

1 Brian D. Shapiro, Esq.
2 Nevada State Bar No. 5772
3 **LAW OFFICE OF BRIAN D. SHAPIRO, LLC**
4 510 S. 8th Street
5 Las Vegas, Nevada 89101
6 Tel: (702) 386-8600
7 Fax: (702) 383-0994
8 brian@brianshapiro.com

6 Andrea M. Champion, Esq.
7 Nevada State Bar No. 13461
8 Nicole E. Lovelock, Esq.
9 Nevada State Bar No. 11187
10 **JONES LOVELOCK**
11 6600 Amelia Earhart Court, Suite C
12 Las Vegas, Nevada 89119
13 Tel: (702) 805-8450
14 Fax: (702) 805-8451
15 achampion@joneslovelock.com
16 nlovelock@joneslovelock.com

13 *Attorneys for Las Vegas Development Fund*

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

17 In re:

18
19 FRONT SIGHT MANAGEMENT, LLC
20 Debtor.

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

**REPLY IN SUPPORT OF (I) MOTION
FOR CLARIFICATION AND/OR
MOTION FOR RECONSIDERATION
[AECF NO. 141] AND (II) MOTION TO
ALLOW AMENDMENT TO PROOF OF
CLAIM [ECF NO. 665]**

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25 Las Vegas Development Fund, by and through its counsel, the Law Office of Brian D.
26 Shapiro, LLC and Jones Lovelock, respectfully submits its Reply to the Omnibus Opposition to
27 (1) Motion for Clarification and/or Motion for Reconsideration and (2) Motion to Allow
28 Amendment to Proof of Claim. (“Reply”). This Reply is supported by the following Memorandum

1 of Points and Authorities, and any oral argument that this Court may entertain at the time of the
 2 hearing on the Motion.¹

3 **MEMORANDUM OF POINTS AND AUTHORITIES**

4 **I. Overview**

5 In order to oppose LVDF’s Motion for Clarification and Motion to Amend its Proof of Claim,
 6 Front Sight misconstrues LVDF’s request. Front Sight builds a straw man—claiming that LVDF
 7 improperly seeks to amend its proof of claim and proceed on the fraudulent transfer claims and other
 8 counterclaims against the Piazza Parties²—only to knock it down. The problem, however, is that
 9 LVDF is not seeking to do any such thing. Accordingly, Front Sight’s Opposition is premised on the
 10 wrong counterclaims altogether and Front Sight does nothing, in its Omnibus Opposition, to counter
 11 LVDF’s position that its fraud claim should proceed.³

12 LVDF’s Motions were both clear: LVDF is *not* seeking to resurrect claims against the Piazza
 13 Parties that the Court found were property of the bankruptcy estate. Rather, LVDF is only seeking to
 14 proceed on LVDF’s fraud claim against Front Sight, Michael Meacher, Efrain Rene Morales-Moreno,
 15 Morales Construction, Inc., All American Concrete & Masonry Inc., and Top Rank Builders, Inc
 16 (collectively, the “**Third-Party Defendants**”) pertaining to the misrepresentations regarding a \$36
 17 million dollar line of credit (the “**Third-Party Fraud Claim**”).

18 Because Front Sight has misunderstood (whether intentionally or not) the basis of LVDF’s request,
 19 its repeated contention that LVDF stipulated it was property of the bankruptcy estate and that it was
 20 transferred as part of the Plan is misplaced. Put simply, Front Sight is talking about the *wrong claim*.
 21 Because Front Sight does not address the Third-Party Fraud Claim within its Opposition, and does not
 22 demonstrate that the Third Party Fraud Claim has been found to be (or should be found to be) property
 23 of the bankruptcy estate, LVDF’s Motions should be granted. Conversely, to the extent that the Court,
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25 _____
 26 ¹ ECF No. refers to pleadings docketed in the main bankruptcy case 22-11824-abl and AECF No. refers to pleadings
 docketed in the Adversary Proceeding 22—01116-abl.

27 ² “Piazza Parties” refers to Ignatius Piazza, Jennifer Piazza, the VNV Dynasty Trust I, and the VNV Dynasty Trust
 II.

