquiry is whether the opposing party would be
4 unduly prejudiced by the amendment.” In *Robert Farms, Inc.*, the Court determined that even after
5 discovery was completed, the parties were not prejudiced by the amendment to the claim.

6 To determine whether [debtor] was prejudiced by [the] amendment, the BAP properly relied on
7 factors considered in *In re City of Capitals, Inc.*, 55 B.R. 634, 637 (Bankr. D. Md. 1985). The Ninth
8 Circuit BAP adopted these factors in *In re Wilson*, 96 B.R. 257, 262 (9th Cir. BAP 1988), where the
9 court stated “in determining prejudicial effect [we] look to such elements as bad faith or unreasonable
10 delay in filing the amendment, impact on other claimants, reliance by the debtor or other creditors, and
11 change of the debtor's position.” *Id.*

12 Similarly, in the 10th Circuit, an “amendment of a proof of claim is freely permitted so long as the
13 claim initially provided adequate notice of the existence, nature, and amount of the claim as well as
14 the creditor's intent to hold the estate liable.” *In re Richter*, 478 B.R. 30, 39 (Bankr. D. Colo. 2012)
15 (citing *In re Unioil, Inc.*, 962 F.2d 988, 992 (10th Cir. 1992)). Amendment should be permitted so
16 long as the substance of the original proof of claim remains unchanged. *In re Richter*, 478 B.R.
17 at 39. In deciding whether to allow an amended proof of claim, the Court should examine: 1. Whether
18 the parties or creditors relied on the initial claim, or whether they had reason to know subsequent proofs
19 of claim would follow pending the completion of an audit; 2. Whether other creditors would receive
20 a windfall to which they are not entitled on the merits by the Court not allowing this amendment
21 to the proof of claim; 3. Whether the movant intentionally or negligently delayed in filing its amended
22 claim; 4. The justification, if any, for the failure to request the timely extension of the bar date; and
23 5. Any other general equitable considerations. See *In re Tanaka Bros. Farms, Inc.*, 36 F.3d 996, 998
24 (10th Cir. 1994).

25 The Second Circuit has a similar test to allow the filing of an amended proof of claim as it is within
26 a bankruptcy court’s “sound discretion” to authorize creditors to amend timely filed proofs of claim.
27 See *In re Enron Corp.*, 328 B.R. 75, 86 (Bankr. S.D.N.Y. 2005). Courts in such circuit apply a two-
28 part test: First, the amendment must “relate back” to the original, timely filed claim. Second, the court

1 must determine that it would be “equitable” under the circumstances to allow the post-bar date
2 amendment. See Meadows v. AMR Corp. (In re AMR Corp.), 662 F. App'x 77, 79 (2d Cir. 2016)
3 (citing Midland Cogeneration Venture Limited P’ship v. Enron Corp. (In re Enron Corp.), 419 F.3d
4 115, 133 (2d Cir. 2005)). An amendment relates back to the original claim if it “1) corrects a defect of
5 form in the original claim; 2) describes the original claim with greater particularity; or 3) pleads a new
6 theory of recovery on the facts set forth in the original claim.” *In re Enron Corp.*, 419 F.3d at 133
7 (citation and internal quotation marks omitted); see also Antoncic v. Giddens (In re Lehman Bros. Inc.),
8 No. 0801420SCCSIPA, 2016 WL 316857, at *8 (S.D.N.Y. Jan. 26, 2016)(“[W]hat matters is whether
9 the original claim referenced or put debtors on notice of the late-filed claims” (citation and internal
10 quotation marks omitted)); *In re Enron Corp.*, 328 B.R. at 87 (“A court must ‘first look to whether
11 there was timely assertion of a similar claim or demand evidencing an intention to hold the estate
12 liable.’ ”(citation omitted)). When determining whether it would be equitable to permit a creditor to
13 amend its claim, courts consider “[m]ultiple factors” such as “whether the debtor, or other creditors,
14 would be unduly prejudiced by the amendment, or whether, instead, other creditors would ‘receive
15 a windfall’ from the disallowance of the amendment, and whether the late claimant acted in good faith
16 and the delay was justified.” *In re Enron Corp.*, 419 F.3d at 133. The most important of these factors,
17 however, is whether the proposed amendment would unduly prejudice the opposing party. *Id.* Absent
18 substantial prejudice, courts generally grant requests to amend the amount of damages claimed because
19 the underlying facts remain the same. See In re McLean Indus., Inc., 121 B.R. 704, 710 (Bankr.
20 S.D.N.Y. 1990).

21 Here, LVDF seeks to have its claim be amended to include a declaration from Robert Dziubla, to
22 attach documents that support the amount of LVDF’s proof of claim, and to incorporate, by reference,
23 the Counter Claims. The Counter Claims are part of the Adversary Proceeding, the Motion to Remand
24 and the Motion to Terminate Stay which were all started prior to the proof of claim deadline. All three
25 of these motions comply with the 9th Circuit test in *In re Sambo’s Restaurants, Inc.*, *supra*, to determine
26 if they reflect an informal claim (must state and explicitly demand showing the nature and amount of
27 the claim against the estate and an intent to hold the debtor liable). There is no prejudice to any party
28

1 as the parties just recently entered into a scheduling order and Front Sight filed a substantive objection
2 to LVDF's amended proof of claim on December 30, 2022 [Dkt. 628].

3 Moreover, nothing in the Amended Proof of Claim comes as a surprise to Front Sight because the
4 Parties are litigating the claims in the Adversary Proceeding, as reflected in the Scheduling Order.
5 Front Sight has been aware of the Counter Claims and has been litigating the Counter Claims in the
6 State Court for over four years. LVDF fully acknowledges that the Fraudulent Transfer Allegations,
7 Alter Ego Claims, and the claims against the Piazza entities were deemed to be part of the bankruptcy
8 estate. However, it is LVDF's position that the particularized fraud claim is still a claim that is the
9 property of LVDF and is being litigated. Thus, its inclusion in the amended proof of claim serves
10 only to confirm the parties' agreement that the claim objection and Adversary Action will proceed
11 through discovery and to trial together.

12 Based upon the above, LVDF requests this Court to enter an order that finds that the Counter
13 Claims are deemed part of its Proof of Claim or alternatively to allow LVDF to file an amended proof
14 of claim to expressly set forth the fraud claim contained within the Counter Claims.
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1 **IV. Conclusion**

2 Based upon the above, LVDF requests this Court to grant this motion to amend the proof of claim
3 or to expressly state that the amended proof of claim incorporates by reference the Counter Claims and
4 specifically to assert the fraud claim.
5

6 DATED 1-16-2023

/s/ Brian D. Shapiro, Esq.

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26 Attorneys for Las Vegas Development Fund
27
28

CERTIFICATE OF SERVICE

On January 20, 2023, this document was served by CM/ECF via the Court's Noticing System.

DATED 1-20-2023

/s/ Brian D. Shapiro, Esq.

Brian D. Shapiro, Esq.

Nevada State Bar No. 5772

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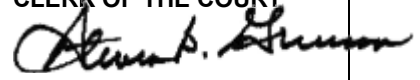
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EXHIBIT 1

EXHIBIT 5

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Steven D. Grierson
CLERK OF THE COURT



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Attorneys for Defendants
5 LAS VEGAS DEVELOPMENT FUND LLC;
EB5 IMPACT CAPITAL REGIONAL CENTER
6 LLC; EB5 IMPACT ADVISORS LLC; ROBERT
W. DZIUBLA; JON FLEMING; and
7 LINDA STANWOOD

8 **DISTRICT COURT**
9 **CLARK COUNTY, NEVADA**

10 FRONT SIGHT MANAGEMENT LLC, a
11 Nevada Limited Liability Company,
12
13 **Plaintiff,**

13 vs.

14 LAS VEGAS DEVELOPMENT FUND LLC, a
Nevada Limited Liability Company; et al,
15
16 **Defendants.**

Case No. A-18-781084-B
Dept. No. XVI

**DEFENDANTS' ANSWER TO
PLAINTIFF'S SECOND AMENDED
COMPLAINT; AND UNREDACTED
FIRST AMENDED COUNTERCLAIM**

17
18 AND ALL RELATED COUNTERCLAIMS.
19

20 COMES NOW Defendants, LAS VEGAS DEVELOPMENT FUND LLC, EB5 IMPACT
21 CAPITAL REGIONAL CENTER LLC, EB5 IMPACT ADVISORS LLC; ROBERT W. DZIUBLA;
22 JON FLEMING; and LINDA STANWOOD, (collectively "Responding Parties"), by and through
23 their counsel of record, Bailey ❖ Kennedy, and specifically admit, deny, and respond to the
24 allegations of FRONT SIGHT MANAGEMENT, LLC's ("Plaintiff") Second Amended Complaint as
25 follows:

26 1. These responding Defendants lack sufficient information to admit or deny the
27 allegations in Paragraph 1 of Plaintiff's Second Amended Complaint and, therefore, deny the same.
28

1 12. These responding Defendants admit that Defendants and Plaintiff exchanged
2 correspondence. However, these responding Defendants deny the remainder of the allegations in
3 Paragraph 12 of Plaintiff's Second Amended Complaint.

4 13. These responding Defendants admit that Defendants and Plaintiff exchanged
5 correspondence. However, these responding Defendants deny the remainder of the allegations in
6 Paragraph 13 of Plaintiff's Second Amended Complaint.

7 14. These responding Defendants admit that Defendants and Plaintiff exchanged
8 correspondence. However, these responding Defendants deny the remainder of the allegations in
9 Paragraph 14 of Plaintiff's Second Amended Complaint.

10 15. These responding Defendants admit that Defendants and Plaintiff exchanged
11 correspondence. However, these responding Defendants deny the remainder of the allegations in
12 Paragraph 15 of Plaintiff's Second Amended Complaint.

13 16. These responding Defendants admit that Defendants and Plaintiff exchanged
14 correspondence. However, these responding Defendants deny the remainder of the allegations in
15 Paragraph 16 of Plaintiff's Second Amended Complaint.

16 17. These responding Defendants admit that Defendants and Plaintiff exchanged
17 correspondence. However, these responding Defendants deny the remainder of the allegations in
18 Paragraph 17 of Plaintiff's Second Amended Complaint.

