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11 **UNITED STATES BANKRUPTCY COURT**
 12 **FOR THE DISTRICT OF NEVADA**

13 In re: 14 FRONT SIGHT MANAGEMENT LLC, 15 Debtor.	Case No.: 22-11824-ABL Chapter 11 Date: March 6, 2023 Time: 9:30 a.m.
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16 **OMNIBUS OPPOSITION TO: (I) MOTION FOR CLARIFICATION AND/OR**
 17 **MOTION FOR RECONSIDERATION [AECF NO. 141]; AND (II) MOTION**
 18 **TO ALLOW AMENDMENT TO PROOF OF CLAIM [ECF NO. 665]**

19 Reorganized Debtor Front Sight Management LLC (“Front Sight”), by and through its
 20 counsel, the law firm of Garman Turner Gordon LLP, hereby submits its omnibus opposition
 21 (“Opposition”) to the *Motion for Clarification and/or Motion for Reconsideration* [AECF No.
 22 141]¹ (the “Reconsideration Motion”) and the *Motion to Allow Amendment to Proof of Claim* [ECF
 23 No. 665] (“Late Claim Motion”) filed by Las Vegas Development Fund, LLC (“LVDF”). This
 24 Opposition is made and based on the following memorandum of points and authorities, the papers
 25 and pleadings on file herein, judicial notice of which is hereby respectfully requested, and the
 26 argument of counsel entertained by the Court at the time of the hearing on the Motions.

27 _____
 28 ¹ “ECF Nos.” refers to pleadings filed in the Bankruptcy Case, case number 22-11824-abl, and “AECF Nos.” refers to pleadings filed in the Adversary Proceeding, adversary number 22-01116-abl.

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2 *Trustees of the Const. Indus. & Laborers Health & Welfare Tr. v. Vasquez*, 2011 WL 4549228, at

3 *2–3 (D. Nev. Sept. 29, 2011) 19

4 *United States v. Alpine Land & Reservoir Co.*, 984 F.2d 1047, 1049 (9th Cir.1993) 22

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTORY STATEMENT**

3 LVDF waited 127 days after the Order Denying Remand was entered, 63 days after the
4 confirmation hearing, 52 days after the Confirmation Order was entered, and 49 days after the
5 Plan’s effective date to bring its Reconsideration and Late Claim Motions. Through these two
6 Motions, LVDF, having actively participated in every facet of the Bankruptcy Case and the Plan
7 process seeks – after the claims bar date and after reasonable reliance by other parties on the
8 finality of orders and a claims bar date – to assert a new general unsecured claim for fraud.

9 This is not legal maneuvering; this is a strategic ambush that will likely raise problems with
10 respect to the Plan and harm the Class 6 general unsecured creditors. To be sure, this Court stated
11 no less than six times during its oral ruling on the Remand Motion that LVDF’s counterclaims
12 were estate property. LVDF did not seek clarification, reconsideration, or appeal. Instead, in
13 connection with obtaining Front Sight’s agreement to withdraw its pending sanctions motion
14 against LVDF and its counsel for violating the automatic stay, LVDF stipulated in four separate
15 paragraphs that its counterclaims were property of the estate.

16 Beyond this, LVDF filed a proof of claim asserting only a secured claim for “money
17 loaned” in the amount of \$11,655,706.01, plus interest, costs, and attorney’s fees and solely
18 attached a claim calculation based on the loan documents and three loan documents. Accordingly,
19 Front Sight filed its plan of reorganization treating LVDF’s claim as a fully secured claim in Class
20 1. LVDF did not assert a general unsecured claim for fraud in connection with the plan process.
21 Instead, LVDF filed a motion seeking to estimate its Class 1 claim for voting purposes. Again,
22 LVDF did not assert a second Class 6 unsecured claim.

23 Thereafter, LVDF negotiated with Front Sight and Nevada PF to obtain a \$750,000
24 increase in the LVDF reserve provided in the Plan for LVDF’s Class 1 secured claim and to strike
25 the LVDF Interest Provision. This was memorialized in the Plan Stipulation. Again, LVDF did
26 not assert an unsecured claim for fraud.

27 At no point did LVDF object to the Disclosure Statement and Plan’s treatment of LVDF’s
28 counterclaims as estate property, the transfer of such claims to the reorganized Front Sight, or the

1 release of such claims provided to the Piazza Parties under the Plan. Nor did LVDF object to the
2 Disclosure Statement and Plan’s treatment of LVDF’s claim solely in Class 1 as a secured claim.
3 In fact, LVDF submitted a Class 1 ballot (not a Class 6 general unsecured ballot) voting in favor
4 of the Plan.

5 LVDF then waited until after the Plan’s effective date and the funding of the increased
6 LVDF reserve to seek to reclaim the fraud counterclaim – the same fraud counterclaim that LVDF
7 had stipulated was property of the estate and was transferred as part of the Plan. LVDF’s
8 intentional delay and concealment of its intent to assert a contrary position after the Plan went
9 effective smacks of bad faith.

10 The Motions should be denied for the multitude of reasons set forth herein, including that:

- 11 (i) LVDF is estopped from arguing that the fraud counterclaim is not property of the
12 estate;
- 13 (ii) LVDF waived any argument that the fraud counterclaim is not property of the
14 estate;
- 15 (iii) LVDF’s changed position is barred by the law of the case doctrine;
- 16 (iv) The Order Denying Stay Relief and the Confirmation Order are final orders that
17 LVDF did not appeal and cannot be collaterally attacked;
- 18 (v) The transfer of LVDF’s counterclaims was a material part of the confirmed Plan
19 and cannot be collaterally attacked now that the Plan is effective and substantially
20 consummated;
- 21 (vi) LVDF has failed to carry its burden under FRCP 54 and 60; and
- 22 (vii) LVDF has failed to carry its burden to assert a new claim after the bar date.

23 **II. PERTINENT FACTS**

24 1. On May 24, 2022, Front Sight filed a voluntary Chapter 11 petition, thereby
25 commencing the above-captioned bankruptcy case (the “Bankruptcy Case”). ECF No. 1

26 2. On June 23, 2022, Front Sight filed a notice of removal of the Front Sight v. LVDF
27 state court proceeding, commencing this Adversary Proceeding. AECF No. 1; ECF No. 176.

28 3. On July 27, 2022, LVDF filed its *Motion to Remand* [AECF No. 4] (“Remand
Motion”), which was opposed by Front Sight [AECF No. 57], the Official Committee of

1 Unsecured Creditors (the “Committee”) [ECF No. 63], Dr. Ignatius Piazza, Jennifer Piazza, VNV
 2 Dynasty Trust I, and VNV Dynasty Trust II (collectively, the “Piazza Parties”) [AECF No. 64].

3 4. On September 9, 2022, the Court rendered its oral ruling on the Remand Motion
 4 [AECF No. 141-2] unambiguously finding that all of LVDF’s claims were property of Front
 5 Sight’s bankruptcy estate:

- 6 • “After careful analysis of the claims that have been advanced by LVDF that
 7 were pending in the state court lawsuit at the time of removal, *the Court*
 8 *concludes that those claims are property the estate, such that only Front*
 9 *Sight, as debtor-in-possession, has standing to pursue them.* The reasons for
 10 that decision are these: When distilled to their essence, LVDF’s claims in the
 11 state court lawsuit at the time of removal are claims for recovery of fraudulent
 12 transfers, conversion, waste, and conspiracy claims resulting in injury to Front
 13 Sight, *or they implicate alter ego claims. Because such claims are property*
 14 *of Front Sight’s bankruptcy estate, only Front Sight, as the debtor-in-*
 15 *possession, has the standing to prosecute them.”* *Id.* pp. 17:16-18:2 (emphasis
 16 added).
- 17 • “Even if LVDF did have standing to pursue the claims pending in the state court
 18 lawsuit at the time of removal, and for the avoidance of doubt, the Court
 19 expressly holds that it did not, the Court would deny the remand motion on
 20 other grounds.” *Id.* p. 20:5-9.
- 21 • “Front Sight hadn’t filed its bankruptcy petition until well after the filing of the
 22 second amended complaint in the state court lawsuit, but *LVDF’s pending*
 23 *claims in the state court lawsuit at the time of removal, our [sic] property, the*
 24 *bankruptcy estate, as debtor-in-possession,* Front Sight has exclusive standing
 25 to pursue them.” *Id.* p. 21:10-15 (emphasis added).
- 26 • “As previously discussed, the substance of LVDF’s pending claims in the state
 27 court lawsuit at the time of removal are claims for recovery of fraudulent
 28 transfers, conversion, waste, conspiracy theories resulting in injury to Front
 Sight, and the implication of alter ego claims. *Because those claims are*
property of Front Sight’s bankruptcy estate, only Front Sight, as the debtor-
in-possession, has standing to prosecute them under the authorities I cited
 previously.” *Id.* p. 23:14-22 (emphasis added).
- “The facts underpinning LVDF’s pending claims in the state court lawsuit at
 the time of removal are inextricably intertwined, *and the claims themselves are*
property of the bankruptcy estate.” *Id.* p. 24:3-7 (emphasis added).
- “This Court will necessarily have to consider LVDF’s pending claims in the
 state court lawsuit at the time of removal in the claims estimation and/or
 allowance context, as well as in the confirmation process, remand would simply
 ensure that two courts would have to address a single set of claims under a

1 single set of operative facts, ***all of those claims belonging to the bankruptcy***
2 ***estate.***” *Id.* p. 24:19-25(emphasis added).

