

1
2 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

3 FRONT SIGHT MANAGEMENT LLC, a
4 Nevada Limited Liability Company,

5 Petitioner,

6 vs.

7 THE EIGHTH JUDICIAL DISTRICT
8 COURT OF THE STATE OF NEVADA,
9 IN AND FOR THE COUNTY OF CLARK;
10 and THE HONORABLE TIMOTHY C.
WILLIAMS, DISTRICT COURT JUDGE,

11 Respondents,

12
13 and

14 LAS VEGAS DEVELOPMENT FUND
15 LLC, a Nevada Limited Liability Company;
16 EB5 IMPACT CAPITAL REGIONAL
17 CENTER LLC, a Nevada Limited Liability
18 Company; EB5 IMPACT ADVISORS
19 LLC, a Nevada Limited Liability Company;
20 ROBERT W. DZIUBLA, individually and
21 as President and CEO of LAS VEGAS
22 DEVELOPMENT FUND LLC and EB5
23 IMPACT ADVISORS LLC; JON
24 FLEMING, individually and as an agent of
25 LAS VEGAS DEVELOPMENT FUND
26 LLC and EB5 IMPACT ADVISORS LLC;
27 LINDA STANWOOD, individually and as
Senior Vice President of LAS VEGAS
DEVELOPMENT FUND LLC and EB5
IMPACT ADVISORS LLC,

28
Real Parties in Interest.

No.: _____ Electronically Filed
Dec 18 2019 10:35 a.m.
Dist. Ct. Case No: A-18-781084-B Elizabeth A. Brown
Clerk of Supreme Court

1 **PETITION FOR EXTRAORDINARY WRIT RELIEF**

2

3 **PETITIONER’S APPENDIX**

4

5 **VOLUME III**

6 John P. Aldrich, Esq.
7 Nevada Bar No. 6877
8 Matthew B. Beckstead, Esq.
9 Nevada Bar No. 14168
10 **ALDRICH LAW FIRM, LTD.**
11 7866 West Sahara Avenue
12 Las Vegas, Nevada 89117
13 702-853-5490
14 jaldrich@johnaldrichlawfirm.com
15 mbeckstead@johnaldrichlawfirm.com

16 *Attorneys for Petitioner*

17

18

19

20

21

22

23

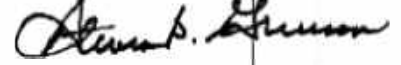
24

25

26

27

28



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

MOT
John P. Aldrich, Esq.
Nevada Bar No. 6877
Catherine Hernandez, Esq.
Nevada Bar No. 8410
ALDRICH LAW FIRM, LTD.
7866 West Sahara Avenue
Las Vegas, Nevada 89117
Telephone: (702) 853-5490
Facsimile: (702) 227-1975
Attorneys for Plaintiff

EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

FRONT SIGHT MANAGEMENT LLC, a
Nevada Limited Liability Company,

Plaintiff,

vs.

LAS VEGAS DEVELOPMENT FUND LLC, a
Nevada Limited Liability Company; EB5
IMPACT CAPITAL REGIONAL CENTER
LLC, a Nevada Limited Liability Company;
EB5 IMPACT ADVISORS LLC, a Nevada
Limited Liability Company; ROBERT W.
DZIUBLA, individually and as President and
CEO of LAS VEGAS DEVELOPMENT
FUND LLC and EB5 IMPACT ADVISORS
LLC; JON FLEMING, individually and as an
agent of LAS VEGAS DEVELOPMENT
FUND LLC and EB5 IMPACT ADVISORS
LLC; LINDA STANWOOD, individually and
as Senior Vice President of LAS VEGAS
DEVELOPMENT FUND LLC and EB5
IMPACT ADVISORS LLC; CHICAGO TITLE
COMPANY, a California corporation; DOES 1-
10, inclusive; and ROE CORPORATIONS 1-
10, inclusive,

Defendants.

CASE NO.: A-18-781084-B
DEPT NO.: 16

PLAINTIFF'S SECOND MOTION
FOR TEMPORARY RESTRAINING
ORDER AND PRELIMINARY
INJUNCTION, MOTION FOR
ORDER SHORTENING TIME, AND
ORDER SHORTENING TIME

DEPARTMENT XVI
NOTICE OF HEARING
DATE 3/21/19 TIME 9:30 AM
APPROVED BY LB [Signature]

02-26-19A07:27 RCVD

1 **PLAINTIFF'S SECOND MOTION FOR TEMPORARY RESTRAINING ORDER AND**
2 **PRELIMINARY INJUNCTION, MOTION FOR ORDER SHORTENING TIME, AND**
3 **ORDER SHORTENING TIME**

4 Plaintiff FRONT SIGHT MANAGEMENT LLC ("Plaintiff"), by and through
5 undersigned counsel, and pursuant to Nevada Revised Statutes ("NRS") § 33.010 and Rule 65 of
6 the Nevada Rules of Civil Procedure, submits this Second Motion for a Temporary Restraining
7 Order and Preliminary Injunction (the "Motion").

8 This Motion is based on the papers on file herein, including the Second Amended
9 Complaint, the following Memorandum of Points and Authorities, the Declaration of Dr.
10 Ignatius Piazza and the exhibits attached thereto, filed on October 4, 2018 ("First Piazza Decl."),
11 the Supplemental Declaration of Mike Meacher and the exhibits attached thereto, filed on
12 October 30, 2018 ("First Meacher Decl."), the Declaration of Dr. Ignatius Piazza (Exhibit 1 to
13 Plaintiff's Petition for Appointment of Receiver and for an Accounting) and the exhibits attached
14 thereto, filed on October 4, 2018 ("Second Piazza Decl."), the Declaration of Mike Meacher
15 (Exhibit 2 to Plaintiff's Petition for Appointment of Receiver and for an Accounting) and the
16 exhibits attached thereto, filed on October 4, 2018 ("Second Meacher Decl."), together with any
17 evidence or argument presented to the Court at the hearing of this matter.

18 DATED this 25th day of February, 2019.

19 **ALDRICH LAW FIRM, LTD.**

20 
21 John P. Aldrich, Esq.
22 Nevada Bar No. 6877
23 Catherine Hernandez, Esq.
24 Nevada Bar No. 8410
7866 West Sahara Avenue
Las Vegas, NV 89117
Tel (702) 853-5490
Fax (702) 226-1975
Attorneys for Plaintiff

1 **DECLARATION OF JOHN P. ALDRICH IN SUPPORT OF SECOND MOTION FOR**
2 **TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION,**
3 **MOTION FOR ORDER SHORTENING TIME, AND ORDER SHORTENING TIME**

3 State of Nevada }
4 } ss
4 County of Clark }

5 Affiant, being first duly sworn, deposes and states as follows:

6 1. I, John P. Aldrich, am an attorney licensed to practice in the State of Nevada and
7 am a partner in the law firm of Aldrich Law Firm, Ltd. I am counsel for Plaintiff in this action.

8 2. My office address is 7866 West Sahara Avenue, Las Vegas, Nevada 89117.

9 3. The following facts set forth in this Affidavit are true and correct to the best of my
10 knowledge, or where stated, are upon information and belief. I make this Declaration based on
11 my personal knowledge of the facts and matters of this action, and to establish good cause
12 justifying a shortening of time for the hearing Plaintiff's Second Motion for Temporary
13 Restraining Order and Preliminary Injunction.

14 4. There exists good cause to hear Plaintiff's Second Motion for Temporary
15 Restraining Order and Preliminary Injunction on shortened time. On January 18, 2019,
16 Defendants, at the request of new Trustee Kathryn Holbert, Esq., again recorded a Notice of
17 Breach, Default and Election to Sell Under of Trust, alleging various defaults. That Notice
18 indicates that Defendants intend to proceed with attempting to sell Plaintiff's property.

19 5. Plaintiff's Project and Plaintiff's property, as more fully outlined in Plaintiff's
20 Second Motion for Temporary Restraining Order and Preliminary Injunction, hang in the balance
21 due to the actions of Defendants, and it is imperative that the Motion are heard on shortened
22 time.

6. On January 28, 2019, Defendants filed several Motions to Dismiss. The hearing on those motions is set for April 3, 2019. That indicates that if the hearing on Plaintiff's Second Motion for Temporary Restraining Order and Preliminary Injunction was held in the ordinary course, irreparable harm may be done to the Project and property.

7. I respectfully request that, pursuant to EDCR 2.26, this Court grant Plaintiff's Order Shortening Time and set the Motion on shortened time.

8. This request for an Order shortening time is made in good faith and without dilatory motive.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

DATED this 25th day of February, 2019.


John P. Aldrich, Esq.

ORDER SHORTENING TIME

Good cause appearing therefore,

IT IS HEREBY ORDERED that the time for the hearing on Plaintiff's Second Motion for Temporary Restraining Order and Preliminary Injunction in the above-entitled matter be shortened, and the same will be heard on the 21st day of March, 2019, at the hour of 9:30 a.m. in Dept. 16 of the Eighth Judicial District Court.

DATED this 28th day of February, 2019.


DISTRICT COURT JUDGE

9

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 Plaintiff respectfully submits this Memorandum of Points and Authorities in Support of
3 its Second Motion for Temporary Restraining Order and Preliminary Injunction.

4 Plaintiff seeks a temporary restraining order and preliminary injunction (both affirmative
5 and prohibitive) as follows:

6 1. A temporary restraining order and preliminary injunction enjoining Defendants
7 from selling the subject property as they purport they have the right to do under the Notice of
8 Breach and Default and of Election to Sell Under Deed of Trust recorded on January 18, 2019.

9 2. An Order expunging the Notice of Breach and Default and of Election to Sell
10 Under Deed of Trust recorded on January 18, 2019.

11 **I.**

12 **PROCEDURAL HISTORY**

13 On or about October 4, 2018, Plaintiff filed an Amended Complaint against Defendants
14 alleging 18 causes of action.

15 Also on or about October 4, 2018, Plaintiff filed a Petition for Appointment of Receiver
16 and for an Accounting, a Motion for Protective Order; and Motion for Temporary Restraining
17 Order and Preliminary Injunction seeking part to enjoin Defendants from selling the subject
18 property.

19 The Court held a hearing on Wednesday, October 31, 2018 on the following motions: (1)
20 Plaintiff's Petition for Appointment of Receiver and for an Accounting; (2) Plaintiff's Motion for
21 Protective Order; and (3) Plaintiff's Motion for Temporary Restraining Order and Preliminary
22 Injunction. The Court granted the accounting portion of the Petition for Appointment of
23
24

1 Receiver and for an Accounting, as to Defendant EBS Impact Advisors ("EB5IA") and also
2 granted in part the Motion for Temporary Restraining Order.

3 On or about November 27, 2018, the Court entered an Order Granting Plaintiff's Petition
4 for an Accounting as to Defendant EB5IA.

5 Also on or about November 27, 2018, the Court entered an Order Granting Plaintiff's
6 Motion for Temporary Restraining Order enjoining Defendants from proceeding with the
7 foreclosure process and/or selling the subject property under the Notice of Breach and Default
8 and Election to Sell Under the Deed of Trust recorded on September 11, 2018. The Court's
9 Order also expunged the Notice of Breach and Default and Election to Sell Under the Deed of
10 Trust recorded on September 11, 2018.

11 On December 5, 2018, the Court held a hearing on Defendants' Motion to Dismiss. At
12 that hearing, a discussion occurred regarding the preliminary injunction hearing that was
13 scheduled for December 13, 2018. The following exchange occurred:

14 MR. ALDRICH: -- if the Court interprets it that way anyway, you would be
15 extending a TRO to a preliminary injunction for something that's already
happened. It's been expunged.

16 THE COURT: Right. It's been done.

17 MR. ALDRICH: Right. We are going to talk about if they file another one, then
we'd just be back.

18 THE COURT: And I'd sign it. And I think all you would have to do is change the
dates probably.

19 (Transcript of December 5, 2018 hearing, relevant portion attached hereto as **Exhibit 1.**)

20 On January 4, 2019, Plaintiff filed a Second Amended Complaint. The causes of action
21 include: (1) Fraud/Intentional Misrepresentation/Concealment Against All Defendants; (2)
22 Breach of Fiduciary Duty Against All Defendants; (3) Conversion Against All Defendants; (4)
23 Civil Conspiracy Against All Defendants; (5) Breach of Contract Against Defendants EB5IA and
24 LVDF; (6) Contractual Breach of Implied Covenant of Good Faith and Fair Dealing Against the

1 Entity Defendants; (7) Tortious Breach of Implied Covenant of Good Faith and Fair Dealing
2 Against the Entity Defendants; (8) Intentional Interference with Prospective Economic
3 Advantage Against the Entity Defendants and Defendant Dziubla; (9) Unjust Enrichment
4 Against All Defendants; (10) Negligent Misrepresentation Against All Defendants; (11)
5 Negligence Against All Defendants; and (12) Alter Ego Against Defendants Dziubla, LVDF,
6 EB5IA, and EB5IC.