19 18. These responding Defendants deny the allegations in Paragraph 18 of Plaintiff's
20 Second Amended Complaint.

21 19. These responding Defendants admit that Defendants and Plaintiff exchanged
22 correspondence. However, these responding Defendants deny the remainder of the allegations in
23 Paragraph 19 of Plaintiff's Second Amended Complaint.

24 20. These responding Defendants admit that Defendants and Plaintiff exchanged
25 correspondence. However, these responding Defendants deny the remainder of the allegations in
26 Paragraph 20 of Plaintiff's Second Amended Complaint.

27 21. These responding Defendants lack sufficient information to admit or deny the
28 allegations in Paragraph 21 of Plaintiff's Second Amended Complaint and, therefore, deny the same

1 22. These responding Defendants admit that Defendant EB5 Impact Advisors LLC and
2 Plaintiff executed an engagement letter dated February 13, 2013. However, these responding
3 Defendants deny the remainder of the allegations in Paragraph 22 of Plaintiff's Second Amended
4 Complaint.

5 23. These responding Defendants admit that Defendant EB5 Impact Advisors LLC and
6 Plaintiff executed an engagement letter dated February 13, 2013. However, these responding
7 Defendants deny the remainder of the allegations in Paragraph 23 of Plaintiff's Second Amended
8 Complaint.

9 24. These responding Defendants admit that Defendant EB5 Impact Advisors LLC and
10 Plaintiff executed an engagement letter dated February 1, 2013. However, these responding
11 Defendants deny the remainder of the allegations in Paragraph 24 of Plaintiff's Second Amended
12 Complaint.

13 25. These responding Defendants admit that Defendant EB5 Impact Advisors LLC and
14 Plaintiff executed an engagement letter dated February 1, 2013. However, these responding
15 Defendants deny the remainder of the allegations in Paragraph 25 of Plaintiff's Second Amended
16 Complaint.

17 26. These responding Defendants admit that Defendants and Plaintiff exchanged
18 correspondence. However, these responding Defendants deny the remainder of the allegations in
19 Paragraph 26 of Plaintiff's Second Amended Complaint.

20 27. These responding Defendants admit that the Regional Center Application was filed
21 on or about April 14, 2014 and that the application was approved on or about July 27, 2015, and
22 deny the remaining allegations in Paragraph 27 of Plaintiff's Second Amended Complaint.

23 28. These responding Defendants admit that the application for EB5 Impact Capital
24 Regional Center, LLC was filed on April 15, 2014. However, these responding Defendants deny the
25 remainder of the allegations in Paragraph 28 of Plaintiff's Second Amended Complaint.

26 29. These responding Defendants admit that Defendants and Plaintiff exchanged
27 correspondence. However, these responding Defendants deny the remainder of the allegations in
28 Paragraph 29 of Plaintiff's Second Amended Complaint.

1 30. These responding Defendants admit that the application for EB5 Impact Capital
2 Regional Center, LLC was approved on July 27, 2015. However, these responding Defendants deny
3 the remainder of the allegations in Paragraph 30 of Plaintiff's Second Amended Complaint.

4 31. These responding Defendants admit that Defendants and Plaintiff exchanged
5 correspondence. However, these responding Defendants deny the remainder of the allegations in
6 Paragraph 31 of Plaintiff's Second Amended Complaint.

7 32. These responding Defendants admit that Defendants and Plaintiff exchanged
8 correspondence. However, these responding Defendants deny the remainder of the allegations in
9 Paragraph 32 of Plaintiff's Second Amended Complaint.

10 33. These responding Defendants admit to the existence of a website identified as
11 "eb5impactcapital.com," and deny the allegations in Paragraph 33 of Plaintiff's Second Amended
12 Complaint.

13 34. These responding Defendants admit that Defendants and Plaintiff exchanged
14 correspondence. However, these responding Defendants deny the remainder of the allegations in
15 Paragraph 34 of Plaintiff's Second Amended Complaint.

16 35. These responding Defendants admit that Defendants and Plaintiff exchanged
17 correspondence. However, these responding Defendants deny the remainder of the allegations in
18 Paragraph 35 of Plaintiff's Second Amended Complaint.

19 36. These responding Defendants admit that Defendants and Plaintiff exchanged
20 correspondence. However, these responding Defendants deny the remainder of the allegations in
21 Paragraph 36 of Plaintiff's Second Amended Complaint.

22 37. These responding Defendants admit that Defendants and Plaintiff exchanged
23 correspondence. However, these responding Defendants deny the remainder of the allegations in
24 Paragraph 37 of Plaintiff's Second Amended Complaint.

25 38. These responding Defendants admit that Defendants and Plaintiff exchanged
26 correspondence. However, these responding Defendants deny the remainder of the allegations in
27 Paragraph 38 of Plaintiff's Second Amended Complaint.

28

1 39. These responding Defendants admit that Defendants and Plaintiff exchanged
2 correspondence. However, these responding Defendants deny the allegations in Paragraph 39 of
3 Plaintiff's Second Amended Complaint.

4 40. These responding Defendants admit that LVD Fund has loaned Front Sight
5 \$6,375,000 and deny the rest of the allegations in Paragraph 40 of Plaintiff's Second Amended
6 Complaint.

7 41. These responding Defendants admit that Defendants and Plaintiff exchanged
8 correspondence. However, these responding Defendants deny the remainder of the allegations in
9 Paragraph 41 of Plaintiff's Second Amended Complaint.

10 42. These responding Defendants admit that Defendants and Plaintiff exchanged
11 correspondence. However, these responding Defendants deny the remainder of the allegations in
12 Paragraph 42 of Plaintiff's Second Amended Complaint.

13 43. These responding Defendants deny the allegations in Paragraph 43 of Plaintiff's
14 Second Amended Complaint.

15 44. These responding Defendants admit that Defendants and Plaintiff exchanged
16 correspondence. However, these responding Defendants deny the allegations in Paragraph 44 of
17 Plaintiff's Second Amended Complaint.

18 45. These responding Defendants deny the allegations in Paragraph 45 of Plaintiff's
19 Second Amended Complaint.

20 46. These responding Defendants deny the allegations in Paragraph 46 of Plaintiff's
21 Second Amended Complaint.

22 47. These responding Defendants deny the allegations in Paragraph 47 of Plaintiff's
23 Second Amended Complaint.

24 48. These responding Defendants admit that Defendant LVD Fund loaned \$6,375,000 to
25 Plaintiff and deny the remaining allegations in Paragraph 48 of Plaintiff's Second Amended
26 Complaint.

27 49. These responding Defendants admit that Defendant Las Vegas Development Fund
28 served a Notice of Default on July 31, 2018. However, these responding Defendants deny the

1 remainder of the allegations in Paragraph 49 of Plaintiff's Second Amended Complaint.

2 50. These responding Defendants deny the allegations in Paragraph 50 of Plaintiff's
3 Second Amended Complaint.

4 51. These responding Defendants deny the allegations in Paragraph 51 of Plaintiff's
5 Second Amended Complaint.

6 52. These responding Defendants admit that Plaintiff responded to Defendant Las Vegas
7 Development Fund's July 31, 2018 Notice of Default. However, these responding Defendants deny
8 the remainder of the allegations in Paragraph 52 of Plaintiff's Second Amended Complaint.

9 53. These responding Defendants admit that Defendant Las Vegas Development Fund
10 served a second Notice of Default on August 24, 2018. However, these responding Defendants deny
11 the remainder of the allegations in Paragraph 53 of Plaintiff's Second Amended Complaint.

12 54. These responding Defendants deny the allegations in Paragraph 54 of Plaintiff's
13 Second Amended Complaint.

14 55. These responding Defendants admit that Plaintiff responded to Defendant Las Vegas
15 Development Fund's August 24, 2018 Notice of Default. However, these responding Defendants
16 deny the remainder of the allegations in Paragraph 55 of Plaintiff's Second Amended Complaint.

17 56. These responding Defendants admit that Defendant Las Vegas Development Fund
18 served a third Notice of Default on August 28, 2018. However, these responding Defendants deny
19 the remainder of the allegations in Paragraph 56 of Plaintiff's Second Amended Complaint.

20 57. These responding Defendants admit that Defendants and Plaintiff attempted to
21 resolve the issues regarding Plaintiff's Defaults regarding the Construction Loan Agreement.
22 However, these responding Defendants deny the remainder of the allegations in Paragraph 57 of
23 Plaintiff's Second Amended Complaint.

24 58. These responding Defendants admit that Defendant Las Vegas Development Fund
25 recorded a Notice of Default on September 11, 2018. However, these responding Defendants deny
26 the remainder of the allegations in Paragraph 58 of Plaintiff's Second Amended Complaint.

27 59. These responding Defendants admit that Defendants and Plaintiff exchanged
28 correspondence. However, these responding Defendants deny the allegations in Paragraph 59 of

1 Plaintiff's Second Amended Complaint.

2 60. These responding Defendants deny the allegations in Paragraph 60 of Plaintiff's
3 Second Amended Complaint.

4 61. These responding Defendants admit that a Court order was entered regarding
5 Plaintiff's Petition for Appointment of Receiver and for an Accounting. However, these responding
6 Defendants deny the remainder of the allegations in Paragraph 61 of Plaintiff's Second Amended
7 Complaint.

8 62. These responding Defendants admit they have complied with the Court order which
9 was entered regarding Plaintiff's Petition for Appointment of Receiver and for an Accounting.
10 However, these responding Defendants deny the remainder of the allegations in Paragraph 62 of
11 Plaintiff's Second Amended Complaint.

12 63. These responding Defendants deny the allegations in Paragraph 63 of Plaintiff's
13 Second Amended Complaint.

14 64. These responding Defendants admit Plaintiff is entitled to a \$36,000.00 offset.
15 However, these responding Defendants deny the remainder of the allegations in Paragraph 64 of
16 Plaintiff's Second Amended Complaint.

17 65. These responding Defendants admit Defendant EB5IA has been dissolved.
18 However, these responding Defendants deny the remainder of the allegations in Paragraph 65 of
19 Plaintiff's Second Amended Complaint.

20 66. These responding Defendants admit Defendant EB5IA has been dissolved.
21 However, these responding Defendants deny the remainder of the allegations in Paragraph 66 of
22 Plaintiff's Second Amended Complaint.