3 5. The *Order Denying Motion for Remand*, incorporating the Court’s oral findings
4 and conclusions made on the record on September 9, 2022, was entered on September 15, 2022
5 (the “Order Denying Remand”). AECF No. 107.

6 6. Having found that LVDF’s counterclaims were estate property and having denied
7 the Remand Motion, the Court likewise denied LVDF’s motion seeking relief from the automatic
8 stay to pursue its previously asserted claims in state court. ECF Nos. 206 and 346 (the “Order
9 Denying Stay Relief”) and AECF No. 141-2, pp. 28-36. The Order Denying Stay Relief was not
10 appealed and is a final order.

11 7. After the Court unambiguously found that all of LVDF’s counterclaims were
12 property of the estate, LVDF did not ask for clarification or seek reconsideration. Instead, LVDF
13 did the exact opposite – LVDF stipulated that all of its counterclaims were property of the estate.
14 AECF Nos. 104 and 106.

15 8. Specifically, on September 14, 2022, LVDF and Front Sight entered into the
16 *Stipulation Resolving Debtor’s Motion for Entry of an Order Confirming Terminating Sanctions*
17 *Order Is Void as a Violation of the Automatic Stay, or, in the Alternative, Motion for Relief from*
18 *Order Pursuant to Federal Rule of Civil Procedure 60(b)* [AECF No. 104], which was granted by
19 Order entered on September 15, 2022 [AECF No. 106], through which LVDF stipulated and
20 agreed that each of LVDF’s counterclaims were property of the estate.

- 21 • “At the September 9, 2022 oral ruling hearing, the Court denied the Remand
22 Motion and the Stay Motion for the reasons set forth on the Court’s record, and
23 found that (a) ***all of the LVDF Parties’ counterclaims against the Piazza***
24 ***Parties are property of the bankruptcy estate as they are based upon***
fraudulent transfer and alter ego claims, and (b) ***only the Debtor and/or its***
bankruptcy estate has the ability to prosecute those claims post-petition.”
AECF No. 104 ¶ 14 (emphasis added).
- 25 • “In light of the Court’s findings made at the September 9, 2022 hearing that ***all***
26 ***of the LVDF Parties’ counterclaims are property of the bankruptcy estate***, the
27 parties have agreed to resolve the Void Motion as stipulated below.” *Id.* ¶ 15
28 (emphasis added).

- 1 • “The LVDF counterclaims against the Piazza Parties are property of the
- 2 bankruptcy estate.” *Id.* ¶ A (emphasis added).
- 3 • “The LVDF counterclaims are property of the bankruptcy estate.” AECF No. 106 ¶ 2.

4 9. To be clear, LVDF did not contend that the Court’s ruling was ambiguous or that
 5 LVDF believed it retained its fraud-based counterclaim. Instead, LVDF stipulated that all of its
 6 counterclaims were property of the estate in a stipulation and order whereby LVDF received
 7 multiple benefits, including an agreement by Front Sight to withdraw its pending motion for
 8 sanctions against LVDF and its counsel for their violation of the automatic stay. AECF Nos. 104
 9 and 106.

10 10. On October 3, 2022, Front Sight filed *Debtor’s Second Amended Chapter 11 Plan*
 11 *of Reorganization* (the “Plan”) and its *Second Amended Disclosure Statement Describing Debtor’s*
 12 *Second Amended Chapter 11 Plan of Reorganization* (the “Disclosure Statement”). ECF Nos. 405
 13 and 406.

14 11. When the Plan and Disclosure Statement were filed, LVDF’s proof of claim
 15 asserted a **fully secured claim** for “MONEY LOANED” in the amount of \$11,655,706.01, plus
 16 accruing interest, costs, and attorney fees, with the basis of perfection described as “DEED OF
 17 TRUST/LIEN.” Claim No. 284-1. LVDF’s proof of claim attached its Construction Deed of
 18 Trust, Security Agreement, Assignment of Leases and Rents, and Fixture Filing; Amended and
 19 Restated Promissory Note; and First Amendment to Construction Deed of Trust, Security
 20 Agreement and Fixture Filing, and provided the following itemization of its claim calculation:

21 Principal Due	\$6,375,000.00
22 Late Fees (Current Month + Past Due)	\$1,126,573.55
23 Past Due Foreclosure Costs	\$155,341.71
24 Current Foreclosure Costs (Partial)	\$3,813.84
25 Past Due Legal/Attorney’s Fees	\$1,858,863.24
26 Current Legal/Attorney’s Fees	\$82,959.69
27 Past Due Interest	\$1,979,473.89
28	

1	Current Interest Due	\$83,680.09
2	Amount Due	\$11,655,706.01

3
4 12. Nothing in LVDF's proof of claim or the attachments asserted an unsecured claim
5 or damages for fraud. *Id.*

6 13. Consistent therewith, the Plan classified LVDF's secured claim in Class 1 and
7 provided that \$11,805,706.01 of the Cash Contribution² be placed into a reserve account
8 maintained by Stretto pending resolution of the objection to LVDF's claim and Front Sight's
9 affirmative claims against LVDF, with LVDF's ultimately allowed claim (if any) to be paid in full
10 from the LVDF reserve account. The Plan also provided that LVDF would have a first priority
11 lien in the LVDF reserve account. ECF No. 405, pp. 21-22

12 14. Attached as Exhibit A to the Disclosure Statement was a chart identifying every
13 proof of claim filed in the Bankruptcy Case, whether the claim asserted an administrative, priority,
14 secured, and/or general unsecured claim, the total claim asserted, and whether it had been marked
15 for objection or comment. ECF No. 406.

16 15. Importantly, on Exhibit A, LVDF was identified as having solely asserted a secured
17 claim in the amount of \$11,655,706. No unsecured claim or priority claim was identified for
18 LVDF. *Id.*, p. 98 of 116. LVDF never contended that Exhibit A to the Disclosure Statement was
19 incorrect or that LVDF was incorrectly omitted as an unsecured creditor.³

20 16. The Plan classified general unsecured claims in Class 6 and provided that holders
21 of allowed Class 6 general unsecured claims would receive their pro rata share of \$3 million upon
22 resolution of all claim objections. *Id.*, p. 24.

23
24 ² "Cash Contribution" refers to the \$19.575 million in cash contributed by Nevada PF, LLC. ("Nevada PF") or a
25 designee in partial exchange for 100% of the new equity interests in the reorganized Front Sight issued on the Plan's
effective date. ECF No. 405, p. 2:7-17.

26 ³ While LVDF did file an objection to Front Sight's first amended disclosure statement, LVDF never asserted that the
27 fraud counterclaim was not property of the estate, that the Court's findings in connection with the Remand Motion
28 were unclear or erroneous, that LVDF held an unsecured claim for fraud that was omitted from the plan and disclosure
statement, or that the treatment of LVDF's claim as fully secured and classified solely in Class 1 was incorrect. *See*
ECF No. 373.