7 On January 14, 2019, Defendants recorded a Substitution of Trustee, substituting
8 Defendants' current litigation counsel, Kathryn Holbert, Esq., as Trustee. (Substitution of
9 Trustee, attached hereto as **Exhibit 2.**)

10 On or about January 17, 2019, the Court entered an Order finding Plaintiff's Motion for
11 Preliminary Injunction Moot because the Court had already expunged the Notice of Breach and
12 Default and Election to Sell Under the Deed of Trust recorded on September 11, 2018. On that
13 same day, Ms. Holbert signed another Notice of Breach, Default and Election to Sell Under the
14 Deed of Trust. (**Exhibit 2.**)

15 On or about January 18, 2019, Defendants, at the request of Ms. Holbert, again recorded
16 a Notice of Breach, Default and Election to Sell Under of Trust, alleging various defaults. The
17 Affidavit of Authority to Exercise the Power of Sale was signed by Defendant Dziubla on
18 January 4, 2019. (**Exhibit 2.**)

19 On January 24, 2019, after Defendants failed to timely respond to the Second Amended
20 Complaint, Plaintiff served by hand a Three Day Notice of Intent to Take Default, attached
21 hereto as **Exhibit 3.**

22 On January 28, 2019, Defendants filed the following motions: (1) Motion to Dismiss
23 Plaintiff's Second Amended Complaint filed by Defendants Las Vegas Development Fund,
24

1 Robert Dziubla and EB 5 Impact Advisors; (2) Motion to Dismiss Plaintiff's Second Amended
2 Complaint filed by Defendant Jon Fleming; (3) Motion to Dismiss Plaintiff's Second Amended
3 Complaint filed by Defendant EB5 Impact Capital Regional Center; (4) Motion to Dismiss
4 Plaintiff's Second Amended Complaint filed by Defendant Linda Stanwood; and (5) Motion to
5 Strike Portions of Plaintiff's Second Amended Complaint. On February 1, 2019, Defendants
6 filed an Amended Motion to Dismiss Plaintiff's Second Amended Complaint filed by
7 Defendants Las Vegas Development Fund, Robert Dziubla and EB 5 Impact Advisors. On
8 February 4, 2019, Defendants filed a Counter-Motion for Relief from the November 20, 2018
9 Court Order Granting Plaintiff's Petition for an accounting of Defendant EB5 Impact Advisors
10 LLC. The hearing on those motions is set for April 3, 2019.

11 On February 6, 2019, Defendant Las Vegas Development Fund LLC filed a Motion for
12 Appointment of Receiver and Request for Order Shortening Time, Declaration of Keith Greer,
13 Esq. Declaration of C. Keith Greer in Support of Defendant's Motion for Receivership, with
14 attached exhibits, and Declaration of Robert Dziubla in Support of Defendant's Motion for
15 Receivership, with attached exhibits. That hearing has been set for February 28, 2019.

16 Defendants' Notice of Default is - once again - frivolous and designed to harass
17 Plaintiff. The Court already advised Defendants against doing exactly what they have done at
18 the hearing on December 5, 2018. Defendants' conduct wastes precious judicial resources and
19 Defendants should be required to pay Plaintiff's attorney's fees for having to bring this motion.

20 II.

21 **FACTUAL BACKGROUND AND NATURE OF THE ACTION**

22 This is the second Motion for Temporary Restraining Order and Preliminary Injunction
23 ("Motion for TRO") Plaintiff has had to file. The facts are the same now as they were back on
24

1 October 4, 2018 when Plaintiff filed the first Motion for TRO and on October 31, 2018 when the
2 Court held the hearing on the first Motion for TRO and granted the Motion for TRO.

3 On October 4, 2018, Plaintiff filed the Declaration of Ignatius Piazza in Support of (1)
4 Motion for Temporary Restraining Order and Preliminary Injunction; (2) Motion for Protective
5 Order; and (3) Petition for Appointment of Receiver and for an Accounting ("First Piazza
6 Decl."). Plaintiff incorporates that Declaration by reference. That Declaration includes the first
7 28 exhibits included with the Second Amended Complaint. Plaintiff has also filed two
8 Declarations of Michael Meacher, and both of them are incorporated by reference.

9 On October 23, 2018, Defendant Robert Dziubla filed a Declaration in Opposition to: (1)
10 (1) Motion for Temporary Restraining Order and Preliminary Injunction; (2) Motion for
11 Protective Order; and (3) Petition for Appointment of Receiver and for an Accounting. Plaintiff
12 incorporates that Declaration by reference as well.

13 The Second Amended Complaint is the operative pleading, and Plaintiff incorporates
14 those facts as well.

15 Defendants have thus far refused to answer these serious allegations, instead filing a
16 second round of motions to dismiss. However, because the Court previously granted a Motion
17 for Accounting against Defendant EB5IA, Plaintiff has discovered serious misappropriation of
18 funds by Defendants Dziubla, Fleming, and EB5IA. Defendants have also shown the Court that
19 Defendants LVDF, EB5IA, and Dziubla have commingled funds provided by Plaintiff for
20 marketing purposes.

21 Defendants continue to assert various breaches. Plaintiff will address each:

22 The first alleged default is improper use of loan proceeds. In support of this argument,
23 Defendants cite Section 1.7(e) of the Construction Loan Agreement and Exhibit 15 of Dziubla's
24

1 Declaration.¹ Defendants claim that “Front Sight revealed that although it has spent all of the
2 \$6,375,000 in loan proceeds since the initial disbursement in October 2016, less than \$2.7
3 million of the proceeds were actually spent on construction of the EB-5 project.” (Defendants’
4 Motion for Appointment of Receiver, p. 11, ls. 9-11.) Without explanation, Defendants then
5 claim that “more than \$3.675 million of EB-5 loan proceeds have been diverted to fund matters
6 that are not related to completion of the approved EB-5 plan, such as payment of Front Sight’s
7 general overhead expenses, thereby severely prejudicing the EB-5 investors.” (Defendants’
8 Motion for Appointment of Receiver, p. 11, ls. 11-14.) As has become custom, Defendants do
9 not tell the Court the whole truth, nor do they provide any evidence to support their claim that
10 the loan proceeds have been used for overhead.

11 There are actually four (4) paragraphs of the Construction Loan Agreement that relate to
12 loan proceeds. They are as follows:

13 **Section 1.7 EB-5 Program Requirements.**

14
15 (e) Borrower shall use the proceeds of the Loan solely for the purpose
16 of funding directly, or advancing to Affiliates to pay, the costs of the Project, in
17 accordance with the terms and conditions of this Agreement, as set forth in the
18 Budget and the Project documents submitted to, and approved by, USCIS.
19

20 **Section 3.7 Use of Loan Proceeds.** Borrower shall use and apply the Loan
21 proceeds solely to all or any number of the individual Project components in
22 accordance with the Budget and also to pay some or all of any or all existing
23 indebtedness encumbering the Project pursuant to a Permitted
24 Encumbrance. Borrower shall use its best business judgment based upon
then-current real estate market and availability of other financing resources
to allocate the proceeds of the Loan in such a manner as to assure the full
expenditure of the Loan proceeds advanced to Borrower. Borrower will
comply with the requirements of the EB-5 Program and the other EB-5 Program
covenants and requirements contained in this Agreement.

24 ¹ The brief actually says the exhibit is “attached hereto,” but it is actually attached to Dziubla’s Declaration.

1 **Section 4.29 Use of Loan Proceeds. The proceeds of the Loan shall be used**
2 **to pay and obtain release of the existing liens on the Land, to pay for or**
3 **reimburse Borrower for soft and hard costs related to the pre-construction,**
4 **development, promotion, construction, development and operation of the**
5 **Project in connection with the FSFTI Facility and the construction,**
6 **development, operation, leasing and sale of the timeshare portion of the**
7 **Project, all as more particularly described on Exhibit F, attached hereto.**
8 The Loan is made exclusively for business purposes in connection with holding,
9 developing and financially managing real estate for profit, and none of the
10 proceeds of the Loan will be used for the personal, family or agricultural purposes
11 of the Borrower.

12 **Section 5.3 Using Loan Proceeds. Subject to Section 3.2, Borrower shall**
13 **use the Loan proceeds in its sole discretion to pay, or to reimburse Borrower**
14 **for paying, costs and expenses incurred by Borrower in connection with the**
15 **pre-construction, promotion, construction, development, operating and**
16 **leasing of the Project on the Land and the equipping of the Improvements,**
17 **together with the payoff and release of any existing liens and encumbrances**
18 **on the Land.** Borrower shall take all steps necessary to assure that Loan
19 proceeds are used by its contractors and subcontractors to pay such costs and
20 expenses which could otherwise constitute a mechanic's lien claim against the
21 Project. Within thirty (30) days after the Completion Date, Borrower shall provide
22 the documentation and supporting accounting records and contract documents
23 necessary, in Lender's discretion, to demonstrate that between the Closing Date
24 and the date of delivery of such documentation not less than the total amount of
 the Advances has been spent directly or indirectly on the Project substantially in a
 form acceptable to Lender for compliance with the EB-5 Program.

(Emphasis added.)

 Taking the contents of Exhibit 15 to Dziubla's Declaration as true, which Defendants
apparently concede, the expenses "from and including July 1, 2017, through and including
October 30, 2018" total at least \$5,990,464.74, which Dr. Piazza's letter notes is "well in excess
of the \$3,750,000.00 in advances made by Lender to Borrower from and after July 1, 2017." Dr.
Piazza also notes that this list of expenses is not exhaustive. Prior to Defendants' Motion for
Appointment of Receiver, Defendants never advised Plaintiff that any of the expenses listed in
Exhibit 15 were inappropriate. Indeed, they are appropriate by the clear terms of the
Construction Loan Agreement. Defendants' claim of improper use of loan funds is completely

1 unfounded. Defendants' math is suspect – Defendants simply disregard entire categories of
2 legitimate expenses to attempt to claim improper spending. This is simply an empty attempt by
3 Defendants to justify their disclosure of Plaintiff's tax records.

4 Defendants inappropriately attached and disclosed private tax information of Plaintiff,
5 claiming Dr. Piazza is “diverting profits” and “misappropriating loan proceeds and endangering
6 Front Sight's solvency.” (Defendants' Motion for Appointment of Receiver, p. 12, ls. 2-3.)
7 Defendants ignore what “diverting profits” and “misappropriating” funds means. As Plaintiff
8 has learned, Defendants have misappropriated funds that Plaintiff provided for specific purposes
9 to their own purposes. That has been shown by the few documents Defendant EB5IA provided
10 in response to the Court's order. “Misappropriation” is defined as “[t]he unauthorized, improper,
11 or unlawful use of funds or other property for purpose other than that for which intended.”
12 Black's Law Dictionary 998 (6th Ed. 1990). Defendants' misuse of Plaintiff's funds literally fits
13 the definition of misappropriation. On the other hand, Dr. Piazza is the owner of Front Sight.
14 Defendants want to disregard their responsibility and claim that Front Sight is supposed to do
15 Defendants' job and finance the project itself. Plaintiff is not in breach.

16 The second alleged default is failure to provide government approved plans for
17 construction. This claim is also false. As Ms. Holmes explained in her report:

18 [I]t is not accurate to say that loan proceeds must be applied toward construction
19 of the Project. In fact, USCIS policy requires that loan proceeds must be applied
20 toward the Project in general, but loan proceeds can be used for any expense
21 related to the Project, except for interest payments made on the EB-5 loan itself
22 and expenses of the EB-5 lender in connection with the EB-5 offering and the
23 loan. The second sentence also incorrectly states that the construction schedule
24 and construction budget must be substantially complied with in order to meet the
immigrant investors' obligations under the EB-5 program. In fact, USCIS policy
requires only that the EB-5 investors' capital be used to fund the Project described
in the business plan filed with USCIS. There is no requirement that the
construction schedule or construction budget be complied with in order for the
EB-5 investors to obtain their visa. I have personally been engaged to provide

1 legal assistance on a number of EB-5 projects that had delays in construction and
2 changed in size and scope, which did not result in any EB-5 investors losing their
3 immigration benefits under the EB-5 program. It is quite common that the
4 construction schedule or construction budget undergo changes in any construction
5 project, including those funded with EB-5 capital. Just as with this Project, delays
6 or changes in construction plans occur when the EB-5 lender fails to raise
7 sufficient capital to complete the project originally contemplated, or within the
8 time contemplated. As long as the EB-5 investors can show that their capital was
invested in the project generally described in the business plan filed with USCIS,
whether there were changes in the size of the project, project budget or
construction timeline, the EB-5 investors will receive their visas so long as the
number of jobs created as a result of the work on the project are sufficient for
each investor in the project. USCIS does not deny visas to EB-5 investors in
projects where there has been a change in construction schedule or construction
budget.

9 (Expert Witness Report of Catherine DeBono Holmes, Esq. attached hereto as **Exhibit 4, ¶12.**)

10 Plaintiff is not in breach.

11 The third alleged event of default –material delays in construction or failure to timely
12 complete the project – is not an event of default at all. Ms. Holmes addressed this issue to, as set
13 forth above. Additionally, that alleged default has not even occurred, so by definition no event
14 of default has occurred. There can be no breach before a deadline has passed. Nevertheless,
15 Plaintiff continues to move forward with the project despite Defendants' failure and refusal to
16 provide financing.

17 The fourth alleged default is also a bogus claim. In their Motion for Appointment of
18 Receiver, Defendants claim that the "Patriot Pavilion" has been reduced from 85,000 square feet
19 to 25,000 to 30,000 square feet. (Defendants' Motion for Appointment of Receiver, p. 14, ls. 3-
20 4.) Ms. Holmes addressed this issue as well:

21 the reduction in size of any portion of the Project would not jeopardize the
22 EB-5 investors' benefits under the EB-5 Program. As stated above, as long as the
23 general Project description is the same as what is actually constructed with EB-5
24 proceeds, and the actual expenditures on the Project result in the creation of the
number of jobs necessary to support each EB-5 investor in the project, all of the
EB-5 investors will receive their immigration benefits. In this case, there are only

1 13 EB-5 investors in the Project, meaning that it is only necessary to demonstrate
2 that 130 jobs have been created from work on the Project. These are far fewer
3 than the total number of jobs that would have been required if the entire \$75
4 million in EB-5 proceeds had been raised. Therefore, the reduction in size of the
5 Project will not jeopardize any EB-5 investors in this Project.

6 (Exhibit 4, ¶13.) Plaintiff is not in breach.