23 67. These responding Defendants deny the allegations in Paragraph 67 of Plaintiff's
24 Second Amended Complaint.

25 68. These responding Defendants deny the allegations in Paragraph 68 of Plaintiff's
26 Second Amended Complaint.

27 69. These responding Defendants admit Plaintiff wired funds to the wrong accounts on
28 multiple occasions. However, these responding Defendants deny the remainder of the allegations in

1 Paragraph 69 of Plaintiff's Second Amended Complaint.

2 70. These responding Defendants admit Plaintiff wired funds to the wrong accounts on
3 multiple occasions. However, these responding Defendants deny the remainder of the allegations in
4 Paragraph 70 of Plaintiff's Second Amended Complaint.

5 71. These responding Defendants admit Plaintiff wired funds to the wrong accounts on
6 multiple occasions. However, these responding Defendants deny the remainder of the allegations in
7 Paragraph 71 of Plaintiff's Second Amended Complaint.

8 72. These responding Defendants admit Plaintiff wired funds to the wrong accounts on
9 multiple occasions. However, these responding Defendants deny the remainder of the allegations in
10 Paragraph 72 of Plaintiff's Second Amended Complaint.

11 73. These responding Defendants deny the allegations in Paragraph 73 of Plaintiff's
12 Second Amended Complaint.

13 **FIRST CAUSE OF ACTION**

14 **(Fraud/Intentional Misrepresentation/Concealment Against All Defendants)**

15 74. These responding Defendants repeat and re-allege their responses to each of the
16 preceding and succeeding paragraphs as though fully set forth herein.

17 75. These responding Defendants deny the allegations in Paragraph 75 of Plaintiff's
18 Second Amended Complaint.

19 76. These responding Defendants deny the allegations in Paragraph 76 of Plaintiff's
20 Second Amended Complaint.

21 77. These responding Defendants admit that Defendant Dziubla is married to Defendant
22 Stanwood and that correspondence was exchanged. However, these responding Defendants deny the
23 remainder of the allegations in Paragraph 77 of Plaintiff's Second Amended Complaint.

24 78. These responding Defendants deny the allegations in paragraph 78 of Plaintiff's
25 Second Amended Complaint.

26 79. These responding Defendants deny the allegations in Paragraph 79 of Plaintiff's
27 Second Amended Complaint.

28 80. These responding Defendants deny the allegations in Paragraph 80 of Plaintiff's

1 Second Amended Complaint.

2 81. These responding Defendants deny the allegations in Paragraph 81 of Plaintiff's
3 Second Amended Complaint.

4 82. These responding Defendants deny the allegations in Paragraph 82 of Plaintiff's
5 Second Amended Complaint.

6 83. These responding Defendants deny the allegations in Paragraph 83 of Plaintiff's
7 Second Amended Complaint.

8 84. These responding Defendants deny the allegations in Paragraph 84 of Plaintiff's
9 Second Amended Complaint.

10 **SECOND CAUSE OF ACTION**
11 **(Breach of Fiduciary Duty Against All Defendants)**

12 85-89. Plaintiff's Second Cause of Action has been dismissed as against all Defendants
13 pursuant to this Court's Order filed April 9, 2019.

14 **THIRD CAUSE OF ACTION**
15 **(Conversion Against All Defendants)**

16 90. These responding Defendants repeat and re-allege their responses to each of the
17 preceding and succeeding paragraphs as though fully set forth herein.

18 91. These responding Defendants deny the allegations in Paragraph 91 of Plaintiff's
19 Second Amended Complaint.

20 92. These responding Defendants deny the allegations in Paragraph 92 of Plaintiff's
21 Second Amended Complaint.

22 93. These responding Defendants deny the allegations in Paragraph 93 of Plaintiff's
23 Second Amended Complaint.

24 94. These responding Defendants deny the allegations in Paragraph 94 of Plaintiff's
25 Second Amended Complaint.

26 **FOURTH CAUSE OF ACTION**
27 **(Civil Conspiracy Against All Defendants)**

28 95. These responding Defendants repeat and re-allege their responses to each of the

1 preceding and succeeding paragraphs as though fully set forth herein.

2 96. These responding Defendants deny the allegations in Paragraph 96 of Plaintiff's
3 Second Amended Complaint.

4 97. These responding Defendants deny the allegations in Paragraph 97 of Plaintiff's
5 Second Amended Complaint.

6 98. These responding Defendants deny the allegations in Paragraph 98 of Plaintiff's
7 Second Amended Complaint.

8 99. These responding Defendants deny the allegations in Paragraph 99 of Plaintiff's
9 Second Amended Complaint.

10 **FIFTH CAUSE OF ACTION**
11 **(Breach of Contract Against All Defendants EB5IA and LVDF)**

12 100. These responding Defendants repeat and re-allege their responses to each of the
13 preceding and succeeding paragraphs as though fully set forth herein.

14 101. These responding Defendants admit the allegations in Paragraph 101 of Plaintiff's
15 Second Amended Complaint.

16 102. These responding Defendants deny the allegations in Paragraph 102 of Plaintiff's
17 Second Amended Complaint.

18 103. These responding Defendants deny the allegations in Paragraph 103 of Plaintiff's
19 Second Amended Complaint.

20 104. These responding Defendants deny the allegations in Paragraph 104 of Plaintiff's
21 Second Amended Complaint.

22 105. These responding Defendants deny the allegations in Paragraph 105 of Plaintiff's
23 Second Amended Complaint.

24 106. These responding Defendants deny the allegations in Paragraph 106 of Plaintiff's
25 Second Amended Complaint.

26 **SIXTH CAUSE OF ACTION**
27 **(Breach of Implied Covenant of Good Faith and Fair Dealing -- Entity Defendants)**

28 Plaintiff's Sixth Cause of Action has been dismissed as against Defendant EB5IC pursuant to this Court's Order filed April 9, 2019.

1 107. These responding Defendants repeat and re-allege their responses to each of the
2 preceding and succeeding paragraphs as though fully set forth herein.

3 108. These responding Defendants admit the allegations in Paragraph 108 of Plaintiff's
4 Second Amended Complaint.

5 109. These responding Defendants admit the allegations in Paragraph 109 of Plaintiff's
6 Second Amended Complaint.

7 110. These responding Defendants admit the allegations in Paragraph 110 of Plaintiff's
8 Second Amended Complaint.

9 111. These responding Defendants deny the allegations in Paragraph 111 of Plaintiff's
10 Second Amended Complaint.

11 112. These responding Defendants deny the allegations in Paragraph 112 of Plaintiff's
12 Second Amended Complaint.

13 113. These responding Defendants deny the allegations in Paragraph 113 of Plaintiff's
14 Second Amended Complaint.

15 **SEVENTH CAUSE OF ACTION**
16 **(Tortious Breach of Implied Covenant of Good Faith and Fair Dealing**
17 **Against the Entity Defendants)**

18 114-121. Plaintiff's Seventh Cause of Action has been dismissed as against the Entity
19 Defendants pursuant to this Court's Order filed April 9, 2019.

20 **EIGHTH CAUSE OF ACTION**
21 **(Intentional Interference With Prospective Economic Advantage**
22 **Against the Entity Defendants and Defendant Dziubla)**

23 Plaintiff's Eighth Cause of Action has been dismissed as against the Entity Defendants EB5IC and
24 EB5IA pursuant to this Court's Order filed April 9, 2019. Therefore, Defendants Dziubla and LVD
25 Fund respond as follows:

26 122. These responding Defendants repeat and re-allege their responses to each of the
27 preceding and succeeding paragraphs as though fully set forth herein.

28 123. These responding Defendants lack sufficient information to admit or deny the
allegations in Paragraph 123 of Plaintiff's Second Amended Complaint and, therefore, deny the
same.

124. These responding Defendants deny the allegations in Paragraph 124 of Plaintiff's

1 Second Amended Complaint.

2 125. These responding Defendants deny the allegations in Paragraph 125 of Plaintiff's

3 Second Amended Complaint.

4 126. These responding Defendants deny the allegations in Paragraph 126 of Plaintiff's

5 Second Amended Complaint.

6 127. These responding Defendants deny the allegations in Paragraph 127 of Plaintiff's

7 Second Amended Complaint.

8 128. These responding Defendants deny the allegations in Paragraph 128 of Plaintiff's

9 Second Amended Complaint.

10 **NINTH CAUSE OF ACTION**
11 **(Unjust Enrichment Against All Defendants)**

12 129-135. Plaintiff's Ninth Cause of Action has been dismissed as against all Defendants
13 pursuant to this Court's Order filed April 9, 2019.

14 **TENTH CAUSE OF ACTION**
15 **(Negligent Misrepresentation Against all Defendants)**

16 Plaintiff's Tenth Cause of Action has been dismissed as against Defendants Stanwood, Fleming,
17 EB5IC, and LVDF pursuant to this Court's Order filed April 9, 2019. Therefore, Defendants EB5IA
18 and Dziubla respond as follows:

19 136. These responding Defendants repeat and re-allege their responses to each of the
20 preceding and succeeding paragraphs as though fully set forth herein.

21 137. These responding Defendants admit the allegations in Paragraph 137 of Plaintiff's
22 Second Amended Complaint.

23 138. These responding Defendants deny the allegations in Paragraph 138 of Plaintiff's
24 Second Amended Complaint.

25 139. These responding Defendants deny the allegations in Paragraph 139 of Plaintiff's
26 Second Amended Complaint.

27 140. These responding Defendants deny the allegations in Paragraph 140 of Plaintiff's
28 Second Amended Complaint.

1 141. These responding Defendants deny the allegations in Paragraph 141 of Plaintiff's
2 Second Amended Complaint.

3 142. These responding Defendants deny the allegations in Paragraph 142 of Plaintiff's
4 Second Amended Complaint.

5 143. These responding Defendants deny the allegations in Paragraph 143 of Plaintiff's
6 Second Amended Complaint.

7 144. These responding Defendants deny the allegations in Paragraph 144 of Plaintiff's
8 Second Amended Complaint.

9 145. These responding Defendants deny the allegations in Paragraph 145 of Plaintiff's
10 Second Amended Complaint.

11 **ELEVENTH CAUSE OF ACTION**
12 **(Negligence Against All Defendants)**

13 146-150. Plaintiff's Eleventh's Cause of Action has been dismissed as against all
14 Defendants pursuant to this Court's Order filed April 9, 2019.