1 21. With respect to the estate’s claims against the Piazza Parties and other insiders, the
2 Plan further provided that the:

3 Reorganized Debtor will retain all claims against the Debtor’s insiders, including
4 its current equity holders, and such claims shall revert in the Reorganized Debtor
5 upon the Effective Date. ***The retention of such claims is an important component***
6 ***of the consideration “package” for the New Equity Investor’s agreement to pay***
7 ***\$19.575 million in Cash to fund the Plan, to contribute or otherwise satisfy FS***
8 ***DIP’s \$5.2 million secured claim and to enable the Reorganized Debtor to continue***
9 ***as a going concern. The retention of these claims by the Reorganized Debtor is***
10 ***part of an integrated transaction between and among the Debtor, FS DIP, the***
11 ***New Equity Investor and Dr. Piazza. As such, the proposed Plan could not be***
12 ***accomplished without the retention of these claims.***

13 *Id.* p. 30:9-18 (emphasis added).

14 22. On October 21, 2022, Front Sight filed its Plan Supplement attaching the Term
15 Sheet Regarding Consulting or Employment Agreement Between Ignatius Piazza and Nevada PF,
16 LLC, which, among other terms, provided that as additional consideration for the services Mr.
17 Piazza would provide to Nevada PF after the Plan’s effective date, Mr. Piazza would receive broad
18 releases, including of any and all Chapter 5 claims. ECF No. 445, Ex. 1.

19 23. After the Plan was filed, on October 19, 2022, LVDF filed its *Motion to Estimate*
20 *Claim of LVDF for Voting Purposes Only* [ECF No. 429] (the “Estimation Motion”), whereby
21 “LVDF requests this Court to estimate LVDF’s claim for plan voting purposes at \$11,805,706.01
22 or as a fallback position, \$9,741,657.57.” ECF No. 429, p. 5:13-15.

23 24. In the Estimation Motion, LVDF discussed its proof of claim asserting a “secured
24 claim in the amount of \$11,655,706.01, plus accruing interest, costs, and attorney fees,” the fact
25 that Front Sight had filed a claim objection, and the Plan’s “reserve amount to pay LVDF’s claim
26 in the amount of \$11,805,706.01.” *Id.*, pp. 3-4.

27 25. To be clear, nowhere in the Estimation Motion did LVDF assert an unsecured claim
28 based on fraud or seek to estimate such unsecured claim for plan voting purposes. *See id.*

 26. The Estimation Motion was resolved by Front Sight’s representation at the
Confirmation Hearing that LVDF’s claim for voting purposes only is \$9,741,657.57. ECF No.
556 ¶ Y.

1 27. On November 3, 2022, Front Sight, Nevada PF, the Piazza Parties, and LVDF
2 entered into the *Stipulation Regarding Las Vegas Development Fund, LLC’s Treatment Under*
3 *Debtor’s Second Amended Chapter 11 Plan of Reorganization* [ECF No. 474] (the “Plan
4 Stipulation”), which was approved by the Order entered on November 7, 2022 [ECF No. 487].

5 28. Through the Plan Stipulation, LVDF stipulated and agreed to the treatment of its
6 claim in the Plan as follows:

- 7 • “The Debtor and Nevada PF shall increase the LVDF Claim Reserve by
8 \$750,000, to a total of \$12,555,706.01. If the Plan is confirmed, then LVDF’s
9 lien shall attach only to the Claim Reserve of \$12,555,706.01.” ECF No. 474
10 ¶ 1; ECF No. 478 ¶ 2.
- 11 • “The Plan confirmation order shall provide that the LVDF Interest Provision
12 is stricken in its entirety. For avoidance of doubt, any interest on the principal
13 amount of the LVDF Claim shall be determined in connection with the
14 adjudication of the Claim Objections.” ECF No. 474 ¶ 2; ECF No. 478 ¶ 3.
- 15 • “LVDF shall not object to the Plan.” ECF No. 474 ¶ 8; ECF No. 478 ¶ 9.
- 16 • “LVDF shall submit a ballot voting in favor of the Plan by the voting deadline
17 of November 4, 2022.” ECF No. 474 ¶ 9; ECF No. 478 ¶ 10.

18 29. Again, the Plan Stipulation did not include any assertion by LVDF of an unsecured
19 claim, damages beyond the asserted breach of contract set forth in its proof of claim, or a claim
20 based on fraud. ECF Nos. 474 and 478.

21 30. On November 11, 2022, Front Sight filed its ballot summary reflecting, in relevant
22 part: (i) LVDF’s Class 1 secured claim accepting the Plan, and (ii) 356 Class 6 general unsecured
23 ballots accepting the Plan, with 244 Class 6 general unsecured ballots rejecting the Plan. ECF No.
24 518. Consistent with the fact that LVDF solely asserted a fully secured claim for breach of contract
25 in its proof of claim, its Estimation Motion, and the Plan Stipulation, LVDF did not submit a Class
26 6 general unsecured ballot. *Id.* at Ex. F.

27 31. Shortly before the November 18, 2022 confirmation hearing, the Committee filed
28 its objection to the Plan [ECF No. 495], which was resolved by the *Stipulation Resolving the*
Committee’s Objection to Plan Confirmation and Modifying Debtor’s Second Amended Plan,
executed by Front Sight, the Committee, and Dr. Piazza [ECF No. 536] (the “Committee”

1 Stipulation”). The Committee Stipulation provided, among other terms, that “Dr. Piazza will
2 contribute to the GUC Reserve additional value from his share of the net savings related to the
3 disputed claims of Las Vegas Development Fund, LLC and Michael Meacher, so that the GUC
4 receives 25% of the total net savings up to a total contribution to the GUC Reserve of \$500,000.”

5 *Id.* ¶ 2.

6 32. To be clear, through the Committee Stipulation, Dr. Piazza agreed to pay \$500,000
7 as additional consideration for the release of the estate’s claims against the Piazza Parties provided
8 in the Plan.

9 33. Because the Committee Stipulation was filed on the day of the Confirmation
10 Hearing, its terms were discussed at length at the Confirmation Hearing, at which LVDF was
11 present. Again, LVDF did not contend that the fraud counterclaim was not estate property and
12 instead LVDF’s individual claim, despite being aware that Dr. Piazza was providing \$500,000 of
13 additional consideration to obtain the release of claims.

14 34. On November 29, 2022, this Court entered its *Findings of Fact, Conclusions of*
15 *Law, and Order Confirming Debtor’s Second Amended Chapter 11 Plan of Reorganization* [ECF
16 No. 556] (the “Confirmation Order”).

17 35. The Confirmation Order incorporated the Consulting Agreement between Dr.
18 Piazza and Front Sight; the Plan Stipulation; and the Committee Stipulation, among other
19 documents, and found that they were proper and an integral part of the Confirmation Order. *Id.*¶
20 L.

21 36. With respect to the Class 6 general unsecured claims, the Confirmation Order
22 included the finding that “[u]nder the Plan, holders of allowed general unsecured claims are
23 expected to receive a pro rata distribution of 10% to 25% of their allowed claims and general
24 unsecured creditors who are also members will receive the benefits set forth on Exhibit B to the
25 Plan (which they would not receive in a chapter 7 liquidation.” *Id.* ¶ J(7). This finding was
26 premised on the general unsecured claims asserted as of the Confirmation Hearing, which did not
27 include LVDF’s newly asserted unsecured claim for fraud.

28

1 37. The Confirmation Order also expressly found that the Plan preserved and
2 transferred the estate’s litigation claims to the reorganized Front Sight: (i) “[i]t is in the best
3 interests of the Debtor and its estate that Litigations Claims that are not expressly released under
4 the Plan be transferred and retained by the Reorganized Debtor as specified in the Plan. The
5 Litigation Claims have been properly reserved and retained and, upon entry of this Confirmation
6 Order, shall be deemed transferred to and vested in the Reorganized Debtor.” *Id.* ¶ V; and (ii) [a]s
7 set forth in Section V.C of the Plan, except as provided elsewhere in the Plan, as of the Effective
8 Date, all property of the Estate shall revert in the Reorganized Debtor, including, but not limited
9 to, any Litigation Claims and the LVDF Litigation, free and clear of all claims, liens,
10 encumbrances or other interests. *Id.* ¶ 3(8).

11 38. Moreover, with respect to the releases provided to the Piazza Parties, the
12 Confirmation Order found that “[t]he terms of the Consulting Agreement between Nevada PF,
13 LLC and Dr. Piazza described in the term sheet regarding the Consulting Agreement attached as
14 Exhibit 1 to the Plan Supplement [ECF No. 445] were negotiated in good faith and at arm’s length
15 and are an essential element of the Plan. The releases provided for therein are fair, equitable and
16 in the best interests of the Debtor and its estate.” *Id.* ¶ W.

17 39. LVDF signed the Confirmation Order. No party appealed the Confirmation Order
18 and the Confirmation Order is now a final order.