7 Even so, Exhibit 12 to Dziubla's Declaration, while still alleging a breach due to changes
8 in "Patriot Pavilion" stated that it was being reduced "to be 57,000 square feet without our prior
9 written consent."² While every project experiences some changes during the building process,
10 the changes to Front Sight's project have not been material. Defendant Dziubla's claim that the
11 "Patriot Pavilion" has been reduced from 85,000 square feet to 25-30,000 square feet is again
12 disingenuous. The size of the *classroom* in the "Patriot Pavilion" has been reduced, but the
13 overall scope and size of "Patriot Pavilion" itself has not changed significantly and work there
14 continues to progress. (First Meacher Decl., ¶7.) Moreover, Dziubla tours the project
15 approximately once a quarter – the latest tour occurred on October 11, 2018 – after this litigation
16 began. Dziubla chose not to attend other inspections. (Correspondence regarding inspection,
17 attached hereto as Exhibit 5.) Plaintiff has kept no secrets about the progress of the project, and
18 Defendants' claim otherwise is disingenuous.

19 The fifth alleged default is the alleged failure to obtain senior debt. The definition of
20 "Senior Debt" provides that an additional loan "will be sought" and that Plaintiff "will use its
21 best efforts" to obtain a senior loan. Plaintiff was not *required* to obtain senior debt, although it
22 has done so. Section 5.27 of the CLA indicates Plaintiff will use its "best efforts" to obtain
23 Senior Debt.

24 ² Admittedly, Exhibit 8 to Dziubla's Declaration claims that Mr. Meacher stated the Patriot Pavilion would be
25,000 to 30,000 square feet.

1 Nevertheless, Defendants have not included the fact that Plaintiff has obtained such
2 financing, and Defendants have indicated such financing is acceptable. Those financing
3 documents were provided to Defendants on October 31, 2017. (See First Piazza Decl., ¶21,
4 Exhibit 19.) Moreover, in Defendant EB5 Impact Capital's Q3 2017 project update to its
5 investors, Defendants specifically referenced the construction line of credit and stated: "The
6 terms of this agreement and note are completed and this line of credit will be signed by the end
7 of October." *Id.* Defendants repeatedly updated investors and referenced the senior construction
8 loan, and those updates indicated that the financing that had been obtained was in compliance
9 with the Construction Loan Agreement. (Updates to investors attached hereto as Exhibits 6-9.)

10 The sixth alleged default is failure to provide monthly project costs. Again, Plaintiff is
11 not in default. Because Defendants have failed to provide financing, Plaintiff has been
12 proceeding through other means. As has been explained to Defendants, the grading work
13 continues. Vertical construction cannot. Defendants long ago received the project costs related
14 to the grading.

15 The seventh alleged default is the assertion that Plaintiff failed to notify Defendants of an
16 event of default. Defendants claim that "Front Sight has failed to notify LVD Fund of either (1)
17 the existence of certain events of default or (2) a detailed statement of the steps being taken to
18 cure the event of default." (Defendants' Motion for Appointment of Receiver, p. 15, ls. 7-9.)
19 Without more specifics, it is difficult for Plaintiff to respond to this assertion. However, Plaintiff
20 directs the Court to the various correspondence related to Defendants' claims of default and
21 Plaintiff's responses thereto. (See First Piazza Decl., Exhibits 19, 21.) There have been no
22 defaults, so there is no duty to report anything.
23
24

1 The eighth alleged default is Defendants' claim that they have not been allowed to
2 inspect the records of Front Sight. Section 5.4 of the Construction Loan Agreement states:

3 **Section 5.4 Keeping of Records.** Borrower shall set up and maintain accurate
4 and complete books, accounts and records pertaining to the Project. Borrower
5 will permit representatives of Lender to have reasonable access to and to inspect
6 and copy such books, records and contracts of Borrower and to inspect the Project
7 and to discuss Borrower's affairs, finances and accounts with any of its principal
8 officers, all at such times and as often as may reasonably be requested by Lender.
Any such inspection by Lender shall be for the sole benefit of and protection of
Lender, and Lender shall have no obligation to disclose the results thereof to
Borrower or to any third party. When a Default or Event of Default exists,
Lender may do any of the foregoing during normal business hours without
advance notice of other limitation.

9 Paragraph 6 of the First Amendment to Loan Agreement required Plaintiff to provide proof of
10 expenses up to "at least the amount of money as has been disbursed..."

11 Defendants deny receiving such documentation. However, Defendants again fail to
12 advise the Court that they have received thousands of pages of documents showing Plaintiff's
13 expenses on the project. Plaintiff has done so and then some, despite the fact that many of the
14 documents were destroyed in a wildfire, which the parties acknowledged in the First Amendment
15 to Loan Agreement and even though not required by the First Amendment to Loan Agreement
16 (because the USCIS or Department of Justice had not required it). (See First Piazza Decl.,
17 Exhibits 19, 21; First Meacher Decl., Exhibits 29-30.) Defendants continue to demand
18 "unimpeded access to Front Sight's books and records regarding the project and Front Sight's
19 operations," which is beyond what the agreement allows. (See Exhibit 13 to Dziubla
20 Declaration.) Plaintiff has more than complied and is not in breach.

21 The ninth alleged default is failure to allow site inspection. However, Dziubla tours the
22 project approximately once a quarter – the latest tour occurred on October 11, 2018 – after this
23
24

1 litigation began. Plaintiff agreed to allow Dziubla to tour the project (without litigation attorneys
2 and experts) but he has declined to do so. (**Exhibit 5.**)

3 The tenth alleged default is for the alleged failure to provide EB-5 information.
4 Defendants do not specify what "EB-5 Information" they lack from Plaintiff. They reference
5 paragraph 1.7 of the CLA and paragraph 6 of the First Amendment, but do not say what is
6 missing. This alleged breach is really just a restatement of the eighth alleged breach, which is
7 addressed above.

8 The eleventh and twelfth alleged defaults are the alleged failure to pay default interest
9 and legal fees. Plaintiff is not in default, and therefore, is not obligated to pay either default
10 interest or attorneys' fees. Further, the attorneys' fee provision requires "reasonable" attorney's
11 fees. Defendants have done nothing to attempt to address the reasonableness of the alleged
12 attorney's fees. Because there has been no default, the claim for attorneys' fees is inherently
13 unreasonable.

14 Defendants have once again recorded a frivolous Notice of Breach and Default and of
15 Election to Sell Under Deed of Trust. Based on the above facts, Plaintiff is currently suffering,
16 and will continue to suffer, immediate and irreparable harm unless this Court immediately orders
17 as follows:

18 1. A temporary restraining order and preliminary injunction enjoining Defendants
19 from selling the subject property as they purport they have the right to do under the Notice of
20 Breach and Default and of Election to Sell Under Deed of Trust filed on January 18, 2019.

21 2. An Order expunging the Notice of Breach and Default and of Election to Sell
22 Under Deed of Trust recorded on January 18, 2019.

23 ///

1 III.

2 ARGUMENT AND AUTHORITIES

3 A. Preliminary Injunction

4 In Nevada, the decision to grant a preliminary injunction is within the sound discretion of
5 the trial court. *Dangberg Holdings Nev., L.L.C. v. Douglas County*, 115 Nev. 129, 142-43, 978
6 P.2d 311, 319-20 (1999) (affirming district court issuance of preliminary injunction). The
7 purpose of a preliminary injunction under Nev. R. Civ. P. 65 is to preserve the status quo pending
8 court determination. *All Minerals Corp. v. Kunkle*, 105 Nev. 835, 838, 784 P.2d 2 (1989); *Dixon*
9 *v. Thatcher et al.*, 103 Nev. 414, 415, 742 P.2d 1029 (1987). An injunction to maintain the status
10 quo is proper if “injury to the moving party will be immediate, certain, and great if it is denied,
11 while the loss or inconvenience to the opposing party will be comparatively small and
12 insignificant if it is granted.” *Dangberg*, 115 Nev. at 146 (quoting *Rhodes Mining Co. v.*
13 *Belleville Placer Mining Co.*, 32 Nev. 230, 239, 106 P. 561, 563 (1910)).

14 In determining whether to grant a preliminary injunction, Nevada courts consider two
15 factors: (1) whether there is a reasonable probability that the plaintiff will prevail on the merits;
16 and (2) is the plaintiff likely to suffer greater injury from a denial of the injunction than the
17 defendants are likely to suffer from its grant. *Dangberg*, 115 Nev. at 146; *Clark County School*
18 *Dist. v. Buchanan*, 112 Nev. 1146, 1150, 924 P.2d 716, 719 (1996); Nev. Rev. Stat. Ann. §
19 33.010.³ The Court “may also weigh the public interest and relative hardships of the parties...”

20
21
22 ³Nev. Rev. Stat. Ann. § 33.010 provides:

23 An injunction may be granted in the following cases:

24 1. When it shall appear by the complaint that the plaintiff is entitled to the relief demanded, and such relief or any part thereof consists in restraining the commission or continuance of the act complained of, either for a limited period or perpetually.

1 *Clark County School Dist.*, 112 Nev. at 1150at 719 (1996) (citing *Pickett v. Commanche*
2 *Construction, Inc.*, 108 Nev. 422, 426, 836 P.2d 42, 44 (1992)). As discussed below, Plaintiff
3 satisfies each of these elements.

4 The movant “bears the burden of providing testimony, exhibits, or documentary evidence
5 to support its request for an injunction.” *Hospitality Int’l Group v. Gratitude Group, LLC*, 387
6 P.3d 208 (Table), 2016 WL 7105065, at *2 (Nev. 2016).

7 Both factors required for a temporary restraining order and preliminary injunction favor
8 granting Plaintiff the requested relief in this case.

9 1. Plaintiff Will Succeed on the Merits of its Claims

10 First, Plaintiff reminds the Court that it has already found that Plaintiff has established a
11 reasonable likelihood of success on the merits on these exact issues. (**Exhibit 1**, Transcript of
12 December 5, 2018 hearing, p. 74; Order Granting Temporary Restraining Order and Expunging
13 Notice of Default filed on November 26, 2018 (Notice of Entry on November 27, 2018).)
14 Nothing of substance has changed, other than Plaintiff has filed a Second Amended Complaint
15 detailing even more specifically Defendants’ unlawful and nefarious actions.

16 Second, the facts set forth above, in the Second Amended Complaint, in the referenced
17 Declarations, and the attached exhibits demonstrate Plaintiff’s reasonable likelihood of success
18 on the merits.

22 2. When it shall appear by the complaint or affidavit that the commission or continuance
of some act, during the litigation, would produce great or irreparable injury to the plaintiff.

23 3. When it shall appear, during the litigation, that the defendant is doing or threatens, or
24 is about to do, or is procuring or suffering to be done, some act in violation of the plaintiff’s rights
respecting the subject of the action, and tending to render the judgment ineffectual.

1 A temporary restraining order and preliminary injunction must be entered to protect
2 Plaintiff and stop further abuse by Defendants. Defendants' nefarious and fraudulent conduct
3 includes the following:

- 4 1. Dziubla and Fleming, as agents of the entity Defendants, misrepresented their
5 EB5 experience. (See First Piazza Decl., Exhibits 1-3, 7.)
- 6 2. Dziubla and Fleming, as agents of the entity Defendants, misrepresented their
7 investor network. (See First Piazza Decl., Exhibits 1-3, 7, 11-12, 16, pp. 4-5.)
- 8 3. Dziubla and Fleming, as agents of the entity Defendants, misrepresented their
9 ability to raise the promised funds. (See First Piazza Decl., Exhibits 1-3, 7, 11-12,
10 16, pp. 4-5.)
- 11 4. Dziubla and Fleming, as agents of the entity Defendants, mismanaged and
12 produced conflicting EB5 documents, loan documents, and investor documents.
13 (See First Piazza Decl., Exhibits 7, 11-12, 16, pp. 2-6.)
- 14 5. Dziubla and Fleming, as agents of the entity Defendants, made fraudulent reports
15 to Plaintiff and investors. (See First Piazza Decl., Exhibit 16, pp. 4-5.)
- 16 6. Dziubla and Fleming, as agents of the entity Defendants, refuse to provide any
17 proof of Defendants Dziubla and Fleming, as agents of the entity Defendants,
18 spent the administrative fees provided by Plaintiff, which fees totaled several
19 hundred thousand dollars were specifically earmarked for development of the
20 regional center. This is particularly disturbing given Defendants' representation
21 that "Front Sight is the ONLY EB5 project we are handling and of course receives
22 our full and diligent attention," while on Defendants' website
23 eb5impactcapital.com, Defendants have posted an open invitation to other
24

1 developers seeking EB-5 funding for their respective projects to contact
2 Defendants regarding their EB-5 fundraising services. (See First Piazza Decl.,
3 Exhibits 10, 15.)

4 7. Dziubla and Fleming, as agents of the entity Defendants, refuse to provide any
5 accounting to Plaintiff or proof of payment of marketing fees for the project,
6 which marketing fees were financed by Plaintiff to the tune of hundreds of
7 thousands of dollars. Defendants have been ordered by the Court to provide said
8 accounting, however, Defendants failed and refused to provide the required
9 documents and Plaintiff's now have a Motion to Compel and for Sanction
10 pending before the Court. (See First Piazza Decl., Exhibits 10, 15.)

11 8. Dziubla and Fleming, as agents of the entity Defendants, refuse to provide any
12 proof of payment for interest paid to investors and agents (although Defendants
13 repeatedly represented they had made such payments), also totaling hundreds of
14 thousands of dollars. (See First Piazza Decl., Exhibits 10, 15.) Dziubla and
15 Fleming, as agents of the entity Defendants, claimed they make no money from
16 interest payments, marketing fees or commissions, yet refuse to disclose and
17 prove where payments have been spent.