15 **TWELFTH CAUSE OF ACTION**
16 **(Alter Ego Against All Defendants)**

17 151-160. Plaintiff's Twelfth Cause of Action has been dismissed as against all Defendants
18 pursuant to this Court's Order filed April 9, 2019.

19 These responding Defendants, LAS VEGAS DEVELOPMENT FUND LLC; EB5 IMPACT
20 CAPITAL REGIONAL CENTER LLC; EB5 IMPACT ADVISORS LLC, a dissolved Nevada
21 Limited Liability Company; ROBERT W. DZIUBLA; JON FLEMING; and LINDA STANWOOD,
22 by and through their counsel of record, HOGAN HULET PLLC, having fully and specifically
23 responded to each and every allegation set forth in Plaintiff's Second Amended Complaint, now
24 assert the following:

25 **AFFIRMATIVE DEFENSES**

26 **FIRST AFFIRMATIVE DEFENSE**

27 Plaintiff's Second Amended Complaint fails to state a claim for which relief can be granted
28 as against these responding Defendants.

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SECOND AFFIRMATIVE DEFENSE

These responding Defendants generally deny all liability and all allegations of negligence or wrongdoing.

THIRD AFFIRMATIVE DEFENSE

Any allegations or factual matters asserted by Plaintiff that are not specifically admitted are hereby denied.

FOURTH AFFIRMATIVE DEFENSE

The claims referred to in Plaintiff's Second Amended Complaint, and the resulting damage—if any—to Plaintiff, was proximately caused or contributed to by Plaintiff's own negligence and, as such, Plaintiff's negligence was greater than the negligence—if any—of these responding Defendants and therefore, Plaintiff's recovery should be barred or diminished.

FIFTH AFFIRMATIVE DEFENSE

If Plaintiff has been damaged as alleged, then said damages are the sole, direct, and proximate result of actions and/or inactions of other named parties and/or third parties not presently named herein over which these responding Defendants had no control.

SIXTH AFFIRMATIVE DEFENSE

These responding Defendants reserve the right to assert any and all defenses raised by any other party to this action.

SEVENTH AFFIRMATIVE DEFENSE

These responding Defendants reserve the right to amend their Answer and/or assert additional affirmative defenses based upon discovery as well as an investigation of the facts and circumstances concerning the alleged incident that is the subject of Plaintiff's Amended Complaint.

EIGHTH AFFIRMATIVE DEFENSE

As a separate and distinct affirmative defense, these responding Defendants allege that, to the extent that Plaintiff's Amended Complaint alleges violations of law, those alleged violations of law are the result of the conduct or omissions of persons or entities other than these responding Defendants.

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NINTH AFFIRMATIVE DEFENSE

Plaintiff is barred from asserting any claims against these responding Defendants because the alleged damages were the result of the intervening and/or superseding conduct of others.

TENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by the doctrine of laches and/or the statute of limitation.

ELEVENTH AFFIRMATIVE DEFENSE

These responding Defendants reserve the right to seek contribution and indemnity in the event that these responding Defendants deem it appropriate to do so.

TWELFTH AFFIRMATIVE DEFENSE

As a separate and distinct affirmative defense, these responding Defendants allege that, before the commencement of this action, these responding Defendants performed, satisfied, and discharged all duties and obligations they may have owed to Plaintiff.

THIRTEENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by the doctrine of unclean hands.

FOURTEENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred because Plaintiff was the first party to breach the contract and cannot maintain an action against the Defendants for a subsequent failure to perform.

FIFTEENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred because the alleged tortious act by Defendants was justified and/or privileged.

SIXTEENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred because all alleged injuries and damages, if any, were caused by the acts or omissions of Plaintiff.

SEVENTEENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred because Defendants complied with applicable statutes and with the requirements and regulations of the State of Nevada.

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FIRST AMENDED COUNTER CLAIM

1
2 1. This First Amended Counterclaim stems from Front Sight’s misappropriation and
3 diversion of construction loan proceeds for the personal benefit of its principal, Ignatius Piazza, his
4 wife Jennifer Piazza, and beneficiaries of the VNV Trust Defendants, and Front Sight’s breach of
5 multiple material provisions of the Construction Loan Agreement (the “CLA”)¹, including its failure
6 to meet the construction schedule, material changes to the Project scope, failure to provide
7 government approved construction plans, failure to obtain Senior Debt, failure to meet its reporting
8 obligations to Lender under the CLA and EB-5 regulations, refusal to give Lender access to its
9 books and records, refusal to allow a site inspection and answer questions by Lender’s
10 representatives, failure to pay default interest, further encumbering the Property by selling securities,
11 and failure to pay Lender’s legal fees relating to enforcing Borrower to comply with the terms of the
12 CLA. Moreover, Borrower’s recent actions of delaying construction, refusing to grant Lender’s
13 representatives access to the property and concealing its books and records, raise serious questions
14 regarding Front Sight’s continued solvency (which is a required loan covenant) and thus, its ability
15 to complete the Project.

16 2. This First Amended Counterclaim is further based upon Counter Defendants entering
17 into a comprehensive scheme to defraud LVD Fund by falsely representing that Counter Defendant
18 Front Sight had entered into a legitimate and bona fide \$36,000,000 “Loan Agreement –
19 Construction Line of Credit” with Counter Defendant Morales Construction, Inc. (“Morales
20 Construction”), that would have provided sufficient capital to make substantial progress toward
21 completing the project. In reality, the “Loan Agreement” was a complete scam because all of the
22 Counter Defendants knew Morales was not capable of fulfilling its obligation to extend tens of
23 millions of dollars in credit, and none of the Counter Defendants ever intended to perform under the
24 Loan Agreement.

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27 _____
28 ¹ “CLA” refers to the Construction Loan Agreement dated October 6, 2016, between Front Sight Management LLC (“Borrower”) and Las Vegas Development Fund LLC (“Lender”). (See Dziubla Decl., Ex. 3).

I. PARTIES

3. Counter Claimant LAS VEGAS DEVELOPMENT FUND LLC (hereafter “LVD Fund” or “Lender”) is a Nevada limited liability company with a principal place of business located in Nevada and has an interest and right in the Property through a certain Deed of Trust² that was by and between Front Sight and LVD FUND.

4. FRONT SIGHT MANAGEMENT LLC (hereinafter as “Front Sight” or “Borrower”) is a Nevada limited liability company with a principal place of business located in Clark County, Nevada.

5. Counter Claimant is informed and believes, and on that basis alleges, Counter Defendant VNV DYNASTY TRUST I is a Nevada statutory trust, Nevada business, family trust, or other irrevocable trust that functions as an entity and that may claim title and ownership interest in the Property. Counter Claimant is informed and believes, and on that basis alleges, Counter Defendant VNV DYNASTY TRUST I was organized and exists under the laws of Nevada and Counter Defendants IGNATIUS A. PIAZZA II and JENNIFER PIAZZA are trustees and/or beneficiaries of the VNV DYNASTY TRUST I.

6. Counter Claimant is informed and believes, and on that basis alleges, Counter Defendant VNV DYNASTY TRUST II is a Nevada statutory trust, Nevada business, family trust, or other irrevocable trust that functions as an entity and that may claim title and ownership interest in the Property. Counter Claimant is informed and believes, and on that basis alleges, Counter Defendant VNV DYNASTY TRUST II was organized and exists under the laws of Nevada and Counter Defendants IGNATIUS A. PIAZZA II and JENNIFER PIAZZA are trustees and/or beneficiaries of the VNV DYNASTY TRUST II. (Hereinafter, VNV DYNASTY TRUST I and VNV DYNASTY TRUST II are collectively referred to as the “VNV Trust Defendants” or “Trust Defendants”).

² “Deed of Trust” refers to the “Construction Deed of Trust, Security Agreement, Assignment of Leases and Rents, and Fixture Filing,” recorded in the official records of Nye County, Nevada, as “DOC #860867” on October 13, 2016, a copy of which is attached as Exhibit 1, filed herewith, as amended by the “First Amendment to Construction Deed of Trust, Security Agreement and Fixture Filing,” recorded in the official records of Nye County, Nevada, as “DOC #886510” on January 12, 2018, a copy of which is provided as Exhibit 2.

1 7. Counter Claimant is informed and believes, and on that basis alleges, that Counter
2 Defendant IGNATIUS A. PIAZZA II, ("Piazza"), is an individual who is, and at all times relevant
3 hereto was, a resident of Sonoma County, California. Piazza is the managing member, or otherwise
4 in control under another title, of Counter Defendant Front Sight Management, LLC and Trustee
5 and/or beneficiary of VNV Trust Defendants.

6 8. Counter Claimant is informed and believes, and on that basis alleges, that
7 DEFENDANT JENNIFER PIAZZA, is an individual who is, and at all times relevant hereto was, a
8 resident of Sonoma County, California, and is Trustee and/or beneficiary of VNV Trust Defendants.

9 9. Counter Defendant MORALES CONSTRUCTION, INC. ("MORALES
10 CONSTRUCTION") is a Nevada Corporation and licensed contractor with its principal place of
11 business in Pahrump, Nevada.

12 10. Counter Defendant ALL AMERICAN CONCRETE & MASONRY INC. ("ALL
13 AMERICAN CONCRETE") is a Nevada Corporation and licensed contractor with its principal
14 place of business in Pahrump, Nevada.

15 11. Counter Defendant TOP RANK BUILDERS INC. ("TOP RANK BUILDERS") is a
16 Nevada Corporation and licensed contractor with its principal place of business in Pahrump, Nevada.

17 12. Counter Claimant is informed and believes, and on such basis alleges, that Counter
18 Defendant EFRAIN RENE MORALES-MORENO ("MORALES") is, and at all times relevant was,
19 a resident of Nye County, Nevada, and the principal and chief executive officer of MORALES
20 CONSTRUCTION, ALL AMERICAN, and TOP RANK.

21 13. Counter Claimant is informed and believes, and on such basis alleges, that Counter
22 Defendant MICHAEL GENE MEACHER ("MEACHER") is, and at all times relevant, was a
23 resident of Nye County, Nevada, and the Vice President and Chief Operating Officer of Counter
24 Defendant FRONT SIGHT.