19 40. The Plan went effective on December 2, 2022. ECF No. 584.

20 41. On December 23, 2022, Front Sight and LVDF, among others, entered into the
21 *Stipulated Scheduling Order and Briefing Schedule Regarding LVDF Claim No. 284 and*
22 *Remaining Adversary Claims*, which was approved by Order entered on January 11, 2023 (the
23 “Scheduling Stipulation and Order”). AECF Nos. 132 and 137; ECF Nos. 621 and 651.

24 42. The Scheduling Stipulation and Order stated that LVDF “intends to file an amended
25 proof of claim...for purposes of providing a calculation of the amounts sought, bringing the
26 amounts, current, and providing a declaration of Robert Dziubla” and that Front Sight reserved its
27 right to object to such amendment, including on the “basis that it is late filed and/or an improper
28 amendment.” ECF No. 621 ¶ 1(a).

1 43. On December 23, 2022, LVDF filed its amended proof of claim adding a new
2 unsecured claim for fraud – the same claim that LVDF previously stipulated was property of the
3 estate. Claim No. 284-2.

4 44. It was not until January 20, 2023, that LVDF filed its Reconsideration and Late
5 Claim Late Claim Motions asserting that the order on the Order Denying Remand was unclear
6 with respect to the fraud counterclaim and that LVDF holds an unsecured claim for damages based
7 on this counterclaim. On the same day, LVDF filed its Late Claim Motion.

8 45. To be clear, LVDF waited 127 days after the Order Denying Remand was entered,
9 63 days after the confirmation hearing, 52 days after the Confirmation Order was entered, and 49
10 days after the Plan’s effective date to bring its Reconsideration and Late Claim Motions.

11 **III. LEGAL ARGUMENT**

12 **A. The Findings and Conclusions with Respect to the Order Denying Remand**
13 **Were Not Ambiguous.**

14 There is simply no credible argument that the Court’s ruling on the Remand Motion was
15 ambiguous or requires clarification. As cited above, the Court stated no less than six times that
16 LVDF’s counterclaims were property of the estate. AECF No. 141-2, pp. 17:16-18:2, 20:5-9,
17 21:10-15, 23:14-22, 24:3-7, and 25:19-25. LVDF’s new contrived confusion is belied by its own
18 stipulation on September 14, 2022 that this Court had found that “all of the LVDF Parties’
19 counterclaims against the Piazza Parties are property of the bankruptcy estate as they are based on
20 fraudulent transfer and alter ego.” AECF No. 104. Within that same stipulation and order, LVDF
21 acknowledged and agreed – in four separate paragraphs – that all of its counterclaims were
22 property of the estate. ACEF No. 104 ¶¶ 14, 15, and A; AECF No. 106 ¶ 2.

23 Having voted in favor of the Plan and having negotiated and obtained the Plan’s +\$12
24 million LVDF reserve, LVDF now pretends that it was confused by this Court’s unambiguous
25 order entered over 127 days ago. This is quintessential gamesmanship. Were LVDF to have
26 actually been confused by the Court’s ruling, LVDF should have immediately sought clarification
27 or reconsideration. Instead, LVDF made representation after representation acknowledging that
28 its counterclaims were property of the estate and solely asserting a fully secured claim based on

1 its asserted breach of contract claim. LVDF actively participated in the Bankruptcy Case and Plan
2 process and voted in favor of the Plan that transferred all property of the estate, including LVDF's
3 counterclaims, to reorganized Front Sight who provided releases of such claims as part of its
4 confirmed Plan. LVDF's untimely and baseless request for clarification of the unambiguous Order
5 Denying Remand should be denied.

6 **B. LVDF Is Estopped from Arguing that the Fraud Counterclaim Is Not**
7 **Property of the Estate.**

8 “[E]stoppel is an equitable doctrine that precludes a party from gaining an advantage by
9 asserting one position, and then later seeking an advantage by taking a clearly inconsistent
10 position.” *Hamilton v. State Farm Fire & Cas. Co.*, 270 F.3d 778, 782 (9th Cir. 2001) (citing
11 *Rissetto v. Plumbers & Steamfitters Local*, 343, 94 F.3d 597, 600–601 (9th Cir. 1996) and *Russell*
12 *v. Rolfs*, 893 F.2d 1033, 1037 (9th Cir.1990)). Judicial and equitable estoppel serve to prevent a
13 party from “gaining an advantage by taking inconsistent positions”, to preserve the “orderly
14 administration of justice and regard for the dignity of judicial proceedings,” and to “protect against
15 a litigant playing fast and loose with the courts.” *Id.* (quoting *Russell*, 893 F.2d at 1037); *see also*
16 *In re Guevarra*, 2021 WL 1179619 *5 (B.A.P. 9th Cir. 2021).

17 Here, LVDF: (i) stipulated and signed an order that explicitly stated that the “LVDF
18 counterclaims are property of the estate” in order to obtain withdrawal of the pending sanctions
19 motion against LVDF and its counsel [AECF Nos. 104 and 106]; (ii) filed a proof of claim that
20 only asserted a fully secured claim for \$11,655,706.01, plus interest, fees and costs based on breach
21 of contract [Claim No. 284-1]; (iii) filed the Estimation Motion only asserting a fully secured claim
22 for \$11,805,706.01 [ECF No. 429]; (iv) negotiated and stipulated to the Plan’s treatment of
23 LVDF’s claim in Class 1 as a fully secured claim, including negotiating and receiving a \$750,000
24 increase in the LVDF reserve bringing the reserve to a total of \$12,555,706.01, which was
25 approved by an order executed by LVDF [ECF Nos. 474 and 478]; (v) voted in favor of a Plan and
26 Disclosure Statement that provided that LVDF’s counterclaims were property of the estate and
27 that such claims would be transferred to the reorganized Front Sight on the Plan’s effective date;
28 and (vi) approved the Confirmation Order confirming the Plan, including the transfer of the

1 litigation claims to the reorganized Front Sight, the releases provided to the Piazza Parties, and the
2 additional \$500,000 paid by Dr. Piazza in exchange for the releases. [ECF No. 556].

3 In exchange for its agreement that the LVDF counterclaims were property of the estate and
4 agreement to the Plan's treatment of its claim, LVDF extracted considerable value from Front
5 Sight, including withdrawal of Front Sight's sanctions motion, consensual resolution of the
6 Estimation Motion, and a \$750,000 increase in the LVDF reserve. By now contending that the
7 fraud counterclaim was not property of the estate and therefore not transferred to the reorganized
8 Front Sight and released with respect to the Piazza Parties, LVDF is taking materially inconsistent
9 positions. This is precisely the type of gamesmanship that the doctrine of judicial estoppel is
10 intended to prevent. The Reconsideration Motion is barred by the doctrine of judicial estoppel and
11 should be denied.

12 **C. LVDF Waived Any Argument that the Fraud Counterclaim Was Not Property**
13 **of the Estate.**

14 “[W]aiver is the ‘intentional relinquishment or abandonment of a known right.’” *Hammer*
15 *v. Neighborhood Housing Servs. of Chicago*, 138 S. Ct. 13, 17 n.1 (2017) (quoting *United States*
16 *v. Olano*, 507 U.S. 725, 733 (1993)); *see also U.S. v. Manarite*, 44 F. 3d 1407 1419 n. 18
17 (“withdrawal of an objection is tantamount to a waiver of an issue for appeal”). A party stipulating
18 to the terms of an order waives any objection to its terms. *See, e.g., In re AGR Premier Consulting,*
19 *Inc.*, 550 Fed. Appx. 115, 122 (3d Cir. 2014) (“[B]y signing the Order, the parties consented to
20 proceed in the Bankruptcy Court. 21st Capital thus affirmatively waived any objection to the
21 Bankruptcy Court’s exercise of jurisdiction to enforce the Order.”); *InteliQuest Media Corp.*, 326
22 B.R. 825, 831 (B.A.P. 10th Cir. 2005) (observing that a court-approved waiver expressly embodied
23 in an order is enforceable).

24 Here, LVDF unequivocally waived any right to assert that the fraud counterclaim is not
25 property of the estate. After the Court rendered its oral ruling on the Remand Motion, LVDF could
26 have filed a motion seeking reconsideration or sought leave to appeal. Instead, in connection with
27 extracting an agreement for Front Sight to withdraw its pending motion for sanctions against
28 LVDF and its counsel, LVDF negotiated and executed the stipulation and order clearly stating that

1 “[t]he LVDF counterclaims are property of the bankruptcy estate.” AECF Nos. 104 and 106. In
2 so doing, LVDF waived any right to assert that the LVDF counterclaims are not property of the
3 estate.