18 9. When Front Sight asked for full disclosure on the financial arrangements with the
19 various agents and brokers Defendant Dziubla claimed to have in place,
20 Defendant Dziubla represented to Front Sight that said agents require strict
21 confidentiality on all financial arrangements with the Regional Center and thus
22 Defendant Dziubla could not disclose to Front Sight the financial splits. (See,
23 e.g., First Piazza Decl., Exhibits 16-17.) Front Sight has recently learned from an
24

1 experienced and reputable industry consultant that these representations are not
2 true. In reality, developers often own the regional centers handling their projects,
3 and financial arrangements with the brokers and agents are normally transparent
4 and regularly disclosed to the developers.

5 10. When Defendant Dziubla was soliciting Front Sight to pay for the Regional
6 Center, Front Sight requested to be an owner of EB5IC since Front Sight was
7 paying for it, but Defendant Dziubla responded that USCIS would not allow it and
8 would look unfavorably on a developer owning a regional center. This statement
9 was false. (See First Piazza Decl., Exhibit 16.)

10 11. Dziubla and Fleming, as agents of the entity Defendants, dissolved EB5 Impact
11 Advisors LLC without notifying Plaintiff or USCIS. (See First Piazza Decl.,
12 Exhibit 23.)

13 12. Dziubla and Fleming, as agents of the entity Defendants, dissolved EB5 Impact
14 Advisors, LLC without paying plaintiff \$36,000 that Plaintiff was owed under
15 agreements with EB5 Impact Advisors, LLC. (See First Piazza Decl., Exhibit 23.)

16 13. Dziubla and Fleming, as agents of the entity Defendants, delivered less than 10%
17 of the funding promised after Plaintiff has paid over \$500,000 in marketing and
18 administrative fees, with Dziubla and Fleming, as agents of the entity Defendants,
19 refusing to provide any accounting of where said money was spent. (See Second
20 Piazza Decl., ¶3.)

21 14. Dziubla and Fleming, as agents of the entity Defendants, billed Plaintiff \$20,000
22 for an economic study associated with the development of the Regional Center
23 and EB5 project, then without Plaintiff's knowledge, offered the economist, Sean
24

1 Flynn, who prepared the economic study, a percentage of the EB5 project, with
2 promises of large financial returns, in consideration for Flynn not accepting the
3 \$20,000 payment made by Plaintiff for said economic study. Plaintiff was not
4 aware of this "bait and switch" conduct until just recently and believes Dziubla
5 and/or Fleming, as agents of the entity Defendants, pocketed the money. Dziubla
6 and Fleming, as agents of the entity Defendants, have failed and refused to
7 account for the \$20,000. (See Second Piazza Decl., ¶4; Second Meacher Decl.,
8 ¶8.)

- 9 15. After Plaintiff had paid over \$300,000 to Dziubla and Fleming, as agents of the
10 entity Defendants, and Dziubla and Fleming, as agents of the entity Defendants,
11 failed to provide the initial \$25 million dollars of the \$75 million that had been
12 promised, Dziubla misrepresented that he and Defendant Fleming had exhausted
13 all of their personal finances and those of the Defendant entities, and needed to
14 restructure the funding project at significant legal and administrative costs to
15 Plaintiff. Dziubla and Fleming, as agents of the entity Defendants, stated
16 Defendants would need an additional \$8,000 per month for ongoing marketing of
17 the project abroad. Plaintiff has paid said additional monthly marketing fees but
18 no marketing has occurred and Plaintiff believes Dziubla has used the marketing
19 funds to fund his own personal lifestyle, which Plaintiff's investigation reveals
20 includes a million-dollar home, new luxury cars, multiple properties, and bank
21 accounts with substantial sums of money now in them. (See Second Piazza Decl.,
22 ¶5.)

1 16. Dziubla and Fleming, as agents of the entity Defendants, are holding hostage
2 \$36,000 of Plaintiff's money as well as \$375,000 in investor money that was
3 supposed to be released to the project many weeks ago. Dziubla and Fleming, as
4 agents of the entity Defendants, are attempting to starve the construction of the
5 project and extort and leverage Plaintiff into foregoing these claims against
6 Defendants. (*See* Second Piazza Decl., ¶6.)

7 17. As Defendants' misrepresentations and failure to provide the promised funding;
8 along with the asserted commingling and misappropriation of the funds provided
9 by Plaintiff to Defendants; and as Defendants' agreements with Plaintiff, USCIS,
10 and his investors began to crumble around them, Dziubla, as agent of the entity
11 Defendants, fraudulently and frivolously sent multiple Notices of Default despite
12 Plaintiff refuting every allegation contained therein (*See* First Piazza Decl.,
13 Exhibits 18-22), and fraudulently and frivolously filed a Notice of Default and
14 Intent to Sell in an attempt to leverage himself out of his predicament, thereby
15 slandering the title of Plaintiff, placing the immigration visa applications of his 13
16 foreign investors as risk, and placing the Front Sight project (with its 200,000
17 members, hundreds of employees, and contractors working on the project) in
18 peril. *See supra, generally.*

19 The Court must not allow Defendants to continue in their unlawful conduct, nor should
20 they be permitted to profit by their inappropriate behavior.

21 Defendants have breached the agreement with Plaintiff and then alleged Plaintiff is in
22 default. As demonstrated above, Plaintiff has refuted Defendants' notices of default at every
23 turn, providing thousands of pages of documentation to prove each and every one of Defendants'
24

1 claimed defaults is a reprehensible attempt to extort additional money out of Plaintiff, and
2 ultimately, to steal Plaintiff's land and business.

3 When Defendants' claims of breach were refuted, on August 31, 2018, Defendants
4 agreed to a standstill agreement regarding the alleged notices of default. (See First Piazza Decl.,
5 Exhibit 24.) On September 5, 2018, purportedly in furtherance of the standstill agreement,
6 Defendants sent a Pre-Negotiation Letter. (See First Piazza Decl., Exhibit 25.) The proposed
7 terms of the Pre-Negotiation Letter had not been discussed with Plaintiff at all. Nevertheless,
8 Plaintiff agreed to the majority of Defendants' terms and proposed a few changes. (See First
9 Piazza Decl., Exhibit 26.) Defendants did not respond to the proposed changes. Instead, on
10 September 11, 2018, in violation of the agreed-upon standstill agreement, Defendants frivolously
11 filed a Notice of Breach and Default and of Election to Sell Under Deed of Trust. Plaintiff was
12 not in default under any loan obligations to Defendants at the time the Notice of Default and
13 Election to Sell Under Deed of Trust was recorded. This Court agreed and entered an order
14 expunging the Notice of Default and Election to Sell.

15 Defendants now filed another Notice of Default and Election to Sell almost identical to
16 the one previously expunged by this Court. Defendants have alleged essentially ten events of
17 default. Plaintiff refers the Court to Exhibits 19 and 21 of the First Piazza Decl. regarding
18 Plaintiff's responses to Defendants' allegations of default. Those documents address these
19 allegations in great detail and were accompanied by hundreds of pages of documents. Plaintiff
20 has also addressed the allegations above.

21 2. Plaintiffs Will Suffer Irreparable Injury If Relief Is Not Granted

22 Plaintiff has also shown irreparable harm. Irreparable harm is an injury "for which
23 compensatory damage is an inadequate remedy." *Excellence Community*, 351 P.3d at 723
24

1 (quotations and citations omitted). In the business context, irreparable harm is established when
2 a company can show that a person committed acts “without just cause which unreasonably
3 interfere with a business or destroy its credit or profits.” *State, Dep’t of Bus. & Indus., Fin.*
4 *Institutions Div. v. Nevada Ass’n Servs., Inc.*, 294 P.3d 1223, 1228 (Nev. 2012) (quoting *Sobol v.*
5 *Capital Management*, 102 Nev. 444, 446, 726 P.2d 335, 337 (1986)).

6 Moreover, “...real property and its attributes are considered unique and loss of real
7 property rights generally results in irreparable harm” *See Dixon v. Thatcher*, 103 Nev. 414, 415,
8 742 P.2d 1029, 1029 (1987); *Thirteen S. Ltd. v. Summit Vill., Inc.*, 109 Nev. 1218, 1220, 866
9 P.2d 257, 259 (1993) (concluding that a party had demonstrated irreparable harm by showing
10 that it would lose title to the property at issue in the absence of an injunction); *Pickett v.*
11 *Comanche Constr., Inc.*, 108 Nev. 422, 426, 836 P.2d 42, 44 (1992) (holding that a party would
12 be subject to irreparable harm if the opposing party were allowed to sell certain real property).

13 Defendants are seeking to take Plaintiff’s real property and greatly harm its ongoing
14 business. Through Defendants’ continued egregious conduct and continued refusal to release
15 funds under the agreement, Defendants have committed acts “without just cause which
16 unreasonably interfere with [Plaintiff’s] business or destroy its credit or profits.” *State, Dep’t of*
17 *Bus. & Indus., Fin. Institutions Div.*, 294 P.3d at 1228. Further, they seek to foreclose on
18 Plaintiff’s real property. Plaintiff has clearly demonstrated irreparable harm.

19 **B. Security**

20 While NRCP 65(c) permits the Court to condition the issuance of an injunction on the
21 moving party providing security sufficient to pay any costs and damages that a wrongfully
22 enjoined or restrained party might sustain, in this case such a bond is not necessary. Defendants
23 will incur no loss from the temporary restraining order or preliminary injunction requested.

1 If the Court were to decide that some bond should be posted, a nominal bond of \$100.00
2 would be sufficient.

3 **C. Sanctions Should Be Awarded for Plaintiff Having to File This Motion to Expunge**
4 **Defendants' Frivolous Notice of Breach, Default and Election to Sell**

5 District courts in Nevada may sanction abusive litigation practices through their inherent
6 powers. *Young v. Johnny Ribeiro Bldg., Inc.*, 106 Nev. 88, 92, 787 P.2d 777, 779 (1990). A
7 court's inherent power to sanction is designed "to protect the dignity and decency of its
8 proceedings and to enforce its decrees, and thus it may issue contempt orders and sanction or
9 dismiss an action for litigation abuses." *Halverson v. Hardcastle*, 123 Nev. 245, 261, 163 P.3d
10 428, 440 (2007). Generally, "this court will not reverse sanctions absent a clear showing of
11 abuse of discretion." *Hamlett v. Reynolds*, 114 Nev. 863, 865, 963 P.2d 457, 458 (1998).

12 This Court advised Defendants that if they filed another frivolous Notice of Breach and
13 Intent to Sell the Court would deny it also. The latest filing was frivolous and unnecessary, and
14 was done for the sole purpose of causing Plaintiff to incur additional litigation costs. Plaintiff
15 requests attorneys' fees for all fees and costs related to having to file this motion. If the Court
16 agrees, Plaintiff will file supplemental briefing related to the request and specify the amount
17 sought.

18 **D. Plaintiff's Motion Should Be Heard on Shortened Time**

19 EDCR 2.26 states in pertinent part:

20 **Rule 2.26.Shortening time.** Ex parte motions to shorten time may not be
21 granted except upon an unsworn declaration under penalty of perjury or affidavit
22 of counsel describing the circumstances claimed to constitute good cause and
23 justify shortening of time. If a motion to shorten time is granted, it must be
24 served upon all parties promptly. An order which shortens the notice of a hearing
to less than 10 days may not be served by mail. In no event may the notice of the
hearing of a motion be shortened to less than 1 full judicial day.

1 As set forth above, there exists good cause to hear Plaintiff's Second Motion for
2 Temporary Restraining Order and Preliminary Injunction on shortened time. On January 18,
3 2019, Defendants, at the request of new Trustee Kathryn Holbert, Esq., again recorded a Notice
4 of Breach, Default and Election to Sell Under of Trust, alleging various defaults. That Notice
5 indicates that Defendants intend to proceed with attempting to sell Plaintiff's property.

6 Plaintiff's Project and Plaintiff's property, as more fully outlined in Plaintiff's Second
7 Motion for Temporary Restraining Order and Preliminary Injunction, hang in the balance due to
8 the actions of Defendants, and it is imperative that the Motion are heard on shortened time.

9 On January 28, 2019, Defendants filed several Motions to Dismiss. The hearing on those
10 motions is set for April 3, 2019. That indicates that if the hearing on Plaintiff's Second Motion
11 for Temporary Restraining Order and Preliminary Injunction was held in the ordinary course,
12 irreparable harm may be done to the Project and property.

13 CONCLUSION

14 WHEREFORE, Plaintiff seeks the following relief:

15 1. A temporary restraining order and preliminary injunction (both affirmative and
16 prohibitive) as follows:

17 a. A temporary restraining order and preliminary injunction enjoining
18 Defendants from selling the subject property as they purport they have the
19 right to do under the Notice of Breach and Default and of Election to Sell
20 Under Deed of Trust.

21 b. An Order expunging the Notice of Breach and Default and of Election to
22 Sell Under Deed of Trust recorded on January 18, 2019.
23
24

EXHIBIT 1

EXHIBIT 1

1 CASE NO. A-18-781084-B

2 DOCKET U

3 DEPT. XVI

4

5

6

DISTRICT COURT

7

CLARK COUNTY, NEVADA

8

* * * * *

9 FRONT SIGHT MANAGEMENT LLC,)

10 Plaintiff,)

11 vs.)

12 LAS VEGAS DEVELOPMENT FUND LLC,)

13 Defendant.)

14

REPORTER'S TRANSCRIPT
OF
MOTION TO DISMISS

15

16

17

BEFORE THE HONORABLE JUDGE TIMOTHY C. WILLIAMS

18

DISTRICT COURT JUDGE

19

20

DATED WEDNESDAY, DECEMBER 5, 2018

21

22

23

REPORTED BY: PEGGY ISOM, RMR, NV CCR #541

24

25

Peggy Isom, CCR 541, RMR
(702)671-4402 - CROERT48@GMAIL.COM
Pursuant to NRS 239.053, illegal to copy without payment.