25 14. Upon information and belief, each of the Counter Defendants sued herein as ROE
26 Counter Defendants 1 through 10, inclusive, are beneficiaries or trustees of the Trust Defendants and
27 claim an interest in the Property or are responsible in some manner for the events and happenings
28 herein that Counter Claimant seeks to enjoin; that when the true names and capacities of such

1 defendants become known, Counter Claimant will ask leave of this Court to amend this counterclaim
2 to insert the true names, identities, and capacities together with proper charges and allegations.

3 15. Counter Claimant is informed and believes, and on that basis alleges, that Counter
4 Defendants Front Sight and the VNV Trust Defendants are influenced and governed by Counter
5 Defendant Ignatius Piazza, and they are so intertwined with one another as to be factually and
6 legally indistinguishable. As such, the adherence to an LLC, corporate, or trust fiction of separate
7 entities would, under the circumstances, sanction fraud and promote injustice.

8 16. As a result of Front Sight being the alter ego of Counter Defendant Ignatius Piazza,
9 Ignatius Piazza is personally liable for the liabilities of Front Sight regarding the allegations set forth
10 in this Counterclaim.

11 II. GENERAL ALLEGATIONS

12 17. The CLA was made to fund construction of the Front Sight Resort & Vacation Club
13 ("FS Resort") and an expansion of the facilities and infrastructure of the Front Sight Firearms
14 Training Institute (the "Training Facilities") located on a 550-acre site in Pahrump, Nevada (the
15 "Project"). The CLA dated October 6, 2016 (Exhibit 3) is the operative agreement for purposes of
16 determining Front Sight's obligations as the "Borrower," and the remedies available to LVD Fund as
17 the "Lender."

18 18. The "Project" is described as construction of the Front Sight Resort & Vacation Club
19 ("FSRVC") and an expansion of the facilities and infrastructure of the Front Sight Firearms Training
20 Institute ("FSFTI") (the "Facilities") located in a 550 acre site in Pahrump, Nevada. The Facilities
21 will include 102 timeshare residential units, up to 150 luxury timeshare RV pads, an 85,000 square
22 foot restaurant, retail, classroom, and office building (to be known as the Patriot Pavilion) and
23 related infrastructure and amenities, all of which will be located at One Front Sight Road, Pahrump,
24 Nevada 89041.

25 19. All of the loan funds came from foreign citizens participating in the Federal
26 Immigrant Investor Program, known as "EB-5." The EB 5 Immigrant Investor Program, which is
27 administered by the United States Citizenship and Immigration Services ("USCIS"), provides
28 certain immigrant investors, who can demonstrate that their investments are creating jobs in this

1 country, with a potential avenue to lawful permanent residency in the United States. The program
2 sets aside EB-5 visas for participants who invest in commercial enterprises approved by USCIS,
3 frequently administered by entities called "regional centers." Each investor is required to invest a
4 minimum of \$500,000 and, through the EB-5 Immigrant Investor Program, is anticipated to receive
5 permanent foreign resident status within the United States assuming compliance with the EB-5
6 program requirements and creation of 10 US jobs per investor. Material departures from the USCIS
7 approved plans for the Project, including delays in construction, and diversion of funds from the
8 Project to general corporate or personal uses, are all significant breaches of the CLA and potentially
9 jeopardize the immigration status of the EB-5 Investors.

10 20. According to the USCIS, the Immigrant Investor Program, also known as "EB-5,"
11 was created to stimulate the U.S. economy through job creation and capital investment from
12 immigrant investors by creating a new commercial enterprise or investing in a troubled business. In
13 this case, the immigrant investors are attempting to gain lawful permanent residence for themselves
14 and their families by participating in a Regional Center Pilot Program, which requires them to make
15 a capital investment of \$500,000, since this region is deemed to be a Targeted Employment Area
16 ("TEA"), i.e., "a rural area or an area that has experienced high unemployment of at least 150
17 percent of the national average." The new commercial enterprise must create or preserve 10 full time
18 jobs for qualifying U.S. workers within two years (or under certain circumstances, within a
19 reasonable time after the two year period) of the immigrant investor's admission to the United States
20 as a Conditional Permanent Resident (CPR).

21 21. The CLA, as well as the USCIS approved business plan and Confidential Offering
22 Memorandum that comply with both EB-5 legislation and U.S. securities laws and regulations,
23 specifically require that loan proceeds and disbursements be applied toward construction of the
24 Project and the creation of jobs. The CLA also includes a contractually agreed upon construction
25 schedule and construction budget that were specifically approved by the USCIS and must be
26 substantially complied with in order to meet the immigrant investors' obligations under the EB-5
27 Program.

28

1 Project documents submitted to, and approved by, USCIS.” However, in its October 30, 2018
2 prove-up to LVD Fund regarding EB-5 compliance, Front Sight revealed that although it has spent
3 all of the \$6,375,000 in loan proceeds since the initial disbursement in October 2016, only
4 approximately \$2,690,000 of the proceeds were actually spent on construction of the EB-5 project.

5 26. Counter Claimants are informed and believe, and thereon allege, that more than
6 \$3,675,000 of EB-5 loan proceeds have been diverted to fund matters that are not related to
7 completion of the approved EB-5 plan, such as payment of Front Sight’s general overhead expenses,
8 thereby severely prejudicing the EB-5 investors.

9 27. Counter Claimants are informed and believe, and thereon allege, that during the past two
10 years, while Front Sight has been using EB-5 (CLA) loan proceeds to pay its general overhead
11 operating costs, pay off a pre-existing loan for which Ignatius Piazza and Jennifer Piazza are
12 personal guarantors, and disburse multi-million shareholder distributions to Counter Defendants
13 Ignatius Piazza, Jennifer Piazza, and the VNV Trust Defendants.

14 **B. Breach Number 2: Failure to Provide Government Approved Plans-CLA §3.2(b)**

15 28. Section 3.2 (b)(I) of the CLA requires that, prior to the Commencement Date, Front
16 Sight provide LVD Fund with “Plans, in the form previously submitted to Lender, as finally
17 approved for construction by the Project Architect and the applicable Governmental Authority.”
18 (Exhibit 3, pg. 20). The “Commencement Date” for the Project is defined in the First Amendment to
19 Loan Agreement effective July 1, 2017 as “October 6, 2016.” (Exhibit 4). This is to include “a
20 schedule listing all Contractors, and primary contracts relating to the Project having a contract sum
21 in excess of \$250,000 for any such Contractor, and construction contracts, subcontracts and
22 schedules relating to the Project.” (Id. CLA §3.2(b)(ii)). In a letter dated August 28, 2018, Robert
23 Dziubla, on behalf of LVD Fund, gave notice to Front Sight that it was in default for failure to
24 provide construction plans and the related lists of contractors, licenses, agreements, and permits
25 relating to the construction as required under §§3.2(b)(I) and (ii) of the CLA. Front Sight remains in
26 default under these provisions of the CLA.

27 **C. Breach Number 3: Failure to Timely Complete Construction - CLA § 5.1**

28 29. Pursuant to Section 5.1 of the CLA, Front Sight was required to complete

1 construction by the “Completion Date” which is defined as “the date that is no later than thirty-six
2 (36) months from the Commencement Date.”(Exhibit 3 pg. 3). Pursuant to the First Amendment to
3 the Loan Agreement, the “Commencement Date” is defined as “October 4, 2016.” (Exhibit 4, §1).
4 Therefore, construction of the project must be completed on or before October 4, 2019.

5 30. Front Sight has explicitly acknowledged in writing that it is in default of this
6 requirement, warning LVD Fund in a letter dated August 25, 2018 that “. . . the foreclosure killed the
7 project when it was 18 months away from being completed.” Even by Counter Defendant Front
8 Sight’s written projection as of August 25, 2018, the Project would not be completed by the
9 contractual Completion Date of October 4, 2019, i.e., 36 months after the commencement date as
10 stated in the First Amendment to Loan Agreement.

11 31. This is a material event of Default, and it is particularly prejudicial to the EB-5
12 investors who risk losing their EB-5 benefits if the project is not completed in accordance with the
13 schedule approved by the USCIS.

14 **D. Breach Number 4: Material Change of Costs, Scope, or Timing of Work - CLA § 5.2**

15 32. Section 5.2 of the CLA states in pertinent part:

16 Borrower shall deliver to Lender revised, estimated costs of the Project,
17 showing changes in or variations from the original Estimated Construction
18 Cost Statement, as soon as such changes are known to Borrower. Borrower
19 shall deliver to Lender a revised construction schedule, if and when any
20 target date set forth therein has been delayed by twenty (20) consecutive
21 days or more, or when the aggregate of all such delays equals thirty (30)
22 days or more. Borrower shall not make or consent to any change or
23 modification in such Plans, contracts or subcontracts, and no work shall be
24 performed with respect to any such change or modification, without the
25 prior written consent of Lender, if (I) such change or modification would in
26 any material way alter the design or structure of the Project or change the
27 rentable area thereof in any way, or increase or decrease the Project cost by
28 \$250,000 or more (after taking into account cost savings and any insurance
proceeds of Borrower received by Lender) for any single change or
modification, or (ii) the aggregate amount of all changes and modifications
exceeds \$500,000 (after taking into account cost savings and any insurance
proceeds of Borrower received by Lender). Borrower shall promptly
furnish Lender with a copy of all changes or modifications in the Plans,
contracts or subcontracts for the Project prior to any Advance used to fund
such change or modification whether or not Lender's consent to such
change or modification is required hereby.”

1 33. Front Sight has made multiple material changes to the plans and schedule without
2 obtaining written consent from LVD Fund, including, inter alia, reducing the size of the “Patriot
3 Pavilion” from 85,000 square feet, as represented to USCIS, to approximately 25,000 - 30,000
4 square feet, while also modifying plans to eliminate foundations. Counter Claimants are informed
5 and believe, and thereon allege, that this change by Front Sight is a material change in the
6 construction plans, in breach of the CLA.

7 **E. Breach Number 5: Refusal to Comply Regarding Senior Debt - CLA § 5.27**

8 34. Under the CLA, Front Sight was required to obtain Senior Debt from a traditional
9 construction lender, originally by March 31, 2016 (Exhibit 3 at pg. 11 “Senior Debt” defined), then
10 was given an extension to December 31, 2017 (Exhibit 4 at ¶4), and then was given an extension to
11 June 30, 2018 (Exhibit 5 at ¶1). To date, Front Sight has not secured Senior Debt that meets the
12 requirements of the CLA.