4 Similarly, through the Plan Stipulation and the Order approving it, LVDF negotiated and
5 agreed to the Plan’s treatment of its claim. ECF Nos. 474 and 478. Specifically, LVDF agreed to
6 vote in favor of the Plan in exchange for an additional \$750,000 being added to the LVDF reserve
7 and the Plan Confirmation Order providing that the “LVDF Interest Provision is stricken.” *Id.* In
8 so doing, LVDF waived any right to assert an additional or alternative claim against the estate.
9 Because LVDF has stipulated that its counterclaims are estate property and agreed that its claim
10 would be treated in Class 1 subject to the modifications negotiated in the Plan Stipulation and
11 Order, LVDF has waived any right it may have had to assert its fraud counterclaim. The
12 Reconsideration Motion should be denied.

13 **D. LVDF’s Arguments Are Barred by the Law of the Case Doctrine.**

14 Pursuant to the law of the case doctrine “a court is generally precluded from reconsidering
15 an issue previously decided by the same court, or a higher court in the identical case.” *Milgard*
16 *Tempering v. Selas Corp. of Am.*, 902 F.2d 703, 715 (9th Cir. 1990); *accord FDIC v. Kipperman*
17 *(In re Commer. Money Ctr., Inc.)*, 392 B.R. 814, 832-33 (B.A.P. 9th Cir. 2008). “The law-of-the-
18 case doctrine generally provides that when a court decides upon a rule of law, that decision should
19 continue to govern the same issues in subsequent stages in the same case.” *See, e.g., Mussacchio*
20 *v. United States*, ___ U.S. ___, 136 S. Ct. 709, 716 (2021) (citations and internal quotations
21 omitted); *see also Thomas v. Bible*, 983 F.2d 152, 154 (9th Cir. 1992 formulating the law of the
22 case doctrine to precluding consideration of previously decided issues).

23 This is not a situation in which the Order Denying Remand was entered and LVDF quickly
24 sought reconsideration. This is a case in which the Order Denying Remand was entered and
25 LVDF, in connection with obtaining withdrawal of a pending sanctions motion, stipulated that
26 LVDF’s counterclaims were estate property and signed both the stipulation and order
27 memorializing this. AECF Nos. 104 and 106. Moreover, the Court’s conclusion that LVDF’s
28 counterclaims were estate property were part and parcel with its decision not to remand and

1 therefore also its Order Denying Stay Relief. Accordingly, this Court has entered multiple orders,
2 many of which LVDF stipulated to, holding that LVDF's counterclaims were estate property. *See*
3 *e.g.* AECF Nos. 141-2, 107, 104, 106; ECF Nos. 346. The law of the case doctrine precludes this
4 Court from reconsidering whether LVDF's counterclaims are estate property at this late date.

5 **E. It Is Irrelevant Whether the Order Denying Remand Is Interlocutory, the**
6 **Order Denying Stay Relief and the Confirmation Order Are Final Orders**
7 **from Which No Appeal Was Taken.**

8 LVDF argues that the Order Denying Remand is an interlocutory decision and therefore
9 may be reconsidered under FRCP 54(b), made applicable here by FRBP 7052. *See*
10 Reconsideration Motion, pp. 10-11. Whether this is true or not is irrelevant. The determination
11 that LVDF's counterclaims were estate property is a critical component of both the Order Denying
12 Stay Relief and the Confirmation Order. And there can be no dispute that the Order Denying Stay
13 Relief and the Confirmation Order are final orders from which no appeal was taken. *See In re*
14 *USA Commercial Mortg. Co.*, 369 B.R. 587, 592 (D. Nev. 2007) ("A confirmation order is a final
15 order subject to appeal. *See In re Frontier Props., Inc.*, 979 F.2d 1358, 1362 (9th Cir.1992) ('A
16 final decision is one that ends the litigation on the merits and leaves nothing for the court to do but
17 execute the judgment.' (quotation omitted)); *In re Interwest Bus. Equip., Inc.*, 23 F.3d 311, 315
18 (10th Cir. 1994) (holding order confirming plan of reorganization is a final, appealable order.");
19 *see also In re Nat'l Envtl. Waste Corp.*, 129 F.3d 1052, 1054 (9th Cir. 1997) ("Orders granting or
20 denying relief from the automatic stay are deemed to be final orders.") (citing *Benedor Corp. v.*
21 *Conejo Enters., Inc. (In re Conejo Enters., Inc.)*, 96 F.3d 346, 351 (9th Cir. 1996)). As such, the
22 Court's determination that LVDF's counterclaims are estate property cannot be altered.

23 **F. The Plan Embodies Multiple Compromises Predicated Upon the Finding and**
24 **Agreement that LVDF's Counterclaims Were Property of the Estate, Which**
25 **Plan Was Approved by LVDF.**

26 As this Court is well-aware, the Plan was heavily negotiated between Front Sight, Nevada
27 PF, the Piazza Parties, the Committee, LVDF, and the Meacher Parties, among others. The transfer
28 of the estate's litigation claims, including LVDF's counterclaims determined to be property of the
estate, was a material and heavily negotiated provision of the Plan, as were the releases provided

1 to the Piazza Parties and the additional \$500,000 from Dr. Piazza for the releases. *See* ECF No.
2 445, Ex. 1; ECF No. 405, pp. 30:9-18, 45:7-9, and 45:14-19; 556 ¶¶ V, W, and 3(8). Similarly,
3 the treatment of LVDF’s claim as a fully secured Class 1 claim, with a reserve of +\$12 million to
4 which its lien would attach was also heavily negotiated and memorialized in the Plan Stipulation
5 and Confirmation Order. ECF Nos. 447, 448, 556 ¶¶ 3(d) and 3(e). At no point during the Plan
6 negotiations, which included three iterations of the Plan, did LVDF file a single document with
7 this Court asserting an unsecured claim for fraud.

8 This is material to not only reorganized Front Sight, but also the estate’s creditors. By not
9 asserting an unsecured claim prior to the confirmation hearing, LVDF mislead not only Front
10 Sight, but also the estate’s general unsecured creditors who relied on the representations in the
11 Disclosure Statement and Plan regarding the filed claims and the estimated allowed claims when
12 determining whether to vote for the Plan. As the Class 6 general unsecured creditors will receive
13 a pro rata distribution of the \$3 million, plus the \$500,000 paid by Dr. Piazza, the addition of any
14 new general unsecured claims harms each of these creditors and decreases their distribution.

15 The Confirmation Order is now a final order. Having not appealed the Confirmation Order,
16 LVDF is precluded from unwinding the negotiated transfer of LVDF’s counterclaims to the
17 reorganized Front Sight, the release of these claims granted to the Piazza Parties under the Plan,
18 LVDF’s Plan treatment as solely a secured creditor for its asserted breach of contract claim, or
19 potentially altering the distributions available to the general unsecured creditors. *See* Fed. R.
20 Bankr. P. 8002(a)(1); *United Student Aid Funds, Inc. v. Espinosa*, 130 S.Ct. 1367, 1377 (2010) (a
21 Rule 60(b) motion is not a substitute for a timely appeal, and a judgment is not void simply because
22 it is or may have been erroneous); *Lafarge Conseils et Etudes, S.A. v. Kaiser*, 791 F.2d 1334, 1337–
23 38 (9th Cir.1986) (Rule 60(b) motion does not permit a party to attack an order for error that could
24 have been complained of on a direct appeal).

25 **G. Reconsideration Is Not Appropriate Under FRCP 54.**

26 The party requesting reconsideration must show “(1) some valid reason why the court
27 should revisit its prior order; **and** (2) facts or law of a ‘strongly convincing nature’ in support of
28 reversing the prior decision.” *Mayo v. Williams*, 216CV00047APGVCF, 2019 WL 2216424, at

1 *1 (D. Nev. May 22, 2019) (emphasis added) (*citing USF Ins. Co. v. Smith's Food & Drug Ctr.,*
2 *Inc.*, 2013 WL 4458776, at *1 (D. Nev. Aug. 16, 2013) (citation omitted).