28 ³ Notably, Front Sight does not object to the Declaration of Robert Dziubla in support of the Amended Proof of
 Claim or the supplemental documents that were attached to support LVDF’s proof of claim. Accordingly, at a
 minimum, the Motion should be granted in part to permit the submission of the Dziubla Declaration and all other
 documents that support the proof of claim.

1 in the Adversary Proceeding intended to find, or now does find, that LVDF's Third-Party Fraud Claim
2 against the Third-Party Defendants is property of the Front Sight Bankruptcy Estate, then the Motion
3 should still be granted in part.

4 **II. Legal Argument**

5 **A. Front Sight Has Misconstrued LVDF's Motions.**

6 LVDF's Motions were solely focused on LVDF's first counterclaim against the Third-Party
7 Defendants and Debtor for fraud. ECF No. 665-1 p. 34, ¶¶67-74 That claim focuses solely on the
8 misrepresentations about a \$36 million construction line of credit extended by the Morales Parties to
9 Debtor, and then represented as "Senior Debt" under the CLA to LVDF.

10 LVDF thought it was clear in its Motions but to avoid any doubt, LVDF is not seeking to resurrect
11 claims this Court explicitly found were property of the Front Sight Bankruptcy Estate. If LVDF was
12 attempting to do so, then Front Sight's Opposition would make sense. But LVDF is not doing so.
13 Therefore, Front Sight's Omnibus Opposition misses the point of LVDF's Motions altogether.

14 **B. Informal Proof of Claim**

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

27 In accordance with the applicable Ninth Circuit law, the Third-Party Fraud Claim against the
28 Debtor should be deemed an informal proof of claim. On June 23, 2022, prior to the proof of claim

1 deadline, the State Court Litigation was removed to the Bankruptcy Court which created Adversary
2 Proceeding 22-ap-01116. All of the state court pleadings, including LVDF's counter-claim against
3 Front Sight were filed in the Adversary Proceeding.

4 On June 27, 2022, prior to the proof of claim deadline, LVDF filed a motion to remand which
5 attached the amended state court complaint which expanded its counterclaims against the Debtor. Such
6 pleadings stated that "LVDF's counterclaims related to Debtor's failure to repay the \$6,375,000 loan
7 from LVDF to Debtor in addition to numerous fraud and civil conspiracy claims levied against all of
8 the parties for their misrepresentations to LVDF which induced LVDF to disburse the loan proceeds
9 to Debtor". See, AECF No. 4, p. 4, l. 9-12 and Exhibits 4 and 5 to such pleading.

10 On June 27, 2022, prior to the proof of claim deadline, LVDF filed a motion to terminate the
11 stay. See, ECF No. 206. The motion to terminate stay attached the amended counterclaim to such
12 motion which asserted the Third-Party Fraud Claim against the Debtor. See, Exhibit 3 to ECF No.
13 206.

14 At the oral decision on the hearing on the motion to remand, the Court stated "[t]his Court will
15 necessarily have to consider LVDF's pending claims in the state court lawsuit at the time of removal
16 in the claims estimation and/or allowance context, as well as in the confirmation process..." AECF
17 141-2, p. 26, l.

18 Thereafter, Front Sight and LVDF entered into a stipulation to litigate the claims in the
19 Adversary Proceeding in conjunction with the Objection to Proof of Claim. Not only is such litigation
20 moving forward, but firm trial dates have been set for both the Adversary Proceeding and Objection to
21 Proof of Claim.

22 Based upon these facts and under Ninth Circuit Law, the amendment to the original proof of
23 claim should be permitted to add the informal Third-Party Fraud Claim against the Debtor.
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1 **C. LVDF Did Not Stipulate that the Third-Party Fraud Claim Against the Third-Party**
2 **Defendants and Debtor were Property of the Estate**

3 At no time has LVDF stipulated that the Third-Party Fraud Claim was property of the Estate. The
4 stipulation entered into between the Debtor and LVDF was pertaining to a resolution of a motion to
5 terminate stay as to LVDF's affirmative claims asserted against the Piazza Parties. Such stipulation
6 reflected that the parties agreed that:

- 7
- 8 • all of LVDF Parties' counterclaims against the Piazza Parties are property of the
9 bankruptcy estate as they are based upon fraudulent transfer and alter ego claims and
 - 10 • only the Debtor and/or its bankruptcy estate has the ability to prosecute those claims post-
11 petition.