13 **F. Breach Number 6: Failure to Provide Monthly Project Costs - CLA § 3.2(a)**

14 35. Front Sight has not delivered the required Monthly Evidence of Project Costs. “From
15 and after the date of the first Advance of the Loan, Borrower shall deliver to Lender on a monthly
16 basis evidence of the Project costs funded during the preceding month.” (CLA § 3.2(a)). Counter
17 Defendant Front Sight has not delivered a single monthly Project cost report.

18 **G. Breach Number 7: Failure to Notify of Event of Default - CLA § 5.10**

19 36. Section 5.10(d) of the CLA requires the Borrower to notify Lender of the occurrence
20 of an Event of Default. “Within five (5) Business Days after the occurrence of any event actually
21 known to Borrower which constitutes a Default or an Event of Default, notice of such occurrence,
22 together with a detailed statement of the steps being taken to cure such event, and the estimated date,
23 if known, on which such action will be taken.” Front Sight has failed to notify LVD Fund of either
24 (1) the existence of certain events of default; or (2) a detailed statement of the steps being taken to
25 cure the event of default.

26 **H. Breach Number 8: Refusal to Allow Inspection of Records - CLA § 5.4**

27 37. Section 5.4 of the CLA provides:
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Keeping of Records. Borrower shall set up and maintain accurate and complete books, accounts and records pertaining to the Project. Borrower will permit representatives of Lender to have reasonable access to and to inspect and copy such books, records and contracts of Borrower and to inspect the Project and to discuss Borrower's affairs, finances and accounts with any of its principal officers, all at such times and as often as may reasonably be requested by Lender.

38. LVD Fund made a demand to Inspect the Books and Records by Notice of Default and Letter dated July 30, 2018.

39. Front Sight explicitly refused to comply with this obligation under the CLA, as stated in the letter from Ignatius Piazza dated August 20, 2018. It states "Borrower is not in breach; thus, there will be no inspections. In the Notice; you have included a "Notice of Inspections" which alleges that "[P]ursuant to articles 3.3 and 5.4 of the CLA, we hereby serve you notice that we and our representatives will inspect the Project and your books and records on Monday, August 27." As set forth above and below herein, we contend that Borrower is not in breach or default of any of its obligations under the Loan Agreement; thus, **Borrower will not authorize any inspections whatsoever by Lender or its representatives of the Project or its books and records on the proposed date of August 27 [2018], or at any other time.**"

40. The right of inspection with advance notice pursuant to §3.3 and §5.4 of the CLA is not contingent on whether there is an Event of Default. Front Sight's refusal to permit the inspection constitutes a separate Event of Default acknowledged in writing by Front Sight.

I. Breach Number 9: Refusal to Allow Inspection of the Project - CLA § 3.3

41. Section 3.3 of the CLA provides:

Inspections: Lender and its representatives shall have access to the Project at all reasonable times and shall have the right to enter the Project to conduct such inspections thereof as they shall deem necessary or desirable for the protection of Lender's interests; provided, however, that for so long as no Event of Default shall have occurred and be continuing, Lender shall provide to borrower prior to the notice of not less than seventy-two (72) hours of any such inspections and such inspection shall be subject to the rights of club members (i.e., owners of timeshare interests) and any tenants under any applicable leases."

1 42. As discussed in the section above, on July 30, 2018, LVD Fund made a demand to
2 Front Sight for permission to inspect the Project, with more than 72 hours notice, even though
3 Events of Default negated the need for advanced notice. In response, Front Sight explicitly refused
4 to comply with this obligation under the CLA, stating: **“Borrower will not authorize any
5 inspections whatsoever by Lender or its representatives of the Project or its books and records
6 on the proposed date of August 27 [2018], or at any other time.”**

7 43. This is a material breach of the CLA justifying court intervention because the right of
8 inspection is necessary for Lender to determine, inter alia, appropriate use of loan proceeds,
9 construction progress, and possible impairment of security, which is necessary for Lender to protect
10 its interests.

11 **J. Breach Number 10: Failure to Provide EB-5 Information - CLA § 1.7(f)**

12 44. In order to verify continuing eligibility for participation in the EB-5 Investor Program
13 with the USCIS, Front Sight was required to submit certain EB-5 information on a continuing basis
14 as a condition of the loan. “Borrower shall submit to Lender the EB-5 Information. Failure of
15 Borrower to use the proceeds of the Loan in accordance with the terms and conditions of this
16 Agreement or to provide the EB-5 Information shall be a default pursuant to Section 6.1.” (Exhibit
17 3). This obligation was further specified in the First Amendment to the CLA requiring “Borrower
18 [to] provide Lender with copies of major contracts, bank statements, receipts, invoices and cancelled
19 checks or credit card statements or other proof of payment reasonably acceptable to Lender that
20 document that Borrower has invested in the Project at least the amount of money as has been
21 disbursed by Lender to Borrower on or before the First Amendment Effective Date.” (Exhibit 4).

22 45. Front Sight has failed to provide the required EB-5 Information. It is necessary to
23 give Lender access to the information needed in order to meet its obligations to its EB-5 investors so
24 the investors don’t lose their investment and their path to citizenship.

25 **K. Breach Number 12: Transferring Assets to Related Parties - CLA § 5.18**

26 46. Section 5.18 of the CLA provides that: “Borrower shall not directly or indirectly,
27 prior to completion of all of the improvements or the Completion Date, (a) make any distribution of
28 money or property to any Related Party, or make or advance to any Related Party, or (b) make any

1 loan or advance to any Related Party, or . . . (d) pay any fees or other compensation . . . to itself or
2 to any Related Party, if any such payment in (a) through (d), inclusive, might adversely affect
3 Borrower’s ability to repay the loan in accordance with its terms . . .”

4 47. In violation of § 5.18, Counter Defendant Ignatius Piazza removed and converted
5 \$10,968,803 away from Front Sight in 2016-2017 (\$4,903,525 as income to Ignatius Piazza and the
6 VNV Trust Defendants and \$6,065,278 in “loans” from Front Sight). Then, in 2017-2018, Ignatius
7 Piazza removed and converted another \$7,505,895 out for himself and the VNV Trust Defendants
8 in 2017.

9 48. Counter Claimant LVD Fund is informed and believes that Ignatius Piazza has
10 transferred additional funds from Front Sight to himself, his wife Jennifer Piazza (either directly or
11 indirectly) and the VNV Trust Defendants in violation of §5.18, which have yet to be disclosed.

12 49. Counter Claimants are informed and believe, and thereon allege, that Counter
13 Defendants Ignatius Piazza and Jennifer Piazza—both individually, as Trustees of the VNV Trust
14 Defendants, and/or as beneficiaries of the VNV Trust Defendants—knew about the source of the
15 transferred funds, and that transferring such funds violated the CLA, and with such knowledge
16 endorsed and aided in the removal of funds from Front Sight, and directly benefitted from the funds
17 through the VNV Trust Defendants and by reduction in debts that Ignatius Piazza and Jennifer
18 Piazza had personally guaranteed.

19 50. Counter Defendants have now diverted out of Front Sight, for their personal benefit,
20 enough capital to have completed the Front Sight Resort Project well within the time constraints
21 approved by the USCIS for the EB-5 Project. By diverting profits generated by Front Sight’s
22 operations to themselves, their trusts, and using EB-5 investor funds to pay Front Sight’s operating
23 expenses and pre-existing loans, Counter Defendants Ignatius Piazza and Jennifer Piazza
24 misappropriated loan proceeds and endangered Front Sight’s solvency.

25 **L. Breach Number 11: Non Payment of Default Interest - CLA § 1.2**

26 51. Section 1.2 of the CLA provides that if there is an Event of Default, interest shall be
27 charged at the “Default Rate.” The “Default Rate” is defined as “the lesser of five percent (5%) per
28 annum in excess of the Loan Rate or the maximum lawful rate of interest which may be charged.”

1 (Exhibit 3, CLA, pg. 4, “Default Rate Defined.”) Because Front Sight is in default under multiple
2 provisions of the CLA as detailed above, the Default Rate provisions of Section 1.2 were properly
3 triggered.

4 52. Front Sight has failed and refused to pay the Default Rate despite the demand
5 therefore. As a result of failing to pay default interest rates, **Front Sight is in monetary default**
6 **under the terms of the CLA.**

7 **M. Breach Number 12: Non Payment of Legal Fees - CLA § 8.2**

8 53. Section 8.2(a) of the CLA provides that “Borrower agrees to pay and reimburse
9 Lender upon demand for all reasonable expenses paid or incurred by Lender (including reasonable
10 fees and expenses of legal counsel) in connection with the collection and enforcement of the Loan
11 Documents, or any of them.” This obligation was specifically reaffirmed in ¶7 of the First
12 Amendment to the Loan Agreement (Exhibit 4), with respect to failure to provide the EB-5
13 Information. LVD Fund has incurred legal fees in connection with the Notices of Default and has
14 made demand of payment therefore from Front Sight. To date, Front Sight has refused to pay such
15 fees and this constitutes a monetary default under §6.1(b) of the CLA. LVD Fund has also incurred
16 attorneys’ fees and costs in excess of \$625,000 in defense of this action and pursuing its rights and
17 remedies under the CLA and Deed of Trust, for which Front Sight is contractually liable.

18 **N. Breach Number 13: Wrongfully Encumbering the Property.**

19 54. Section 5.7 of the CLA provides that “[w]ithout the prior written consent of Lender,
20 Borrower shall not voluntarily or involuntarily agree to, cause, suffer or permit any sale,
21 conveyance, lease, mortgage, grant, lien, encumbrance, security interest, pledge, assignment or
22 transfer of: (a) the Project or any part or portion thereof, or (b) any ownership interest in Borrower,
23 direct or indirect, legal or equitable (including the issuance, sale, redemption, or repurchase of any
24 such interest, the distribution of treasury stock, or the payment of any indebtedness owed to
25 Borrower by any managers, subsidiaries, Affiliates or owners of equity interests or debentures).”