3 In this District, “similar to a Rule 59(e) motion, ‘a motion for reconsideration should not
4 be granted, absent highly unusual circumstances, unless the district court is presented with newly
5 discovered evidence, committed clear error, or if there is an intervening change in the controlling
6 law.’” *Id.* (quoting *Kona Enterprises, Inc. v. Estate of Bishop*, 229 F.3d 877, 890 (9th Cir. 2000)
7 (citation omitted)). A motion for reconsideration should be denied when the movant is simply
8 rehashing its prior arguments. *See Backlund v. Barnhart*, 778 F.2d 1386, 1388 (9th Cir. 1985)
9 (holding that a district court properly denied a motion for reconsideration in which the plaintiff
10 presented no arguments that were not already raised in his original motion)); *see also USF Ins. Co.*
11 *v. Smith’s Food & Drug Ctr., Inc.*, 2:10-CV-01513-MMD, 2013 WL 4458776, at *1 (D. Nev. Aug.
12 16, 2013) (“ Motions for reconsideration are not ‘the proper vehicles for rehashing old arguments,’
13 *Resolution Trust Corp. v. Holmes*, 846 F.Supp. 1310, 1316 (S.D.Tex.1994) (footnotes omitted),
14 and are not “intended to give an unhappy litigant one additional chance to sway the judge.” *Durkin*
15 *v. Taylor*, 444 F.Supp. 879, 889 (E.D.Va.1977).”).

16 Here, LVDF does not assert that there is any newly discovered evidence or an intervening
17 change in the controlling law. Instead, LVDF merely rehashes its arguments made in connection
18 with its Remand Motion, which were opposed by Front Sight, the Piazza Parties, and the
19 Committee. AECF Nos. 4, 57, 63, and 64. As the foregoing legal authority establishes, this is an
20 improper use of Rule 54. The Reconsideration Motion should be denied.

21 **H. The Court Correctly Addressed LVDF’s Counterclaim Titled as Fraud Under**
22 **the Alter Ego Rubric and Concluded It Was Property of the Estate.**

23 Contrary to LVDF’s contentions, the Court did not overlook or fail to make findings with
24 respect to LVDF’s fraud counterclaim asserted in its first amended counterclaim nor did the Court
25 err in its findings. In truth, the Court clearly identified LVDF’s fraud counterclaim in its findings.
26 *See* AECF No.141-2, pp. 12:21 and 13:17-21. The Court then held that “[a]fter careful analysis
27 of the claims that have been advanced by LVDF that were pending in the state court lawsuit at the
28 time of remove, the Court concludes that those claims are property of the estate, such that only

1 Front Sight, as debtor-in-possession, has standing to pursue them.” *Id.* at p. 17:16-20.

2 LVDF’s argument that somehow its first counterclaim for fraud was simply missed is
3 belied by the extensive briefing on the Remand Motion. Both the Debtor and the Committee
4 addressed LVDF’s fraud counterclaim explaining that because LVDF alleged that Front Sight and
5 the Piazza Parties were alter egos in making its counterclaims (including its fraud counterclaim),
6 the counterclaims became property of the estate vesting in Front Sight’s estate on the Petition Date.

7 Specifically, in its opposition to LVDF’s Remand Motion, Front Sight argued that:

8 [LVDF’s fraud] claim is impacted by the allegations of alter ego that makes such
9 claim an asset for the estate⁴ and the fact that the alleged fraud was perpetrated on
10 behalf of and for the benefit of the Debtor (i.e. with the other defendants acting in
11 their capacity as agents for the Debtor). LVDF makes no showing to the contrary,
12 nor can it credibly claim the resolution of the fraud claim would not necessarily
13 affect the administration of the bankruptcy case. Moreover, to the extent that the
14 other defendants were ‘alter egos’ of the Debtor, as LVDF claims, those rights vest
15 in the Debtor, not LVDF.

16 AECF No. 57, pp. 13:12-14:4.

17 Similarly, the Committee argued that creative pleading titles cannot prevent a substantively
18 alter ego claim from becoming property of the estate.

19 17. Permitting a trustee or debtor in possession, rather than individual creditors, to
20 pursue general creditor claims on behalf of the estate as a whole, as opposed to
21 piecemeal creditor actions, serves the orderly and equitable distribution of the
22 bankruptcy estate’s assets. *AgriBioTech, Inc.*, 319 B.R. at 222; *see also* 11 U.S.C.
23 §§ 704(a)(1), 1106 & 1107. Moreover, bankruptcy courts guard the bankruptcy
24 estate and/or claims that the bankruptcy trustee holds or controls against “creative”
25 attempts to argue that such claims are held by individual creditors. *See Nat’l Am.*
26 *Ins. Co. v. Ruppert Landscaping Co.*, 187 F.3d 439 (4th Cir. 1999) (rejecting an
27 attempt by sureties of a debtor to pursue a fraudulent transfer alter ego claim

28 ⁴ As explained by the district court in *Trustees of the Const. Indus. & Laborers Health & Welfare Tr. v. Vasquez*, 2011
WL 4549228, at *2–3 (D. Nev. Sept. 29, 2011):

Where state law permits an alter ego claim to be asserted by a corporation in its own name, such a
right of action is property of the estate, assertable only by the bankruptcy trustee or the debtor-in-
possession, and a claim by a creditor against the debtor’s affiliate based solely on an alter ego theory
is therefore barred for lack of standing and under the automatic stay. [citations]. As recognized by
the Fifth Circuit in *S.I. Acquisition*, 817 F.2d at 1152–53, Nevada law is identical to Texas law in
permitting a corporation to bring an alter ego claim in its own name. *See Henderson v. Buchanan*
(In re Western World Funding, Inc.), 52 B.R. 743, 783–84 (Bankr.D.Nev.1985). Accordingly, if S
& G is the alter ego of ADT, as Plaintiffs allege and which this court accepts as true, they “are to be
regarded as identical,” *Frank McCleary Cattle Co. v. Sewell*, 73 Nev. 279, 282, 317 P.2d 957
(Nev.1957), ADT “has an equitable interest in the assets of its alter ego,” *Western World*, 52 B.R.
at 784, and the right to assert an alter ego claim against S & G is property of ADT’s bankruptcy
estate. See 11 U.S.C. § 541(a)(1) (property of the estate includes “all legal or equitable interests of
the debtor in property as of the commencement of the case”).

1 relabeled as a tort action unique to the creditor as barred by the automatic stay); *In*
 2 *re Shubh Hotels Pittsburgh, LLC*, 2011 WL 7109364, at *4 (Bankr. W.D. Pa. May
 3 16, 2011) (“To allow selected creditors to artfully plead their way out of bankruptcy
 court would unravel the bankruptcy process and undermine an ordered distribution
 of the bankruptcy estate.”).

4 18. Here, the Counterclaims for alter ego, fraudulent transfer, intentional
 5 interference with contractual relationships, conversion, civil conspiracy, and waste
 6 all became property of the estate on the Petition Date because they all relate back
 7 to the Debtor, notwithstanding the creative pleading titles. It is a fundamental
 8 principle of bankruptcy law that such claims may not be pursued by any individual
 creditor of the estate absent the abandonment of such claims by the estate. *See*
Estate of Spirtos v. One San Bernardino Cnty. Super. Ct., 443 F.3d 1172, 1175 (9th
 Cir. 2006) (‘The trustee’s standing to sue on behalf of the estate is exclusive; a
 debtor’s creditors cannot prosecute such claims belonging to the estate absent
 abandonment.’).

9 AECF No. 63, p. 10:7-26

10 In its findings, the Court specifically held that “[w]hen distilled to their essence, LVDF’s
 11 claims in the state court lawsuit at the time of removal are claims for recovery of fraudulent
 12 transfers, conversion, waste, and conspiracy claims resulting in injury to Front Sight, **or they**
 13 **implicate alter ego claims**. Because such claims are property of Front Sight’s bankruptcy estate,
 14 only Front Sight, as the debtor-in-possession, has the standing to prosecute them.” AECF No.
 15 141-2, p. 17:21-18:3; *see also* AECF No. 141-2, p. 23:14-18. Thus, LVDF’s argument that the
 16 Court failed to consider LVDF’s fraud claim is baseless as is its implicit argument that the Court
 17 erred. As such, relief under either FRCP 54 or 60(a) is not warranted here.