11:55:58 1 the point do we really need the hearing on the 13th
2 because --

3 MR. GREER: Right.

4 MR. ALDRICH: -- if the Court interprets it
11:56:04 5 that way anyway, you would be extending a TRO to a
6 preliminary injunction for something that's already
7 happened. It's been expunged.

8 THE COURT: Right. It's been done.

9 MR. ALDRICH: Right. We are going to talk
11:56:18 10 about if they file another one, then we'd just be back.

11 THE COURT: And I'd sign it. And I think all
12 you would have to do is change the dates probably.

13 MR. ALDRICH: Yeah.

14 THE COURT: Right?

11:56:27 15 MR. ALDRICH: We all have so much fun when we
16 all get together.

17 THE COURT: Yes, we do.

18 Where do we go from here? So is it safe to
19 say we just go ahead and vacate the hearing on -- is it
11:56:38 20 the 13th?

21 MR. ALDRICH: The 13th.

22 MR. GREER: Yes, your Honor.

23 THE COURT: We'll do that. As moot?

24 MR. GREER: Moot.

11:56:45 25 Counsel? Counsel, 13th, moot?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

REPORTER'S CERTIFICATE

STATE OF NEVADA)
:SS
COUNTY OF CLARK)

I, PEGGY ISOM, CERTIFIED SHORTHAND REPORTER DO
HEREBY CERTIFY THAT I TOOK DOWN IN STENOTYPE ALL OF THE
PROCEEDINGS HAD IN THE BEFORE-ENTITLED MATTER AT THE
TIME AND PLACE INDICATED, AND THAT THEREAFTER SAID
STENOTYPE NOTES WERE TRANSCRIBED INTO TYPEWRITING AT
AND UNDER MY DIRECTION AND SUPERVISION AND THE
FOREGOING TRANSCRIPT CONSTITUTES A FULL, TRUE AND
ACCURATE RECORD TO THE BEST OF MY ABILITY OF THE
PROCEEDINGS HAD.

IN WITNESS WHEREOF, I HAVE HEREUNTO SUBSCRIBED
MY NAME IN MY OFFICE IN THE COUNTY OF CLARK, STATE OF
NEVADA.

PEGGY ISOM, RMR, CCR 541

Peggy Isom, CCR 541, RMR
(702)671-4402 - CROERT48@GMAIL.COM
Pursuant to NRS 239.053, illegal to copy without payment.

EXHIBIT 2

EXHIBIT 2

DOC #905318

Official Records Nye County NV
Deborah Beatty - Recorder
01/14/2019 09:16:46 AM
Requested By: E-DOCS SOLUTIONS L
Recorded By: tc RPTT:\$0
Recording Fee: \$35.00
Non Conformity Fee: \$
Page 1 of 1

APN(s) 045-481-05 and 045-481-06

RECORDING REQUESTED BY
and RETURN TO:

Kathryn Holbert, Esq. NV Bar #10084
FARMER CASE & FEDOR
2190 E. Pebble Rd., #205
Las Vegas, NV 89123

SUBSTITUTION OF TRUSTEE

WHEREAS, Front Sight Management, LLC is the original Trustor, Chicago Title Company was the / original Trustee and Las Vegas Development Fund, LLC was the original Beneficiary under that certain Construction Deed of Trust, Security Agreement, Assignment of Leases and Rents and Fixture Filing dated October 6, 2016 and recorded on October 13, 2016, as Document No. 860867 of official records in the Office of the Recorder of Nye County, Nevada; ("Deed of Trust").

WHEREAS, the undersigned current Beneficiary, desires to substitute a new Trustee under said Deed of Trust in place of and instead of said original Trustee thereunder in the manner in said Deed of Trust provided;

NOW THEREFORE, the undersigned hereby substitutes Kathryn Holbert, Esq., whose address is 2190 E. Pebble Rd., #205, Las Vegas, Nevada 89123, as Trustee under said Deed of Trust.

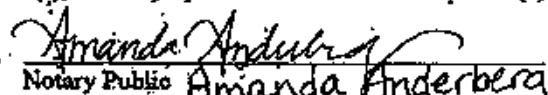
I certify under Penalty of Perjury under the laws of Nevada, California and the United States that the foregoing is true and correct.

Dated: January 4, 2019

Title: President & CEO

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document, to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF California
COUNTY OF San Diego
On Jan 4, 2019 before me, Amanda Anderberg, a Notary Public, personally appeared Robert W. Dziubla, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or entity upon behalf of which the person(s) acted, executed the instrument.


Notary Public Amanda Anderberg



APN(s) 045-481-05 and 045-481-06

RECORDING REQUESTED BY
and RETURN TO:

Kathryn Holbert, Esq. NV Bar #10084
FARMER CASE & FEDOR
2190 E. Pebble Rd., #205
Las Vegas, NV 89123

DOC #905512

Official Records Nye County NV
Deborah Beatty - Recorder
01/18/2019 10:51:43 AM
Requested By: E-DOCS SOLUTIONS L
Recorded By: MJ RPTT:\$0
Recording Fee: \$285.00
Non Conformity Fee: \$
Page 1 of 5

NOTICE OF BREACH, DEFAULT and ELECTION TO SELL UNDER DEED OF TRUST
IMPORTANT NOTICE

NOTICE IS HEREBY GIVEN that Kathryn Holbert, Esq., is the duly appointed substitute Trustee under that certain Construction Deed of Trust, Security Agreement, Assignment of Leases and Rents and Fixture Filing dated October 6, 2016 and recorded on October 13, 2016, as Document No. 860867 of official records in the Office of the Recorder of Nye County, Nevada; ("Deed of Trust"), which was executed by FRONT SIGHT MANAGEMENT, LLC, a Nevada limited liability company, Grantor, as Trustor, to secure certain obligations in favor of LAS VEGAS DEVELOPMENT FUND, LLC, a Nevada limited liability company, together with that certain First Amendment to Construction Deed of Trust, Security Agreement and Fixture Filing dated July 1, 2017 and recorded on January 12, 2018, as Document No. 886510, and any modifications/amendments thereto of the Official Records in the Office of the Recorder of Nye County, State of Nevada ("Deeds of Trust").

Such DEED OF TRUST secures an Amended and Restated Promissory Note for the sum of up to \$50,000,000.00 as well as other material obligations. A breach of the obligations which are secured by such Amended and Restated Promissory Note has occurred and FRONT SIGHT MANAGEMENT, LLC is in default under the terms of the Deeds of Trust as set forth below:

The total amount due is \$345,787.24 which is itemized as \$32,833.33 current interest; \$158,395.80 past due interest; \$138,655.62 legal/attorney fees and costs; and \$15,902.49 in late fees. Additionally, FRONT SIGHT MANAGEMENT, LLC has default regarding various material non-monetary obligations which are set forth in and secured by the Deeds of Trust, including:

- a. Improper use of loan proceeds.
- b. Failure to provide government approved plans for construction.
- c. Material delays in construction.
- d. Material changes to the costs, scope and timing of the construction.
- e. Refusal to comply regarding securing senior debt.
- f. Failure to provide monthly project costs.
- g. Failure to notify lender of the occurrence of events of default.
- h. Refusal to allow inspection of books and records.
- i. Refusal to allow site inspection by Lender and its representatives.
- j. Failure to provide EB-5 documentation.

NOTICE OF BREACH, DEFAULT and ELECTION TO SELL UNDER DEED OF TRUST
Page 1 of 2

00458

To cure the Default and Reinstate your loan, you must pay all amounts then due at the time of reinstatement, including any additional unpaid amounts that you are obligated to pay by the terms of the Note and the Deed of Trust, such as, but not limited to, advances, taxes, hazard insurance and obligations secured by prior encumbrances, plus Trustee's and/or Attorney's Fees and Costs and Expenses incurred in enforcing the obligation AND cure the above itemized performance obligations.

Pursuant to NRS 104.9604(1)(b) the sale may, at the election of the beneficiary, include personal property.

NOTICE

You may have the right to cure the defaults set forth herein and reinstate the obligations secured by the Deeds of Trust described above. NRS Section 107.080 permits certain defaults to be reinstated without requiring payment of that portion of principal and interest which would not be due had no default occurred (acceleration of principal). Where reinstatement is possible, if the default is not cured within 35 days following the recording and mailing of this Notice, the right of reinstatement shall terminate and the property thereafter may be sold.

To find out the amount you must pay and the other obligations you must fulfill, or to seek to make arrangements to stop the foreclosure, or if your property is in foreclosure for any other reason, contact LAS VEGAS DEVELOPMENT FUND, LLC, c/o Kathryn Holbert, Esq. Farmer Case & Fedor, Las Vegas, NV 89123, 702-579-3900.

That by reason thereof, the present beneficiary under such Deeds of Trust has executed and delivered to said Trustee a written Declaration of Default and Demand for Sale, and has delivered to said Trustee such Deeds of Trust and all documents evidencing obligations secured thereby and has declared and does hereby declare all sums and obligations set forth above which are secured thereby immediately due and has elected to cause the property to be sold to satisfy the obligations secured thereby.

AFFIDAVIT OF AUTHORITY IS ATTACHED HERETO

Kathryn Holbert
Kathryn Holbert, Esq. Successor Trustee

1-17-2019
Dated

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document, to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

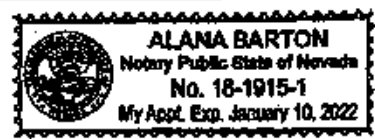
STATE OF NEVADA
COUNTY OF CLARK

On January 17, 2019 before me, Alana Barton, a Notary Public, Personally appeared KATHRYN HOLBERT, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or entity upon behalf of which the person(s) acted, executed the instrument.

Alana Barton
Notary Public Alana Barton

NOTICE OF BREACH, DEFAULT and ELECTION TO SELL UNDER DEED OF TRUST

Page 2 of 2



AFFIDAVIT OF AUTHORITY TO EXERCISE THE POWER OF SALE

NRS § 107.080(2)(c)

STATE of CALIFORNIA)
)ss.
COUNTY of SAN DIEGO)

The affiant, ROBERT W. DZIUBLA, being first duly sworn upon oath, based on my direct, personal knowledge, or pursuant to personal knowledge that I acquired by a review of the business records, which meet the standards set forth in NRS §51.135, of the beneficiary and/or the servicer of the obligation or debt secured by that certain Construction Deed of Trust, Security Agreement, Assignment of Leases and Rents and Fixture Filing dated October 6, 2016 and recorded on October 13, 2016, as Document No. 860867 of official records in the Office of the Recorder of Nye County, Nevada; ("Deed of Trust"), which was executed by FRONT SIGHT MANAGEMENT, LLC, a Nevada limited liability company, Grantor, as Trustor, to secure certain obligations in favor of LAS VEGAS DEVELOPMENT FUND, LLC, a Nevada limited liability company, together with that certain First Amendment to Construction Deed of Trust, Security Agreement and Fixture Filing dated July 1, 2017 and recorded on January 12, 2018, as Document No. 886510, and any modifications/amendments thereto of the Official Records in the Office of the Recorder of Nye County, State of Nevada ("Deeds of Trust").

I further attest, under penalty of perjury, that I am the authorized representative of the beneficiary under such Deeds of Trust, which are described in the NOTICE OF BREACH, DEFAULT and ELECTION TO SELL UNDER DEED OF TRUST to which this affidavit is attached.

I further attest, under penalty of perjury, to the following information, as required by NRS § 107.080(2)(c):

- 1. The full name and business address of the current trustee is:

Kathryn Holbert, Esq. NV Bar No. 10084
Farmer Case & Fedor
2190 E. Pebble Rd., Suite #205
Las Vegas, NV 89123
702-579-3900

- 2. The full name and business address of the current holder of the Promissory Note which is secured by the Deeds of Trust and the current beneficiary of record of the Deeds of Trust is:

Las Vegas Development Fund, LLC
916 Southwood Blvd., Suite IG
Post Office Box 3003
Incline Village, NV 89450

AFFIDAVIT OF AUTHORIZATION

Page 1 of 3

3. The full name and business address of the current servicer of the obligation or debt which is secure by the Deeds of Trust is:

NES Financial Corp.
50 W. San Fernando St., Suite 300
San Jose, CA 95113

4. The beneficiary is in actual possession of the Promissory Note which is secured by the Deeds of Trust and is entitled to enforce the debt and/or other obligations which are secured by the Deed of Trust.

5. The beneficiary and/or the servicer of the obligations and/or debt which are secured by the Deed of Trust has sent to the obligator/borrower of the obligation and/or debt which are secured by the Deed of Trust a written statement of:

a. The amount of payment required to make good the monetary deficiency in performance or payment, avoid the exercise of the power of sale and reinstate the terms and conditions of the underlying obligation or debt as existing before the deficiency and/or defaults occurred, as of the date of the statements;

b. The amount in default;

c. The principal amount of the obligation or debt secured by the Deed of Trust;

d. The amount of accrued interest and late charges,

e. A good faith estimate of all fees imposed in connection with the exercise of the power of sale; and

f. Contact information for obtaining the most current amounts due and the local or toll free number as required by NRS 107.080(2)(c)(4).

6. A local or toll free telephone number that the obligor or borrower of the obligation or debt may call to receive the most current amount due and other items required to cure the obligors defaults under the Deeds of Trust as well as recitation of the information contained in this affidavit is 702-579-3900.

7. The following information regarding the recorded instruments that conveyed the interest of the beneficiary is as follows:

Construction Deed of Trust, Security Agreement, Assignment of Leases and Rents and Fixture Filing dated October 6, 2016 and recorded on October 13, 2016, as Document No. 860867 of official records in the Office of the Recorder of Nye County, Nevada; ("Deed of Trust"), which was executed by FRONT SIGHT MANAGEMENT, LLC, a Nevada limited liability company, Grantor, as Trustor, to secure certain obligations in favor of LAS VEGAS DEVELOPMENT FUND, LLC, a

AFFIDAVIT OF AUTHORIZATION

Page 2 of 3

Nevada limited liability company, together with that certain First Amendment to Construction Deed of Trust, Security Agreement and Fixture Filing dated July 1, 2017 and recorded on January 12, 2018, as Document No. 886510, and any modifications/amendments thereto of the Official Records in the Office of the Recorder of Nye County, State of Nevada ("Deeds of Trust").