12 See, AECF No. 104, p. 3, l. 18-22.

13 At no time has LVDF stipulated that any other claims (i.e., the Third-Party Fraud Claim or the
14 Foreclosure Action) are property of the Estate. Rather, LVDF has acknowledged that this Court, except
15 as to the Third-Party Fraud Claim and Judicial Foreclosure Claim, has made findings that the *other*
16 *claims* asserted by LVDF are property of the Estate.⁴

17 **D. The Third-Party Fraud Claim should not be found to be Property of the Estate.**

18 As addressed in LVDF's Motion for Clarification, when the Court ruled on the LVDF's motion to
19 terminate stay and remand, it ruled that LVDF's counterclaims against the Piazza Parties were
20 premised on fraudulent transfer and/or alter ego and thus, were property of the Front Sight Bankruptcy
21 estate. But the Court did not address the Third-Party Fraud Claim against the Third-Party Defendants
22 and Debtor.⁵ Therefore, clarification and/or reconsideration under FRCP 54(b) and/or FRCP 60(b)(6)
23 is appropriate.
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26 ⁴ Because Front Sight's Omnibus Opposition focuses on the wrong counterclaims, Front Sight's estoppel argument
and waiver arguments are inapplicable to LVDF's requests.

27 ⁵ Because Front Sight's Omnibus Opposition focuses on the wrong counterclaims, its arguments that LVDF failed to
28 appeal the Order Denying Stay Relief and the Confirmation Order are misplaced. Again, LVDF's Motions are
brought because the Court did not specifically address the Third-Party Fraud Claim as part of the Order Denying
Stay Relief. Moreover, the Third-Party Fraud Claim was not found to be Property of the Bankruptcy Estate or
released as part of plan confirmation.

1 The Third-Party Fraud Claim is easily distinguishable from LVDF's other counterclaims that were
2 found to be property of the Front Sight Bankruptcy estate because unlike those claims, the Third-Party
3 Fraud Claim speaks in injury to LVDF (not Front Sight) and does not implicate alter ego.⁶ In fact,
4 the Third-Party Fraud Claim does not reference fraudulent transfer or alter ego at all. See LVDF's
5 Counterclaim at ¶¶ 67-74.

6 Because the parties have stipulated that discovery in the Adversary Action and the Bankruptcy
7 Case are proceeding together and there will be one trial to cover both cases, if the Court finds that the
8 Third-Party Fraud Claim remains, it makes no sense to not also allow LVDF to amend its proof of
9 claim to assert the informal proof of claim.

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⁶ To be clear, Ignatius Piazza was originally named in the Third-Party Fraud Claim as a third-party defendant. However, in light of the Court's ruling on the motion to terminate stay and remand, LVDF is in agreement that Ignatius Piazza should be dropped from that claim as he was named as the alter-ego of Front Sight.

1
2 **III. Conclusion**

3 Based upon the above, LVDF requests this Court to grant this motion to amend the proof of claim
4 or to expressly state that the amended proof of claim incorporates by reference the Third- Party Fraud
5 Claim against the Third-Party Defendants and Debtor or in the alternative, to grant the motion in part
6 as to the additional documents and declaration which were not objected to by Front Sight and that
7 applies directly to the original proof of claim.

8 DATED 2-27-2023

/s/ Brian D. Shapiro, Esq.

9 Brian D. Shapiro, Esq.
10 Nevada State Bar No. 5772
11 LAW OFFICE OF BRIAN D. SHAPIRO, LLC
12 510 S. 8th Street
13 Las Vegas, Nevada 89101
14 Tel: (702) 386-8600
15 Fax: (702) 383-0994
16 brian@brianshapirolaw.com

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23 Las Vegas, Nevada 89119
24 Tel: (702) 805-8450
25 Fax: (702) 805-8451
26 achampion@joneslovelock.com
27 nlovelock@joneslovelock.com

28 Attorneys for Las Vegas Development Fund

CERTIFICATE OF SERVICE

Contemporaneously with the filing of this pleading, on February 27, 2023, this pleading was served electronically by the Court's CM/ECF to all registered CM/ECF users in this case.

Dated 2-27-2023

/s/ Brian D. Shapiro, Esq.
Brian D. Shapiro, Esq.