18 **I. LVDF Has Not Established Mistake, Surprise, or Excusable Neglect Under**
 19 **FRCP 60(b)(1) or Extraordinary Circumstances Under FRCP 60(b)(6).**

20 FRCP 60 provides for extraordinary relief that may only be granted upon a showing of
 21 exceptional circumstances. *Engleson v. Burlington Northern Railroad Co.*, 972 F.2d 1038, 1044
 22 (9th Cir. 1992). Here, LVDF does not argue mistake or surprise, nor could it credibly do so. Not
 23 only did the Court state no less than six times in its oral ruling that the LVDF counterclaims were
 24 property of the estate, but LVDF executed both a stipulation and an order stating in four separate
 25 paragraphs that the LVDF counterclaims were property of the estate. Instead, LVDF asserts
 26 excusable neglect and engages in an examination of the *Pioneer* factors. Reconsideration Motion,
 27 pp. 12-13. However, LVDF’s analysis is confined to this Adversary Proceeding and completely
 28

1 ignores the Bankruptcy Case, the Plan, and the other creditors of the estate.

2 The first *Pioneer* factor is the danger to the non-moving party and the second factor is the
3 potential impact on judicial proceedings. *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship*,
4 507 U.S. 380, 395 (1993). Here, were the Court to vacate its prior order and determine that
5 LVDF's fraud-based counterclaim is not property of the estate (despite LVDF's stipulation to the
6 contrary), the Court would place the Plan in jeopardy. The transfer of the LVDF counterclaims to
7 reorganized Front Sight and their release with respect to the Piazza Parties was a critical
8 component of the confirmed Plan. Moreover, in the unlikely event that LVDF were to litigate and
9 establish a significant unsecured fraud claim, it would materially alter the distribution to the Class
10 6 general unsecured creditors. LVDF laid in wait never raising its general unsecured claim until
11 after Plan confirmation, thereby intentionally misleading Front Sight and the estate's other
12 creditors. The first two *Pioneer* factors weigh heavily against granting relief under FRCP 60(b)(1).

13 The third *Pioneer* factor is the reason for the delay, including whether it is within the
14 reasonable control of the movant, and the fourth factor is whether the moving party's conduct was
15 in good faith. *Id.* Here, LVDF waited 127 days after the Order Denying Remand was entered, 63
16 days after the confirmation hearing, 52 days after the Confirmation Order was entered, and 49 days
17 after the Plan's effective date to bring the Reconsideration Motion. In so doing, LVDF extracted
18 withdrawal of Front Sight's sanctions motion and improved treatment under the Plan, including
19 an additional \$750,000 in the LVDF reserve. Additionally, the Committee obtained an additional
20 \$500,000 from Dr. Piazza for the Class 6 creditors in exchange for the Plan's releases of the Piazza
21 Parties. Now, LVDF seeks to ambush Front Sight after the Plan is confirmed and the LVDF
22 reserve has been funded to assert a counterclaim LVDF had previously agreed was property of the
23 estate and was transferred pursuant to the Plan. Such conduct is not undertaken in good faith.
24 Viewed in the most favorable light, LVDF's dilatory conduct is improper gamesmanship that
25 should not be tolerated. As each of the *Pioneer* factors weighs heavily against LVDF, relief should
26 not be granted under FRCP 60(b)(1).

27 Similarly, LVDF has failed to establish that it is entitled to relief under FRCP 60(b)(6).
28 Rule 60(b)(6) should be "used sparingly as an equitable remedy to prevent manifest injustice' and

1 ‘is to be utilized only where extraordinary circumstances prevented a party from taking timely
2 action to prevent or correct an erroneous judgment.’” *In re Int’l Fibercom, Inc.*, 503 F.3d 933,
3 941 (9th Cir. 2007) (quoting *United States v. Washington*, 394 F.3d 1152, 1157 (9th Cir.2005)
4 (quoting *United States v. Alpine Land & Reservoir Co.*, 984 F.2d 1047, 1049 (9th Cir.1993)).
5 “Accordingly, a party who moves for such relief ‘must demonstrate both injury and circumstances
6 beyond his control that prevented him from proceeding with ... the action in a proper fashion.’” *Id.*
7 (quoting *Community Dental Servs. v. Tani*, 282 F.3d 1164, 1168 (9th Cir.2002)).

8 LVDF cannot prove manifest injustice as LVDF stipulated that its counterclaims were
9 property of the estate in connection with Front Sight’s agreement to withdraw its sanctions motion
10 and LVDF concealed its newly-found argument that it holds an unsecured claim for fraud until
11 after the Plan was confirmed and went effective. Similarly, LVDF has not asserted any
12 extraordinary circumstances that prevented LVDF from filing its Reconsideration Motion in a
13 timely manner and, at a bare minimum, prior to the Plan confirmation hearing. There is simply no
14 basis for relief under FRCP 60(b)(6).

15 **J. LVDF’s Amended Claim Impermissibly Adds a New Claim.**

16 LVDF filed its original claim on August 11, 2022 asserting a secured claim for breach of
17 contract. LVDF now seeks – over four months after the proof of claim deadline and two months
18 after the Plan has been confirmed – to assert a new unsecured claim based on fraud. As a
19 preliminary matter, nothing in the Scheduling Stipulation and Order authorized LVDF to file a
20 new unsecured claim. Rather, the Scheduling Stipulation and Order stated that LVDF “intends to
21 file an amended proof of claim...for purposes of providing a calculation of the amounts sought,
22 bringing the amounts, current, and providing a declaration of Robert Dziubla” and that Front Sight
23 reserved its right to object to such amendment, including on the “basis that it is late filed and/or an
24 improper amendment.” ECF No. 621 ¶ 1(a).

25 Beyond the fact that LVDF stipulated that this same claim was property of the estate and
26 may not be prosecuted by LVDF, the Plan provided that this claim – settled by way of payment to
27 the estate – was transferred to the reorganized Front Sight and released with respect to the Piazza
28 Parties. For all of the legal and equitable reasons discussed above, the Late Claim Motion should

1 be denied.

2 Moreover, neither the Bankruptcy Code nor the rules specifically address allowance of
3 amended proofs of claim. *In re Shotwell Landfill, Inc.*, No. 13-02590-8-SWH, at *7-8 (Bankr.
4 E.D.N.C. June 20, 2014) (citing *Clamp-All Corp. v. Foresta (In re Clamp-All Corp.)*, 235 B.R.
5 137, 140 (1st Cir. BAP 1999)). However, FRBP 7015, which incorporates FRCP 15, allows
6 relation back when “the amendment asserts a claim or defense that arose out of the conduct,
7 transaction, or occurrence set out - or attempted to be set out - in the original pleading.” *In re*
8 *Shotwell Landfill*, at *7-8 (citing Fed. R. Bankr. P. 7015(c)(1)(B)). Based thereon, courts typically
9 allow relation back of an amendment to a timely filed proof of claim “where the purpose is to cure
10 a defect in the claim as originally filed, to describe the claim with greater particularity or to plead
11 a new theory of recovery on the facts set forth in the original claim.” *In re International Horizons,*
12 *Inc.*, 751 F.2d 1213, 1216 (11th Cir. 1985); *see also In re Sambo’s Restaurants, Inc.*, 754 F.2d
13 811, 816-17 (9th Cir. 1985); *In re Commonwealth Corporation*, 617 F.2d 415, 420 (5th Cir.1980).
14 When faced with post bar date amendments to proofs of claim, the court must subject the amended
15 claim “to *careful scrutiny* to prevent an attempt to file a new claim under the guise of an
16 amendment.” *In re Mitchell*, 116 B.R. 63, 64 (Bankr. W.D. Va. 1990) (citing *In re Newcomb*, 60
17 B.R. 520, 522 (Bankr. W.D. Va. 1986))(emphasis added). Whether to allow an amendment to a
18 timely filed proof of claim is an equitable determination that lies within the sound discretion of the
19 court. *See In re Hemingway Transport, Inc.*, 954 F.2d 1, 10 (1st Cir. 1992).

20 The Bankruptcy Court’s decision in *In re Shotwell* is particularly instructive in this matter:

21 These three documents, the Explanation of Claim, the Addendum and the 2012
22 draft K-1 are the only documents attached to the original claim that describe the
23 basis for the claim. Although the original claim and its attachments provide a
24 minimum of information regarding the Phantom Income and stock reimbursement
25 components (i.e., the Memorandum Agreement was not attached), those
26 components of the claim are at least identified. However, nowhere in the original
27 proof of claim or its attachments is there any indication that Cook was owed unpaid
28 compensation from the debtor or that Cook would later seek to amend to set forth
such a claim. In fact, the addendum to the original proof of claim specifically stated
that the “total amount of claim as of Petition Date” amounted to \$1,392,995.30. . .
Accordingly, the amended claim is not an attempt to cure a defect that was present
in the original claim or to describe the original claim with greater particularity. . . .