The beneficiary has and does hereby instruct the Successor Trustee to exercise the power of sale with respect to the property which is set forth as security under the Deeds of Trust.


Robert W. Dziuba, President and CEO of beneficiary
LAS VEGAS DEVELOPMENT FUND, LLC

January 4, 2019
Dated

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document, to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE of CALIFORNIA)
)ss.
COUNTY of SAN DIEGO)

On Jan 4, 2019 before me, Amanda Anderberg, a Notary Public, Personally appeared Robert W. Dziuba, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or entity upon behalf of which the person(s) acted, executed the instrument.


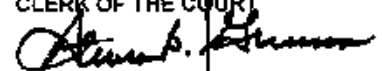

Notary Public Amanda Anderberg



EXHIBIT 3

EXHIBIT 3



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

NOTC
John P. Aldrich, Esq.
Nevada Bar No. 6877
Catherine Hernandez, Esq.
Nevada Bar No. 8410
ALDRICH LAW FIRM, LTD.
7866 West Sahara Avenue
Las Vegas, Nevada 89117
Telephone: (702) 853-5490
Facsimile: (702) 227-1975
Attorneys for Plaintiff

EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

FRONT SIGHT MANAGEMENT LLC, a
Nevada Limited Liability Company,

Plaintiff,

vs.

LAS VEGAS DEVELOPMENT FUND LLC, a
Nevada Limited Liability Company; EB5
IMPACT CAPITAL REGIONAL CENTER
LLC, a Nevada Limited Liability Company;
EB5 IMPACT ADVISORS LLC, a Nevada
Limited Liability Company; ROBERT W.
DZIUBLA, individually and as President and
CEO of LAS VEGAS DEVELOPMENT
FUND LLC and EB5 IMPACT ADVISORS
LLC; JON FLEMING, individually and as an
agent of LAS VEGAS DEVELOPMENT
FUND LLC and EB5 IMPACT ADVISORS
LLC; LINDA STANWOOD, individually and
as Senior Vice President of LAS VEGAS
DEVELOPMENT FUND LLC and EB5
IMPACT ADVISORS LLC; DOES 1-
10, inclusive; and ROE CORPORATIONS 1-
10, inclusive,

Defendants.

CASE NO.: A-18-781084-B
DEPT NO.: 16

**THREE DAY NOTICE OF INTENT
TO TAKE DEFAULT**

1 TO: LAS VEGAS DEVELOPMENT FUND LLC, Defendant:
2 TO: EB5 IMPACT CAPITAL REGIONAL CENTER LLC, Defendant:
3 TO: EB5 IMPACT ADVISORS LLC, Defendant:
4 TO: ROBERT W. DZIUBLA, Defendant:
5 TO: JON FLEMING, Defendant:
6 TO: LINDA STANWOOD, Defendant:
7 TO: KATHRYN HOLBERT, ESQ. and C. KEITH GREER, ESQ., Attorneys for Defendants:

8 YOU WILL PLEASE TAKE NOTICE that pursuant to Nevada Rules of Civil Procedure
9 12(a)(1) on file herein within three (3) days of the date of receipt of this Three Day Notice of
10 Intent to Take Default, Plaintiff FRONT SIGHT MANAGEMENT LLC will enter Default
11 against Defendants, and request the Court enter Judgment against Defendants, by default, based
12 on Defendants' failure to file a responsive pleading unless an Answer to the Second Amended
13 Complaint or other responsive pleading is filed in the above-entitled action on or before January
14 29, 2019.

15 DATED this 24th day of January, 2019.

16 ALDRICH LAW FIRM, LTD.

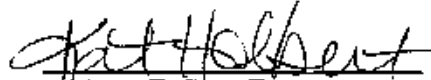
17 

18 John P. Aldrich, Esq.
19 Nevada Bar No. 6877
20 Catherine Hernandez, Esq.
21 Nevada Bar No. 8410
22 7866 West Sahara Avenue
23 Las Vegas, NV 89117
24 Tel (702) 853-5490
Fax (702) 226-1975
Attorneys for Plaintiff

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

RECEIPT OF COPY

I HEREBY CERTIFY that on the 24th day of January, 2019, I received, via hand delivery, the foregoing **THREE DAY NOTICE OF INTENT TO TAKE DEFAULT.**



Anthony T. Case, Esq.
Kathryn Holbert, Esq.
FARMER CASE & FEDOR
2190 E. Pebble Rd., Suite #205
Las Vegas, NV 89123

C. Keith Greer, Esq.
17150 Via del Campo, Suite 100
San Diego, CA 92127

Attorneys for Defendants

EXHIBIT 4

EXHIBIT 4

FRONT SIGHT MANAGEMENT, LLC
V.
LAS VEGAS DEVELOPMENT FUND LLC, ET AL.

EXPERT WITNESS REPORT OF
CATHERINE DEBONO HOLMES, ESQ.

I have been asked to serve as an expert witness for the Plaintiff in the above identified case, in connection with the Plaintiff's claims that the Defendants committed fraud, made intentional misrepresentations, breached their fiduciary duties, wrongfully converted funds of Plaintiff, and breached written contracts with Plaintiff. My qualifications as an expert witness in this matter are described in Exhibit A.

I intend to testify as follows based upon my review of the exhibits attached to the Declaration of Ignatius Piazza (the "**Declaration**") and the Memorandum of Points and Authorities (the "**Memorandum**") submitted in support of the Motion for Appointment of Receiver and Request for Order Shortening Time (the "**Motion**") of Defendant Las Vegas Development Fund LLC ("**Defendant**"):

1. The initial letter proposal ("**Proposal**") dated September 13, 2012 of Kenworth Capital, Inc. addressed to Front Sight Enterprises, LLC (Exhibit 2 of the Declaration) states in paragraph 2 that Kenworth's "partners" are Emphyrean West (Dave Keller and Jay Carter), the owners of Liberty West Regional Center. The letter agreement further represents in paragraph 3 that Emphyrean West has been authorized by the Vietnamese government to act as the exclusive EB-5 firm in Vietnam and has been exempted from the \$5,000 limit on international money transfers. I know from my personal experience working with dozens of EB-5 offerings over the past approximately 10 years that Emphyrean West was not and is not the exclusive EB-5 firm in Vietnam. I believe that this was a misrepresentation intended to give the impression that Kenworth, through its "partners" Emphyrean West had special access to EB-5 investors in Vietnam.
2. The Proposal further describes the estimated direct out-of-pocket cost for an EB-5 offering as typically \$300,000 (paid upfront). I know from my personal experience in the EB-5 industry that this is a substantially inflated estimate of direct-out-of-pocket costs, and that it is not customary for an amount this large to be paid up front. I believe that this estimate was a misrepresentation of the true costs of an EB-5 offering intended to mislead the Plaintiff into paying substantially more upfront than it would pay to a legitimate EB-5 funding provider.
3. The engagement letter agreement dated February 14, 2013 ("**Engagement Agreement**") between EB5 Impact Advisors LLC ("**EB5IA**") and Plaintiff (Exhibit 5 of the Declaration) indicates in the Scope of Assignment; Services on page 1 that EB5IA would engage Baker & McKenzie to establish the EB5 Impact Capital Regional Center. The establishment of a regional center is a highly unusual provision in an engagement letter to provide EB-5 financing to a third party, and the cost of establishment of the regional center is, in my experience, always paid for by the owner of the regional center, not the party seeking financing. These provisions indicate

that EB5IA misled the Plaintiff into believing that this was a normal part of an EB-5 financing, which it was not.

4. The process for filing a regional center application with the U.S. Citizenship and Immigration Services (“USCIS”) and a request for exemplar approval of an actual EB-5 project in 2013 was approximately 12 to 24 months from the date of filing. **This is a very important disadvantage to an EB-5 financing, because no EB-5 investor is allowed to file a visa petition until the regional center is approved.** For that reason, it is standard in the EB-5 industry to either wait until the regional center is approved before even beginning to market an EB-5 project, or enter into an agreement with an existing regional center to avoid the waiting time. (As shown in Exhibit 6 and Exhibit 8 of the Declaration, EB5IA filed its regional center application on April 14, 2014 and received USCIS approval on July 27, 2015, meaning that the Plaintiff’s project could not be marketed for 15 months after the regional center application was filed, thus demonstrating the substantial disadvantage of this method of raising EB-5 financing.) EB5IA could have entered into an agreement with one of several regional centers that were already approved to sponsor projects in the Las Vegas area in 2013 (including Emphyrean West, which it represented to be a “partner”), but for unexplained reasons, EB5IA chose not to enter into an agreement with an existing regional center, and instead to file a regional center application that would require it to delay marketing for over a year.

5. The Engagement Agreement (Exhibit 5 of the Declaration) contains an estimated timeline showing that \$75 million in EB-5 financing would be raised between 4 months from the earliest expected approval of the regional center and 6 months from the latest expected approval of the regional center. Those estimates wildly misrepresented the normal time necessary to raise \$75 million in EB-5 financing. In 2013, only the very largest and most experienced regional centers could raise that much in EB-5 financing, based upon their track record of prior successful EB-5 financings. Most new regional centers either failed to raise any financing at all or would start with very small offerings (\$5 million to \$10 million) and gradually raise larger EB-5 financings as they became known in the EB-5 financing market. Even for well-known regional center operators, it is not unusual for an EB-5 financing, even one sponsored by an experienced EB-5 sponsor, to take a year or more before it gains acceptance in the EB-5 financing market.

6. In an email exchange between Robert Dziubla (“Dziubla”), the owner of EB5IA and Mike Meacher (“Meacher”), an officer of Plaintiff, between June 26 and June 29, 2015 (Exhibit 7 of the Declaration) Dziubla states that

“We anticipate that once we start the roadshows for the Front Sight project, which will have already been pre-approved by USCIS as part of the I-924 process – a very big advantage- we should have the first tranche of \$25m into escrow and ready for disbursement for the project (at the 75% level, i.e., \$18.75m, as discussed) within 4 – 5 months.”

This assurance that it would take only 4 to 5 months to raise \$25,000,000 in EB-5 financing again substantially overstates the ability of a new regional center to raise EB-5 financing.

7. In an email exchange between Dziubla and Meacher dated August 11, 2015 (Exhibit 9 of the Declaration), which was one month after the regional center approval by USCIS, Dziubla stated that:

“Front Sight is the ONLY EB5 project we are handling and of course receives our full and diligent attention. Our goal is most assuredly to have the minimum raise of \$25m (50 investors) subscribed by Thanksgiving.”

This is yet another indication that Dziubla misled Plaintiff into believing that it was possible to raise that amount of EB-5 financing within 4 months.

8. In an email exchange between Dziubla and Meacher between December 8 and December 16, 2015 (Exhibit 11 of the Declaration), Dziubla attempted to explain the reason why EB5IA had not raised \$25,000,000, while continuing to represent that he would reach that goal soon. He states in his email dated December 16, 2015 that the following is the reason for the delay in raising EB-5 funds:

“As we mentioned in an earlier email, the uncertainty surrounding what Congress was going to do has really sidelined the investors. We have been in contact with our agents in China over night, and they are ecstatic with this news and assure us that with this logjam now cleared, the investors will be signing up. We were, of course, dismayed by the slow sales progress, but now expect the sales pace to increase substantially.”

Contrary to the explanation given by Dziubla for the slow sales of investments in Plaintiff's project, in fact, because of the uncertainty regarding whether the EB-5 program would be renewed, the sales of EB-5 investments reached their highest levels ever in 2015, particularly in China where over 85% of all EB-5 investments were sold at that time. To illustrate this fact, attached as Exhibit B is a report issued by USCIS that states the number of I-526 petitions filed by EB-5 investors each year between 2008 and 2017. As indicated in this chart, the highest number of I-526 petitions filed with USCIS was in 2015, when 14,373 petitions were filed. No other year before or after 2015 had a higher number of petitions filed. If Dziubla had any knowledge of the EB-5 markets, he would have known that 2015 was a year of very high market demand, and his statements that the market had slowed in 2015 were deliberately misleading.

9. In the same email dated December 16, 2015, Dziubla states that:

“With regard to the timeline, we may still be able to achieve the minimum raise of \$25m by January 31 and thereupon begin disbursing the construction loan proceeds to you, but a more realistic date might be February 8.”

This shows that Dziubla was continuing to misrepresent to Plaintiff that there was a possibility that at least \$25,000,000 would be raised by February 8, 2016.

10. In an email exchange between Dziubla and Meacher between January 26 and January 31, 2016 (Exhibit 13 of the Declaration), Dziubla provided a detailed update of the actions he was taking to raise EB-5 financing. One of the methods he states that he was using was to sign up four new agents, including one who is native Chinese living in Washington state and one who is native Chinese living in the Chicago area. He does not state that either of these individuals are

registered securities broker-dealers, and appears to be unaware that it is illegal to hire U.S. persons to solicit EB-5 investors, even outside the U.S., unless they are registered securities broker-dealers. At the time of these emails, the Securities and Exchange Commission ("SEC") had already publicly announced that it was illegal to pay finder's fees to persons for selling EB-5 investments, and the SEC subsequently brought at least 20 enforcement actions against unregistered persons for receiving illegal payments and against two regional centers for paying illegal payments to unregistered persons. It is unknown whether Dziubla paid illegal finder's fees to unregistered persons.