26 55. In breach of this provision of the CLA, Counter Defendants Front Sight and Ignatius
27 Piazza have been selling, and continue to sell, “credits,” “points,” “memberships,” “certificates,” and
28 other instruments and products, including the sale of unregistered securities, that create contingent

1 liabilities for Counter Defendant Front Sight and/or include the current or contingent rights to
2 convert said instruments directly or indirectly into ownership interests in Counter Defendant Front
3 Sight or the Project.

4 56. As a result of the multiple breaches outlined above, on January 4, 2019, LVD Fund
5 filed the “Notice of Breach, Default and Election to Sell Under the Deed of Trust” with the Nye
6 County Recorder (DOC #905512, attached hereto as Exhibit 6).

7 57. Counter Defendant Front Sight thereafter has failed to correct any of the previously
8 cited breaches and Events of Default under the CLA, and has further breached the CLA by failing to
9 provide Counter Claimant LVD Fund with financial statements within 75 days of the end of calendar
10 year 2018, as identified in § 5.10 of the CLA, despite Counter Claimant making the demand for said
11 financial statements by letter dated March 25, 2019.

12 **Material Misrepresentations Regarding the Morales Construction Line of Credit**

13 58. By October 2017, Front Sight was in breach of the CLA. Front Sight had failed to
14 timely obtain Senior Debt and provide LVD Fund with the EB5 documentation required under the
15 CLA. Thereafter, Front Sight concocted a scheme to further defraud LVD Fund and to convince
16 LVD Fund to continue working with Front Sight to fund the project.

17 59. Specifically, in or about October 2017, Counter Defendants Front Sight, Piazza,
18 Meacher, Morales, and the Morales Entities (i.e., Morales Construction, All American Concrete and
19 Top Rank Builders) entered into a comprehensive scheme to further defraud LVD Fund. The
20 scheme involved Front Sight and the Morales Entities entering into a fictitious \$36 million loan
21 agreement to give the false appearance that Front Sight had access to enough credit to complete the
22 Project.

23 60. Counter Defendants carried out the fraudulent scheme with the intent that LVD Fund
24 would rely on this false appearance of access to credit and believe that the credit would in fact be
25 utilized for construction of the Project. Counter Defendants further intended that the fictitious loan
26 agreement would give LVD Fund a false sense of security so that it would release funds it was
27 withholding from Front Sight (pursuant to §3.1 of the CLA), and facilitate continued solicitation of
28 additional EB-5 investors by using the loan agreement to give an appearance that Front Sight was

1 putting more money into construction than it really was.

2 61. In furtherance of the fraudulent scheme, on October 31, 2017, Front Sight entered
3 into the purported “Loan Agreement – Construction Line of Credit” (“Loan Agreement”) with the
4 Morales Entities. (See Exhibit 8). The Loan Agreement was executed by Counter Defendant
5 Morales. Per the terms of the Loan Agreement, the Morales Entities were to provide Front Sight
6 with up to \$36,000,000 of credit to be applied towards completing the Project.

7 62. Counter Defendants Front Sight, Piazza, Meacher, Morales, and the Morales Entities
8 caused this “Loan Agreement” to be executed with no intent to ever utilize the credit line, and with
9 knowledge that the Morales Entities were not capable of extending or carrying the amount of credit
10 purportedly available under the agreement’s terms.

11 63. On October 31, 2017, Meacher represented to LVD Fund that:

12 “Attached please find fully executed documents between Front Sight
13 Management and our three primary contractors. This Construction Line
14 of Credit and associated Promissory Note extends to Front Sight up to
15 \$36,000,000 in construction credit pursuant to the terms of the
16 agreements . . .

17 These documents and the attached construction line of credit along with
18 the upcoming Letter of Commitment from USCP **should jump start**
19 **the marketing in both China and India. Please release the funds for**
20 **the investor you now hold** and give me the vehicle by which we send
21 the funds for Dr. Shah’s marketing road show that we promised with his
22 next closing. Also light a fire under David and Kyle. Get them to put
23 some serious effort to close the 26 investors in China who are currently
24 looking for another project. **There are now no excuse [sic] for not**
25 **closing more of these EB-5 investors.**” (Emphasis added)

26 64. Counter Claimant is informed and believes, and thereon alleges, that in return for the
27 Morales Entities entering into the fraudulent Loan Agreement, Front Sight agreed to contract with
28 the Morales Entities to perform construction work on the Project. Morales, as the owner of the
29 Morales Entities, personally benefitted from the profit generated by the millions of dollars received
30 from Front Sight.

31 65. Rather than the construction funding coming from the Morales Entities pursuant to
32 the Loan Agreement, the Counter Defendants agreed that the funds were to come solely from LVD
33 Fund. The Loan Agreement was simply a ruse to lull LVD Fund into soliciting more EB-5 funds,
34

1 with the intent that the false appearance of Front Sight having a \$36 million line of credit would
2 result in a greater number of EB-5 investors coming forward.

3 **FIRST CAUSE OF ACTION**

4 **Fraud by Front Sight, Morales, Piazza, Meacher, Morales, and the Morales Entities**

5 67. Counter Claimant repeats and realleges each and every allegation contained in
6 paragraphs 1 through 66 of this Counterclaim as though set forth fully herein at length.

7 68. When Counter Defendants made the misrepresentations set forth above, they knew
8 them to be false.

9 69. Counter Defendants made the misrepresentations knowing that Counter Claimant and
10 members of the Class would rely on said misrepresentations.

11 70. LVD Fund did in fact rely on said misrepresentations to its detriment. Had LVD Fund
12 known the true facts, it would not have released the funds it was holding pursuant to §3.1 of the
13 CLA and would not have solicited additional EB-5 investors for the Front Sight Project.

14 71. As a direct and proximate result of the fraud and intentional misrepresentations made
15 by the Counter Defendants, Counter Claimant LVD Fund has sustained damages well in excess of
16 the fifteen thousand dollar (\$15,000) jurisdictional limit of this court.

17 72. The conduct of Counter Defendants, and each of them, as described herein, was
18 malicious, oppressive, and fraudulent under NRS 42.005, entitling Counter Claimant to an award of
19 punitive damages.

20 73. As a result of Counter Defendants' actions, Counter Claimant has been required to
21 retain the services of an attorney in order to pursue this claim against said Counter Defendants, and
22 each of them, and is therefore entitled to be compensated for any and all costs incurred in the
23 prosecution of this action, including without limitation, any and all reasonable costs and attorney's
24 fees.

25 74. LVD Fund also is entitled to attorney's fees under Section 8.2 of the Construction
26 Loan Agreement for enforcement of the contract.

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SECOND CAUSE OF ACTION
Fraudulent Transfers – NRS §§ 112.180 and 112.190
Against Front Sight, VNV Dynasty Trust I and VNV Dynasty Trust II

75. Counter Claimant repeats and realleges each and every allegation contained in paragraphs 1 through 74 of this Counterclaim as though set forth fully herein at length.

76. Pursuant to the CLA § 5.18, Front Sight was prohibited from making certain related party transactions or transfers if such transfers would impair the ability of Front Sight to repay the construction loan under the CLA.

77. Despite being insolvent at year end 2016, Front Sight made an undocumented “loan to shareholder” of in excess of \$6 million in FY 2016.

78. The “loan to shareholder” was in fact a disguised distribution of over \$6 million for the benefit of the shareholder.

79. From the date of closing of the CLA to the end of 2016, Front Sight made additional transfers to, or for the benefit of, Piazza in the approximate amount of \$2,230,000, all at a time when Front Sight was insolvent.

80. Front Sight made additional transfers to, or for the benefit of, Piazza in the approximate amount of \$7,713,985 in 2017, all at a time when Front Sight was insolvent.

81. Front Sight made additional transfers to, or for the benefit of, Piazza in the approximate amount of \$2,883,127 in 2018, all at a time when Front Sight was insolvent.

82. Front Sight made additional transfers to, or for the benefit of, Piazza in the approximate amount of \$1,484,831 in the first three quarters of 2019, all at a time when Front Sight was insolvent.

83. The above transactions were made with actual intent to hinder, delay, or defraud LVD Fund.

84. Front Sight engaged in the above transactions without receiving reasonably equivalent value in exchange for the transfer at a time when: (1) Front Sight was engaged in a transaction (the CLA and the Project) for which the remaining assets of Front Sight were unreasonably small in relation to the transaction; and (2) in which Front Sight intended to incur, or

1 reasonably should have believed it was incurring, debts that were beyond the ability of Front Sight to
2 pay when due. NRS 112.180.

3 85. The above transactions were: (a) to an insider; (b) the insider retained possession or
4 control of the transferred funds; (c) the transfers were unconsented to by LVD Fund despite the
5 obligations of CLA § 5.18; (d) the transfers were made shortly after Front Sight incurred a
6 substantial debt pursuant to the CLA; and (e) Front Sight was insolvent at the time the transfers were
7 made. NRS 112.180.

8 86. The above transfers are fraudulent transfers as to LVD Fund because they were made
9 after the obligation to LVD Fund was incurred and they were made without receiving a reasonably
10 equivalent value in exchange for the transfer or obligation and Front Sight was insolvent at the time
11 the transfers were made. NRS 112.190.

12 87. The above transfers are further fraudulent transfers as to LVD Fund because the
13 obligation to LVD Fund was incurred before the transfers were made and the transfers were to an
14 insider at a time when Front Sight was insolvent, and the insider (Piazza) knew that Front Sight was
15 insolvent.

16 88. Pursuant to NRS 112.210, LVD Fund seeks: (a) avoidance of the transfers and loan to
17 shareholder; (b) an attachment or garnishment against the asset transferred or other property of the
18 transferee pursuant to NRS 31.010 to 31.460, inclusive, and (c) subject to applicable principles of
19 equity and in accordance with applicable rules of civil procedure: (1) an injunction against further
20 disposition by the debtor or a transferee, or both, of the assets transferred or of other property; (2)
21 appointment of a receiver to take charge of the assets transferred or of other property of the
22 transferee; or (3) any other relief the circumstances may require.

23 **THIRD CAUSE OF ACTION**

24 **Intentional Interference with Contractual Relationships Against Ignatius Piazza,
25 Jennifer Piazza, and VNV Trust Defendants.**

26 89. Counter Claimant repeats and realleges each and every allegation contained in
27 paragraphs 1 through 88 of this Counterclaim as though set forth fully herein at length.