None of the factors necessary for relation back of an amended proof of claim are present here. The amended claim does not cure a defect in the original claim or

1 *describe the original claim with more particularity. Instead, Cook asserts an*
2 *entirely new claim arising from alleged unpaid wages and compensation during*
3 *Cook's employment with the debtor from 2008 through 2012. This compensation*
4 *component is wholly unrelated to and does not arise from the same set of facts*
5 *pled in the original proof of claim. Accordingly, relation back of the amended*
6 *claim to the time of the original proof of claim shall not be allowed.*

7 *In re Shotwell Landfill, Inc.*, No. 13-02590-8-SWH, at *11-12 (Bankr. E.D.N.C. June 20, 2014)
8 (emphasis added).

9 Further, a bankruptcy court may disallow an amendment to a proof of claim if allowing
10 that amendment would result in prejudice to other parties. *In re Sambo's Rest., Inc.*, 754 F.2d at
11 816-17. The factors a court may consider to determine prejudice include whether there has been
12 "bad faith or unreasonable delay in filing the amendment, impact on other claimants, reliance by
13 the debtor or other creditors, and change of the debtor's position." *Wall Street Plaza, LLC v. JSJF*
14 *Corp. (In re JSJF Corp.)*, 344 B.R. 94, 102 (9th Cir. BAP 2006) (quoting *Roberts Farms, Inc. v.*
15 *Bultman (In re Roberts Farms, Inc.)*, 980 F.2d 1248, 1251-52 (9th Cir. 1992)).

16 Here, LVDF previously stipulated that its newly asserted claim was an estate claim.
17 Moreover, LVDF did not assert any claims based on the State Court Action in its initial proof of
18 claim. Instead, LVDF asserted only a secured claim based on the LVDF loan documents. The
19 new claim is one based on fraud, a tort, which is an unsecured claim. The amount of any purported
20 unsecured claim by Front Sight was never factored into a liquidation analysis, was not voted by
21 LVDF, and not disclosed in connection with the Disclosure Statement or Plan. Any recovery on
22 account of this new fraud claim would be limited to a pro rata distribution allocated for the general
23 unsecured claims. Amendment at this late date not only seeks to add an entirely new claim, but it
24 is also prejudicial to the entire unsecured creditor class who relied on the claims existing at the
25 time of Plan confirmation to determine their proposed distributions under the Plan, which did not
26 take into account an intentionally concealed LVDF unsecured claim.

27 **K. LVDF's Cited Authority Does Not Support Granting the Late Claim Motion.**

28 LVDF provides ample authority explaining the factors courts consider when determining
whether to permit an amendment to a proof of claim. However, the cited cases actually establish
why LVDF's Late Claim Motion should be denied. For instance, LVDF cites *In re Wilson*, 96

1 B.R. 257, 262 (9th Cir. B.A.P. 1988), for the following factors: bad faith, unreasonable delay in
 2 filing the amendment, impact on other claimants, reliance by the debtor and other creditors, and
 3 change of the debtor's position. Late Claim Motion, p. 6:9-11. Here, LVDF initially stipulated
 4 that its fraud counterclaim was property of the estate and is now contending that the claim is
 5 LVDF's individual claim that it can bring. However, LVDF did not immediately switch positions;
 6 instead, LVDF waited until after it extracted concessions from Front Sight and Nevada PF and the
 7 Plan was confirmed and went effective before asserting its new unsecured claim. Such conduct
 8 smacks of bad faith, is an unreasonable delay, and harms the estate's other creditors. Thus, analysis
 9 of the *In re Wilson* factors requires denial of the Late Claim Motion.

10 LVDF further cites *In re Richter*, 478 B.R. 30, 39 (Bankr. D. Colo. 2012) and *In re Enron*
 11 *Corp.*, 419 F.3d 133 (2d Cir. 2005), for the proposition that an amendment should be permitted as
 12 long as the substance of the original proof of claim remains unchanged or pleads a new theory of
 13 recovery on the facts set forth in the original claim. Late Claim Motion, p. 6:16-18, 7:5-8. Here,
 14 LVDF's initial proof of claim solely asserted a secured claim for breach of loan documents.
 15 Through its amendment filed well after the bar date, LVDF asserts a general unsecured claim for
 16 fraud. Absolutely nothing in the initial proof of claim provided a basis for a general unsecured
 17 fraud claim. Rather, the initial proof of claim solely attached loan documents and provided the
 18 following claim calculation:

19	Principal Due	\$6,375,000.00
20	Late Fees (Current Month + Past Due)	\$1,126,573.55
21	Past Due Foreclosure Costs	\$155,341.71
22	Current Foreclosure Costs (Partial)	\$3,813.84
23	Past Due Legal/Attorney's Fees	\$1,858,863.24
24	Current Legal/Attorney's Fees	\$82,959.69
25	Past Due Interest	\$1,979,473.89
26	Current Interest Due	\$83,680.09
27	Amount Due	\$11,655,706.01
28		

1 In sum, nothing in the initial proof of claim asserted anything beyond a secured claim for
2 a breach of a loan. Adding a new fraud claim after the bar date and Plan confirmation, when LVDF
3 previously stipulated that such claim was property of the estate, never asserted the claim in its
4 Estimation Motion or in the Plan Stipulation, and the claim was transferred to the reorganized
5 Front Sight and released with respect to the Piazza Parties is inequitable, prejudicial to Front Sight
6 and the estate's general unsecured creditors, and contrary to LVDF's cited authority. *See* Late
7 Claim Motion, p. 7:17-20 (quoting *In re Enron Corp.*, 419 F.3d at 133) ("The most important of
8 these factors, however is whether the proposed amendment would unjustly prejudice the opposing
9 party.").

10 **L. The Fraud Claim Against Front Sight, Which LVDF Stipulated Was Property**
11 **of the Bankruptcy Estate, Cannot Serve as an Informal Proof of Claim.**

12 Under Ninth Circuit law, "an informal proof of claim must "[1] state an explicit demand
13 showing the nature and amount of the claim against the estate, and [2] evidence an intent to hold
14 the debtor liable." *In re Harrington*, Bankr. No. 02-43878-PBS, USDC Case No. C06-5100BHS,
15 at *11 (W.D. Wash. Aug. 10, 2007) (citing *In re Anderson-Walker Indus. Inc.*, 798 F.2d 1285,
16 1287 (9th Cir. 1986)); *Sambo's Rest., Inc v. Wheeler (In re Sambo's Rest., Inc.)*, 754 F.2d 811,
17 815 (9th Cir.1985) (citing *Cnty. of Napa v. Franciscan Vineyards (In re Franciscan Vineyards)*,
18 597 F.2d 181, 182-83 (9th Cir.1979) (per curium), *cert. denied*, 445 U.S. 915, 100 S.Ct. 1274, 63
19 L.Ed.2d 598 (1980)). In applying this doctrine, the Ninth Circuit BAP has instructed that, to
20 establish an effective informal claim, the creditor must show, at a minimum: "(1) presentment of
21 a writing; (2) within the time for the filing of claims; (3) by or on behalf of the creditor; (4) bringing
22 to the attention of the court; (5) the nature and amount of a claim asserted against the estate." *Pac.*
23 *Res. Credit Union v. Fish (In re Fish)*, 456 B.R. 413, 417 (9th Cir. BAP 2011).

24 Here, while the claims asserted by LVDF were on file in the Adversary Proceeding, those
25 claims were determined to be property of the estate ***including through stipulation by LVDF***. All
26 parties relied on the Court's findings and the stipulation for, among other things, voting on the
27 Plan that limited LVDF's claim to a secured claim based on the claim it filed and Nevada PF
28 acquiring and releasing the estate claims against the Piazza Parties. LVDF cannot now contend

1 that it actually intended to pursue this new claim when it failed to assert the claim until four months
2 after the Plan was confirmed, a Plan that LVDF voted its Class 1 ballot to approve. The Late
3 Claim Motion should be denied.

4 **IV. CONCLUSION**

5 For the foregoing reasons, Front Sight respectfully requests that the Court deny LVDF's
6 Reconsideration Motion and its Late Claim Motion.

7 DATED this 21st day of February, 2023.

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9

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