11. In an email exchange between Dziubla and Meacher on March 1, 2016 (Exhibit 16 of the Declaration), 18 months after marketing first began for the EB-5 offering, Meacher states that as of that date, there was only one Indian investor with funds in escrow, two Indian investors who are raising funds to deposit to escrow and one Swiss investor who has decided to invest but has not put any money in escrow. This email lists 28 prior emails from Dziubla to Meacher from August 2015 to February 2016 in which Dziubla had repeatedly indicated that EB5IA was on track to raise the minimum \$25,000,000. All of these assurances appear to have been misrepresentations designed to persuade Plaintiff to continue funding amounts that were purportedly intended to be used for marketing the offering.

12. The Memorandum includes statements regarding the requirements of the EB-5 Program that are partially accurate, and partially inaccurate, indicating a possible lack of understanding of the requirements of the EB-5 Program. Specifically, page 8, line 14 through page 9, line 1 of the Memorandum contains these statements that are partially accurate and partially inaccurate:

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

The first sentence quoted states that loan proceeds and disbursements must be applied toward construction of the Project and the creation of jobs. However, it is not accurate to say that loan proceeds must be applied toward construction of the Project. In fact, USCIS policy requires that loan proceeds must be applied toward the Project in general, but loan proceeds can be used for any expense related to the Project, except for interest payments made on the EB-5 loan itself and expenses of the EB-5 lender in connection with the EB-5 offering and the loan. The second sentence also incorrectly states that the construction schedule and construction budget must be substantially complied with in order to meet the immigrant investors' obligations under the EB-5 program. In fact, USCIS policy requires only that the EB-5 investors' capital be used to fund the Project described in the business plan filed with USCIS. There is no requirement that the construction schedule or construction budget be complied with in order for the EB-5 investors to obtain their visa. I have personally been engaged to provide legal assistance on a number of EB-5 projects that had delays in construction and changed in size and scope, which did not result in any EB-5 investors losing their immigration benefits under the EB-5 program. It is quite

common that the construction schedule or construction budget undergo changes in any construction project, including those funded with EB-5 capital. Just as with this Project, delays or changes in construction plans occur when the EB-5 lender fails to raise sufficient capital to complete the project originally contemplated, or within the time contemplated. As long as the EB-5 investors can show that their capital was invested in the project generally described in the business plan filed with USCIS, whether there were changes in the size of the project, project budget or construction timeline, the EB-5 investors will receive their visas so long as the number of jobs created as a result of the work on the project are sufficient for each investor in the project. USCIS does not deny visas to EB-5 investors in projects where there has been a change in construction schedule or construction budget.

13. The Memorandum contains this statement on page 14, lines 1 – 9:

“Front Sight has made multiple changes to the plans and schedule without obtaining written consent from LVD Fund or the USCIS, including, *inter alia*, reducing the size of the "Patriot Pavilion" from 85,000 square feet, as represented to USCIS, to approximately 25,000 30,000 square feet, while also modifying plans to eliminate foundations. (See Exhibit 8, July 2018 Notice of Multiple Defaults). This appears to be a material change from the plans approved by the USCIS, which could jeopardize the EB-5 investors' benefits under the EB-5 Program. Without appointment of a receiver, Lender will not be able to get sufficient information to analyze the extent to which Borrower has deviated from the USCIS approved plans, and certainly will not have any ability to compel Borrower to follow the plans.”

Contrary to the statement made in this paragraph, the reduction in size of any portion of the Project would not jeopardize the EB-5 investors' benefits under the EB-5 Program. As stated above, as long as the general Project description is the same as what is actually constructed with EB-5 proceeds, and the actual expenditures on the Project result in the creation of the number of jobs necessary to support each EB-5 investor in the project, all of the EB-5 investors will receive their immigration benefits. In this case, there are only 13 EB-5 investors in the Project, meaning that it is only necessary to demonstrate that 130 jobs have been created from work on the Project. These are far fewer than the total number of jobs that would have been required if the entire \$75 million in EB-5 proceeds had been raised. Therefore, the reduction in size of the Project will not jeopardize any EB-5 investors in this Project.

14. The Memorandum contains these statements on page 19, lines 4 through 15:

“Due to the nature of the EB-5 Investor Program, Front Sight's material breaches of the CLA have created a substantial risk of irreparable harm to the EB-5 Investors who were the source of the funds for the CLA. Because the EB-5 Program is closely regulated and monitored by the USCIS, a failure to comply with material conditions of the program and material departures from the approved project plans submitted to the USCIS could seriously jeopardize the immigration status of the EB-5 Investors through no fault of their own.

If the Project is not built substantially in accordance with the plan and schedule that was submitted to, and approved by, USCIS as part of the EB-5

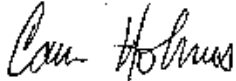
approval process, the EB-5 investors who have funded the construction loan to Borrower may not receive their permanent green cards and will be subject to deportation from the United States — all after having uprooted themselves and their families from their home countries to move to the United States, the land of their dreams.”

This statement repeats the same inaccurate information — that the Project must be built in accordance with its original plan and schedule as submitted to USCIS — as the earlier paragraphs noted in paragraphs 12 and 13 of this Report. In addition, it implies that there is an immediate risk of deportation, which is also inaccurate due to the delays in processing applications that currently exist within the EB-5 Program. The timeline for an EB-5 investor from the date he or she files an I-526 Petition for approval of an EB-5 investment through the date the investor files an I-829 Petition for removal of conditions is approximately 5 years. This means that EB-5 Investors would not need to present evidence of job creation to USCIS for 5 years from the date each EB-5 investor first filed an I-526 Petition. Until that time, the EB-5 Investor is not required to file any information with USCIS. For EB-5 investors from mainland China, the timeline from date of filing an I-526 Petition until the date of filing an I-829 Petition has been estimated at 14 years by Charles Oppenheim, the Chief, Immigrant Visa Control & Reporting, U.S. Department of State (“DOS”) at a recent EB-5 Conference held in April 2018. (See this report of Mr. Oppenheim’s presentation: <https://wolfsdorf.com/eb-5-update-new-state-department-data-released/>.) This means that no EB-5 investors in this Project will be required to submit information on this Project to USCIS for at least the next three years or more for investors from China.

15. The Memorandum repeats the inaccurate statements regarding the risk to EB-5 investors commencing on page 21, line 25 and ending on page 23, line 24, by stating that “timely” job creation is a requirement under the EB-5 Program, and that material modifications in the Project could result in EB-5 investors not receiving their permanent green cards and being deported. As described in detail in paragraphs 12 through 14 of this Report, there are no requirements for “timely” completion of a Project, or that the Project be completed in accordance with its original plan. I personally have been engaged for many EB-5 projects where there have been substantial delays in construction, as well as significant changes in the size and scope of a Project, none of which have resulted in USCIS denying any EB-5 investor their permanent green or deporting any EB-5 investor. I also have personal knowledge of a number of EB-5 Projects, even Projects which have failed and never been completed, in which the EB-5 investors have received their visas.

This Expert Witness Report is based solely upon my review of the exhibits contained in the Declaration of Ignatius Piazza and the Memorandum prepared by Defendant. I expect there will be more relevant evidence as additional discovery is completed.

IN WITNESS WHEREOF, I prepared and signed this Expert Witness Report on February 21, 2019.



CATHERINE DEBONO HOLMES

EXHIBIT A

Catherine DeBono Holmes is chair of JMBM's Investment Capital Law Group and a partner in the firm's Corporate Department, specializing in securities law. She has been an attorney at JMBM for over 35 years and has worked in many aspects of the EB-5 industry over the past 10 years. She has represented more than 200 real estate developers in obtaining financing through the EB-5 immigrant investor visa program for the development of hotels, multi-family and mixed-use developments through the U.S. She has also represented dozens of EB-5 regional centers in New York, California, Oregon, Nevada, and Illinois to raise EB-5 financing for development of hotels, assisted living facilities, multi-family residential buildings and mixed use projects.

Author:

Investment Law Blog at: <https://www.investmentlawblog.com/>. (With many articles concerning EB-5 legal and business issues)

Education:

J.D., Boalt Hall School of Law, University of California, Berkeley, 1977

B.A., University of California, Berkeley, 1974, Phi Beta Kappa

EB-5 Industry Associations and Awards:

Invest in the USA ("IIUSA") Trade Organization of EB-5 Regional Centers and Service Providers

Current Member, Editorial Committee

Past Member, Best Practices Committee

EB-5 Securities Roundtable – Organization of most active securities attorneys in EB-5 financing (including many voted as Top 15 EB-5 Securities Attorneys in the U.S. in EB-5 Investors Magazine)

2016, 2017 and 2018 – Top 15 EB-5 Securities Attorneys EB-5 Investors Magazine



**U.S. Citizenship
and Immigration
Services**

Number of Form I-526, Immigrant Petition by Alien
Fiscal Year, Quarter

Period	Petitions by Case Status		
	Petitions Received ¹	Approved ²	Denied ³
Fiscal Year - Total			
2008	1,258	642	120
2009	1,031	1,265	208
2010	1,953	1,369	165
2011	3,805	1,571	372
2012	6,041	3,677	957
2013	6,346	3,699	943
2014	10,950	5,115	1,266
2015	14,373	8,761	1,056
2016	14,147	7,632	1,735
2017	12,165	11,321	922
Fiscal Year 2018 by Quarter			
Q1. October - December	2,862	2,746	298
Q2. January - March	1,607	3,303	312
Q3. April - June	617	4,012	412
Q4. July - September			
Total	5,086	10,061	1,022

D Data withheld to protect applicants' privacy.

- Represents zero.

¹ The number of new petitions received and entered into a case-tracking system during the reporting period.

² The number of petitions approved during the reporting period.

³ The number of petitions that were denied, terminated, or withdrawn during the reporting period.

⁴ The number of petitions awaiting a decision as of the end of the reporting period.

NOTE: 1) Some petitions approved or denied may have been received in previous reporting periods.

2) The report reflects the most up-to-date estimate available at the time the report is generated.

Source: Department of Homeland Security, U.S. Citizenship and Immigration Services, *Performance Reporting Tool*,

EXHIBIT 5

EXHIBIT 5

Traci Bixenmann

From: John Aldrich <jaldrich@johnaldrichlawfirm.com>
Sent: Tuesday, November 13, 2018 2:55 PM
To: 'Kathryn Holbert'
Cc: 'Keith Greer'; traci@johnaldrichlawfirm.com
Subject: RE: Front Sight v. LV Dev. Fund et al 11-14-18 SITE INSPECTION

Ms. Holbert,

Thank you for letting us know. I will advise my client accordingly.

John P. Aldrich, Esq.
ALDRICH LAW FIRM, LTD.
7866 West Sahara Avenue
Las Vegas, Nevada 89117
jaldrich@johnaldrichlawfirm.com
Tel (702) 853-5490
Fax (702) 227-1975
Visit us online at <http://www.johnaldrichlawfirm.com>

WE HAVE MOVED! Please note our new address above.

The information contained in this transmission may contain privileged and confidential information. It is intended only for the use of the person(s) named above. If you are not the intended recipient, you are hereby notified that any review, dissemination, distribution or duplication of this communication is strictly prohibited. If you are not the intended recipient, please contact the sender immediately and destroy all copies of the original message.

If you are a client or work for a client of Aldrich Law Firm, or have consulted with the law firm for potential representation, this e-mail is protected by the attorney-client privilege and the work product doctrine. This e-mail is not intended for release to opposing parties, opposing counsel or any other third person or entity. Caution should be used when forwarding this e-mail to others as the privilege may be lost. Copies of this e-mail should not be kept in your regular files. If you print a copy of this e-mail, place it in a separate file labeled "Attorney-Client Privilege." DO NOT PRODUCE A COPY OF THIS E-MAIL IN DISCOVERY.

From: Kathryn Holbert [mailto:kholbert@farmercase.com]
Sent: Tuesday, November 13, 2018 2:12 PM
To: John Aldrich
Cc: 'Keith Greer'
Subject: Front Sight v. LV Dev. Fund et al 11-14-18 SITE INSPECTION

Mr. Aldrich-

Thank you for taking the time to discuss this matter with me this morning and taking the time to further explain your client's position. I have discussed the matter with my client. He has already cancelled his flight and will not be inspecting the site tomorrow.

Our client would like to inspect the property in early December, 2018. We will get back to you regarding dates and additional details.

Thank you,

Kathryn Holbert, Esq
FARMER CASE & FEDOR
2190 E. Pebble Rd., Suite #205
Las Vegas, NV 89123
702-579-3900

EXHIBIT 6

EXHIBIT 6

**EB5 Impact Capital
Regional Center, LLC**

EB5 Impact Capital Regional Center, LLC
216 SOUTHWOOD BOULEVARD, SUITE 40
P.O. BOX 3803
INCLINE VILLAGE, NEVADA 89450

Telephone: (702) 895-0028
Facsimile: (702) 332-1795

21 April 2017

TO: Our valued EB5 investors in the Front Sight Resort & Vacation Club (the "Project")

PROJECT UPDATE
04 2017

Dear Investors:

ES Capital Partners – senior construction loan: US Capital Partners has provided a commitment letter to Front Sight (FS) that is acceptable to FS but which requires that origination points and interest rate payments start immediately upon signature. FS does not need the senior construction loan until this autumn after the 25 new ranges have been completed and the architectural plans have been finalized, so FS will sign and begin drawing down on the senior loan at that point.

EB-5 funds – status: We have disbursed a total of \$2,625,000 in EB-5 funds to the Front Sight project since the closing on October 7, 2016. USCIS is now processing I-526s dating from July 28, 2016, so we anticipate that several of our investors will receive their I-526 approval very soon.

Construction Status: FS continues construction on the 25 new training ranges, which cover 60 acres of land and will double the number of ranges. Here is a Dropbox link showing recent pictures of the ongoing construction: <https://www.dropbox.com/sh/p0jflvaqpd3ybd/AAAcKoxBvCNhIMl-SVZDkZn7e?dl=0>. These pictures show that FS has completed concrete block walls on 16 of the 25 new ranges. They have also completed between-range simulators on each of these 16 ranges. All the shade structure steel has been delivered and is waiting to be installed when the final grading, gravel and railroad ties have been installed.