28 90. Front Sight and LVD Fund entered into a written Construction Loan Agreement (Ex.

1 3), along with a First Amendment in July 2017 (Ex. 4), and a Second Amendment in February 2018.
2 (Ex. 5).

3 91. Counter Defendants had knowledge of the valid contract or had reason to know of its
4 existence;

5 92. These Counter Defendants committed intentional acts intended or designed to disrupt
6 the contractual relationship or to cause the contracting party to breach the contract, including but not
7 limited to, inducing Front Sight to improperly use funds for the personal benefit of Counter
8 Defendants Ignatius Piazza, Jennifer Piazza, and VNV Trust Defendants.

9 93. Front Sight did in fact breach the contract as stated specifically above.

10 94. The breach was caused by the wrongful and unjustified conduct.

11 95. As a direct and proximate result of Counter Defendants' intentional acts to induce
12 Front Sight to breach the CLA, Counter Claimant sustained damages in the amount to be proven at
13 trial.

14 96. As a result of Counter Defendants' actions, Counter Claimant has been required to
15 retain the services of an attorney in order to pursue this claim against said Counter Defendants, and
16 each of them, and is therefore entitled to be compensated for any and all costs incurred in the
17 prosecution of this action, including without limitation, any and all reasonable costs and attorney's
18 fees.

19 **FOURTH CAUSE OF ACTION**

20 **Conversion Against Front Sight, Ignatius Piazza and Jennifer Piazza**

21 97. Counter Claimant repeats and realleges each and every allegation contained in
22 paragraphs 1 through 96 of this Counterclaim as though set forth fully herein at length.

23 98. Through these Counter Defendants' conduct described above, Counter Defendants
24 obtained Counter Claimants' property and have wrongfully asserted dominion over Counter
25 Claimant's property; to wit: misappropriating and spending the loan proceeds under the CLA for
26 purposes other than that for which it was intended.

27 99. Counter Defendants' wrongful conduct was in denial of, inconsistent with, and in
28 defiance of Counter Claimant's rights and title to its money and/or property.

1 107. Based on Counter Defendants’ conduct and the inequitable result of allowing the
2 transferred funds to remain in control of Counter Defendants, a constructive trust should be placed
3 on all monies transferred from Front Sight to the VNV Trust Defendants, as prayed for below.

4 **SIXTH CAUSE OF ACTION**
5 **Judicial Foreclosure Against Front Sight**

6 108. Counter Claimant repeats and realleges each and every allegation contained in
7 paragraphs 1 through 107 of this Counterclaim as though set forth fully herein at length.

8 109. In July 2017, Counter Defendant Front Sight for good and valuable consideration
9 executed and delivered the original Promissory Note to LVD Fund. On November 14, 2017, Counter
10 Defendant Front Sight executed and delivered the Amended and Restated Promissory Note to LVD
11 Fund. (Exhibit 7).

12 110. To secure the Note, on October 13, 2016, Counter Claimant LVD Fund recorded a
13 Deed of Trust titled “Construction Deed of Trust, Security Agreement, Assignment of Leases and
14 Rents, and Fixture Filing,” in the official records of Nye County, Nevada, as “DOC #860867.”
15 (Exhibit 1). On January 12, 2018, the “First Amendment to Construction Deed of Trust, Security
16 Agreement and Fixture Filing,” was recorded in the official records of Nye County, Nevada, as
17 “DOC #886510.” (Exhibit 2).

18 111. Counter Claimant LVD Fund is the owner and the holder of the note for value and has
19 performed all obligation under the Promissory Note.

20 112. The encumbered Property is now owned by and in possession of Counter Defendant
21 Front Sight.

22 113. Counter Defendants have breached the Deed of Trust as discussed in detail above,
23 which include but are not limited to: improper use of loan proceeds; failure to provide government
24 approved plans; material delays in construction; material changes to cost, scope, and timing of the
25 construction; refusal to comply with regarding Senior Debt; failure to provide monthly project costs;
26 failure to notify Lender of events of default; refusal to allow Lender to inspect books and records;
27 diverting Front Sight assets out of Front Sight for the benefit the individual Counter Defendants;
28 refusal to allow site inspections; failure to give Lender annual financial statements; and failure to

1 provide EB5 documentation.

2 114. As of January 4, 2019 there remained due and owing under the Note approximately
3 \$345,787.24 (excluding principal) as described in the Notice of Breach and Election to Sell Under
4 the Deed of Trust. (Exhibit 6). Counter Defendants reserve the right to amend this Counterclaim up
5 to the time of trial to include any additional amounts which become due and remain unpaid as a
6 result of additional damages caused by Counter Defendants.

7 115. Counter Claimant is entitled to an order directing a foreclosure sale in the subject
8 Property to abrogate any and all interest or claims that Counter Defendants might have in the subject
9 Property.

10 116. As a result of Counter Defendants' actions, Counter Claimant has been required to
11 retain the services of an attorney in order to pursue this claim against said Counter Defendants, and
12 each of them, and is therefore entitled to be compensated for any and all costs incurred in the
13 prosecution of this action, including without limitation, any and all reasonable costs and attorney's
14 fees.

15 **SEVENTH CAUSE OF ACTION**

16 **Waste Against Front Sight, Ignatius Piazza, and the VNV Trust Defendants**

17 117. Counter Claimant repeats and realleges each and every allegation contained in
18 paragraphs 1 through 116 of this Counterclaim as though set forth fully herein at length.

19 118. Counter Claimant LVD Fund (Lender) has a lien encumbering the subject Property.

20 119. Counter Defendant Front Sight (Borrower) has possession of the Property.

21 120. Waste was committed to the property in bad faith, impairing its value, including but
22 not limited to improperly using funds earmarked for development of the Property for the personal
23 benefit of Counter Defendants Ignatius Piazza, Jennifer Piazza, and the VNV Trust Defendants;
24 selling unregistered securities which create substantial legal and financial liability to Front Sight,
25 misappropriating Front Sight's assets for the personal benefit of Ignatius and Jennifer Piazza and
26 other beneficiaries of the VNV Trust Defendants, and selling various instruments which include
27 rights to Front Sight's resort property for highly reduced rates which further encumbers the Property,
28 either directly or indirectly.

1 121. As a direct and proximate result of the waste committed by Counter Defendants,
2 Counter Claimant has been injured in an amount to be proven at trial.

3 122. Counter Claimant is entitled to treble damages under NRS 40.150.

4 123. Counter Defendants' conduct was malicious, oppressive, and fraudulent under NRS
5 42.005, entitling Counter Claimant to an award of punitive damages.

6 124. As a result of Counter Defendants' actions, Counter Claimant has been required to
7 retain the services of an attorney in order to pursue this claim against said Counter Defendants, and
8 each of them, and is therefore entitled to be compensated for any and all costs incurred in the
9 prosecution of this action, including without limitation, any and all reasonable costs and attorney's
10 fees.

11 **PRAYER FOR RELIEF**

12 WHEREFORE, all material allegations of Plaintiff's Second Amended Complaint having
13 been denied, affirmative defenses having been stated, and counterclaims asserted, these responding
14 Defendants now pray as follows:

15 1. That Plaintiff take nothing by way of its Second Amended Complaint on file herein
16 and that the same be dismissed with prejudice;

17 2. For Judgment in favor of Counter Claimants against Counter Defendants, and each of
18 them, in an amount in excess of Fifteen Thousand Dollars (\$15,000.00), subject to proof at trial;

19 3 For appointment of a receiver over Counter Defendant Front Sight;

20 4. For an accounting from Counter Defendant Front Sight from October 6, 2016
21 forward, of any and all money paid and received, from all sources;

22 5. For an accounting from the Counter Defendant VNV Trusts from October 6, 2016
23 forward, of any and all money received from Counter Defendant Front Sight, and for all money
24 distributed by the Counter Defendant Trusts since October 6, 2016.

25 6. For imposition of a constructive trust over the money transferred by Counter
26 Defendant Front Sight to the VNV Trust Defendants in violation of Section 5.18 of the CLA,
27 because the retention of said funds by the Counter Defendant Trusts against Counter Claimant LVD
28 Fund's interests would be inequitable, and a constructive trust is essential to the effectuation of

1 justice, and that restrictions be placed on such funds that limit their use to paying for the costs and
2 expenses relating to completion of the Project.

3 7. For injunctive relief pursuant to NRS 33.010 or as otherwise permitted by law or
4 equity to enjoin Counter Defendant Front Sight from engaging in acts that further encumber
5 the Property and increase Counter Defendant Front Sight’s actual or contingent liabilities in
6 violation of the CLA, including the sale of “credits,” “points,” “memberships,” “certificates,” or any
7 other instruments or products, including the sale of unregistered securities, that create contingent
8 liabilities for Counter Defendant Front Sight and/or include the current or contingent right to convert
9 said instruments directly or indirectly into ownership interests in Counter Defendant Front Sight or
10 the Project.

11 8. For punitive damages pursuant to NRS 42.005.

12 9. For disgorgement of the funds misappropriated by Counter Defendant Front Sight and
13 distributed to the other Counter Defendants;

14 10. For attorneys’ fees and cost of suit incurred herein; and

15 11. For such other and further relief as the Court may deem just and proper.

16 DATED this 30th day of March, 2021.

17 HOGAN HULET PLLC

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19 By: /s/ Kenneth E. Hogan
20 KENNETH E. HOGAN

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CERTIFICATE OF SERVICE

I certify that I am an employee of HOGAN HULET PLLC and that on the 30th day of March, 2021, service of the foregoing **DEFENDANTS’ ANSWER TO PLAINTIFF’S SECOND AMENDED COMPLAINT; AND UNREDACTED FIRST AMENDED COUNTERCLAIM** was made by mandatory electronic service through the Eighth Judicial District Court’s electronic filing system and/or by depositing a true and correct copy in the U.S. Mail, first class postage prepaid, and addressed to the following at their last known address:

JOHN P. ALDRICH	Email:
CATHERINE HERNANDEZ	jaldrich@johnaldrichlawfirm.com
ALDRICH LAW FIRM, LTD.	
7866 West Sahara Avenue	<i>Attorneys for Plaintiff</i>
Las Vegas, Nevada 89117	FRONT SIGHT MANAGEMENT
	LLC

/s/ Kenneth E. Hogan
Employee of HOGAN HULET PLLC