FS will complete all the block walls, then complete all the grading, then spread all the gravel. On 10 of the ranges FS will be installing concrete walking paths so the students are standing on level and firm concrete while shooting. The final segment will be to put up the railroad ties, targets and sand facing over the backdrop dirt berms into which the bullets are trapped.

With these new ranges, FS will be able to train 2,000 students at any one time.

FS is funding the balance of the \$6m construction cost for the ranges out of its cashflow from operations.

Please let us know if you have any questions.

Very truly yours,

Las Vegas Development Fund, LLC


Robert W. Dziubla
President & CEO

EXHIBIT 7

EXHIBIT 7

EB5 Impact Capital Regional Center, LLC

EB5 Impact Capital Regional Center, LLC
916 SOUTHWOOD BOULEVARD, SUITE 1G
P.O. BOX 3003
INCLINE VILLAGE, NEVADA 89450

Telephone: (844) 888-8028
Facsimile: (844) 832-1795

19 July 2017

TO: Our valued EB5 investors in the Front Sight Resort & Vacation Club (the "Project")

PROJECT UPDATE **Q2 2017**

Dear Investors:

US Capital Partners – senior construction loan: As explained in the prior Project Update for Q1 2017, Front Sight ("FS") does not need the senior construction loan until this autumn after the 25 new ranges have been completed and the architectural plans have been finalized, so FS will sign and begin drawing down on the senior loan at that point.

EB-5 funds – status: We have disbursed a total of \$2,625,000 in EB5 funds to the Front Sight project since the closing on October 7, 2016. USCIS is now processing I-526s dating from October 18, 2015, so we anticipate that several of our investors will receive their I-526 approval very soon.

Construction Status: FS has completed about 95% of the construction on the 25 new training ranges. Please use this link to see an aerial video of the construction:
<https://www.dropbox.com/s/nixg55gxdcp3jw/Drone%20Phase%203%20.mov?dl=0>

The platted site for the new ranges is 60 acres, and FS has used 55 acres – that is a very large area. To help put that into perspective, if you look carefully on the aerial video, some of the construction equipment is visible, and it looks like toys compared to the site. There is an enormous D-9 Caterpillar in the video that looks dwarfed by the construction site. Look also for some of the regular-size pickup trucks - they look like little toy Lego blocks.

FS has moved over 245,000 cubic yards of dirt to create this flat area, and then distributed almost 40,000 tons of Type 2 gravel on this site as preparation for the ranges and the roads. This is almost 2,000 huge semi-trailer truckloads of gravel. FS then installed more than 115,000 CMU concrete blocks for all the walls, reinforced them with rebar and filled them with hundreds of tons of concrete to create ballistic barriers.

All block walls are complete except for one 200-yard rifle range. All the railroad ties and steel has been delivered and is ready to complete the ranges.

FS has spent \$3,443,501 on this construction to-date.

Very truly yours,

Las Vegas Development Fund, LLC

RW Dziubla

Robert W. Dziubla
President & CEO

EXHIBIT 8

EXHIBIT 8

EB5 Impact Capital Regional Center, LLC

EB5 Impact Capital Regional Center, LLC
515 SOUTHWOOD BOULEVARD, SUITE 102
P.O. BOX 3000
INCLINE VILLAGE, NEVADA 89459

Telephone: (844) 389-8028
Facsimile: (895) 332-1776

24 October 2017

TO: Our valued EB5 investors in the Front Sight Resort & Vacation Club (the "Project")

PROJECT UPDATE **Q3 2017**

Dear Investors:

We are pleased to provide you with Project Update for Q3 2017 (July – September 2017). If you have any questions, please let us know.

Senior Construction Lender- Front Sight has negotiated a \$36 million construction line of credit with the construction companies contracted to build the resort. This will be a 5-year term credit facility that accrues interest at 7% for the difference between any work done by the construction companies and the payments made by Front Sight to those companies. The terms of this agreement and note are completed and this line of credit will be signed by the end of October. There will be no Deed of Trust encumbering the property associated with this credit facility.

Additionally, Front Sight has agreed to take a reduced loan from U.S. Capital Partners in San Francisco of \$21 million. This construction loan will be secured by a first deed of trust on the Front Sight property. Since there is no immediate need for this capital, Front Sight will conclude this agreement later in the fourth quarter.

Construction Status- Front Sight has had delivered all the steel for the shade structures on the 25 new ranges. All railroad ties that support the sand for the shooting berms have been delivered and installed. Hundreds of tons of sand have been installed against the berms on these ranges. The steel shade structures are being erected and many of these new ranges are being used for classes this Fall. The new 800-yard rifle range is in use every week. Final grading for the roads on the Phase 3 ranges was completed and thousands of tons of Type 2 gravel has been spread and compacted as a base for future asphalt paving for these roads.

The preliminary grading plans have been submitted to Nye County for grading the 14 acre site that will house the 1300 person classroom, offices, the armory, the proshop and the retail sales building as well as a grading plan for the parking lot for 1000 cars and RVs. This site plan included all water drainage plans and utilities distribution for this site. Grading for this new project will begin as soon as Nye County Building and Safety approves these plans. This is anticipated by the end of October. This site is clearly shown in the attached flyover animation at 45 to 60 seconds into this video.

EB5 Investors in Front Sight Project
24 October 2017
Page 2

EB5 Impact Capital Regional Center, LLC

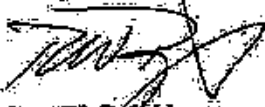
Here is that updated link.

https://www.dropbox.com/s/pvnhvll307e4bk73D%20Frontsight%20HD%20w_msc%202017a.m?dl=0

FS has spent \$3,443,501 on this construction to-date.

Very truly yours,

EB5 Impact Capital Regional Center LLC /
Las Vegas Development Fund, LLC



Robert W. Darabla
President & CEO

EXHIBIT 9

EXHIBIT 9

**EB5 Impact Capital
Regional Center, LLC**

EB5 Impact Capital Regional Center, LLC
926 SOUTHWOOD BOULEVARD, SUITE 1G
P.O. BOX 3083
INCLINE VILLAGE, NEVADA 89450
Telephone: (844) 689-8028
Facsimile: (956) 332-1795

10 April 2018

TO: Our valued EB5 investors in the Front Sight Resort & Vacation Club (the "Project")

PROJECT UPDATE
Q1 2018

Dear Investors:

We are pleased to provide you with this Project Update for Q1 2018 (January – March 2018). If you have any questions, please let us know.

Front Sight ("FS") continues to build out the infrastructure on the firearms training side and has been seeing record numbers of students at the facility. In March, FS had over 1,250 people for a group of classes on just one day. Front Sight had over 8200 student days during March alone.

The grading of the 240,000 cubic yards for the Patriot Pavilion site will be complete in mid-April. This 44-acre site includes a pad for the 2,000 person classroom, offices, armory, retail store, and ammunition bunker. Front Sight also completed a new road connecting the main road to the newly completed Phase 3 shooting ranges. All 25 of these new ranges are in full use. Front Sight now has 50 total ranges which have a capacity of up to 2,000 people per day.

The permits were secured to begin a major concrete drainage channel on the east side of the Patriot Pavilion location to control water from getting into the newly graded 1200 car parking lot. Construction of this project will begin in mid-April.

Rough grading plans for the resort side of Front Sight are almost completed by the civil engineers and are on schedule to be submitted to Nye County, Nevada in the next two weeks. Upon approval, rough grading for the entire resort side will begin.

Here is the link to the same video from the last update, showing some of the construction described above:

EB5 Investors in Front Sight Project
10 March 2018
Page 2

EB5 Impact Capital Regional Center, LLC

https://www.dropbox.com/s/zpebnnyucz836d/Phase%203%20Completion%20%26%20Patriot%20Pavillion%20Construction%20Progress%2001_24_18.mp4?dl=0

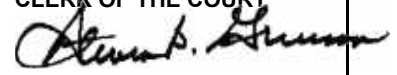
Very truly yours,

Las Vegas Development Fund, LLC

RW Dziubla

Robert W. Dziubla
President & CEO

00489



1 MRCVR
2 C. Keith Greer, ESQ.
3 Admitted *pro hac vice*
4 keith.greer@greerlaw.biz
5 **GREER AND ASSOCIATES, A PC**
6 17150 Via Del Campo, Suite 100
7 San Diego, CA 92127
8 Telephone: (858) 613-6677
9 Facsimile: (858) 613-6680

6 ANTHONY T. CASE, ESQ.
7 Nevada Bar No. 6589
8 tcase@farmercase.com
9 KATHRYN HOLBERT, ESQ.
10 Nevada Bar No. 10084
11 kholbert@farmercase.com

9 **FARMER CASE & FEDOR**
10 2190 E. Pebble Rd., Suite #205
11 Las Vegas, NV 89123
12 Telephone: (702) 579-3900
13 Facsimile: (702) 739-3001

12 Attorneys for Defendants
13 LAS VEGAS DEVELOPMENT FUND LLC, EB5
14 IMPACT CAPITAL REGIONAL CENTER LLC,
15 EB5 IMPACT ADVISORS LLC, ROBERT W. DZIUBLA,
16 JON FLEMING and LINDA STANWOOD

15 **EIGHTH JUDICIAL DISTRICT COURT**
16 **CLARK COUNTY, NEVADA**

17 FRONT SIGHT MANAGEMENT LLC, a) CASE NO.: A-18-781084-B
18 Nevada Limited Liability Company,) DEPT NO.: 16
19 Plaintiff,)
20 vs.) **DEFENDANT LAS VEGAS**
21 LAS VEGAS DEVELOPMENT FUND LLC,) **DEVELOPMENT FUND, LLC'S**
22 et al.,) **OPPOSITION TO PLAINTIFF'S SECOND**
23) **MOTION FOR TEMPORARY**
24) **RESTRAINING ORDER AND**
25) **PRELIMINARY INJUNCTION**
26)
27) Hearing Date: March 21, 2019
28) Time: 9:30 a.m.

1 Defendant Las Vegas Development Fund, LLC, by and through its attorneys Keith Greer,
2 Esq. and Catherine Holbert, Esq., hereby files this Opposition to Plaintiff's Second Motion for
3 Temporary Restraining Order and Preliminary Injunction. This Motion is based on the pleadings
4 and papers on file, the Memorandum of Points and Authorities attached hereto, the Declarations
5 of Deborah Lowry, Terry Arnett, Sean Flynn, Robert Dziubla, filed herewith, and the Declaration
6 of Robert Dziubla in Support of Las Vegas Development Fund LLC's Motion for Appointment
7 of a Receiver (filed 2/6/19), together with any further evidence or argument presented to the
8 Court at the hearing of this matter.

9 Dated: March 18, 2019

FARMER CASE & FEDOR
2190 E. Pebble Rd., Suite #205
Las Vegas, NV 89123
Telephone: (702) 579-3900
Facsimile: (702) 739-3001

12 /s/ Kathryn Holbert
13 Kathryn Holbert, Esq.
Attorney for Defendants

14 LAS VEGAS DEVELOPMENT FUND LLC, a
15 Nevada Limited Liability Company; EB5 IMPACT
16 CAPITAL REGIONAL CENTER, LLC, a Nevada
17 Limited Liability Company; EB5 IMPACT
18 ADVISORS LLC, a Nevada Limited Liability
19 Company; ROBERT W. DZIUBLA, an individual;
20 JON FLEMING; an individual; and LINDA
21 STANWOOD, an individual.

28

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 **I. INTRODUCTION**

3 On January 18, 2019, Defendant Las Vegas Development Fund, LLC (“LVD Fund” or
4 “Lender”) recorded a Notice of Default against Front Sight Management, LLC (“Front Sight” or
5 “Borrower”), based on Borrower’s breach of multiple material provisions of the Construction
6 Loan Agreement (the “CLA”)¹, including: (1) improper use of loan proceeds, including the
7 apparent misappropriation of more than \$18 million; (2) failure to provide government approved
8 Plans for construction; (3) material delays in construction, in violation of the USCIS approved
9 construction schedule; (4) failure to report material changes in project costs; (5) failure to comply
10 with senior debt financing requirements; (6) failure to provide monthly evidence of project costs;
11 (7) failure to notify Lender of events of default; (8) refusal to allow Lender to inspect books and
12 records; (9) refusal to allow site inspections by Lender’s representatives; (10) failure to provide
13 information necessary for EB-5² reporting as required by the U.S. Citizenship and Immigration
14 Service (“USCIS”); (10) failure to pay default interest; and (11) failure to pay Lender’s legal fees
15 relating to enforcing Borrower to comply with the terms of the CLA. (See Dziubla Decl., Ex. 5,
16 Notice of Default). Moreover, Borrower’s continued failure to proceed with construction,
17 refusing to grant Lender’s representatives access to the property and concealing its books and
18 records, raise serious questions regarding Front Sight’s continued solvency (which is a required
19 loan covenant) and thus its ability to complete the Project.

20 The CLA was made to fund construction of the Front Sight Resort & Vacation Club (“FS

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

25 ² The EB-5 Immigrant Investor Program, which is administered by the United States
26 Citizenship and Immigration Services (“USCIS”), provides certain immigrant investors, who can
27 demonstrate that their investments are creating jobs in this country, with a potential avenue to lawful
28 permanent residency in the United States. The program sets aside EB-5 visas for participants who
invest in commercial enterprises approved by USCIS, frequently administered by entities called
“regional centers.” (8 U.S.C.A. § 1153(b)(5)(B); *Securities and Exchange Commission v. Hui Feng*
(C.D. Cal., Aug. 10, 2017, No. 15-CV-09420) 2017 WL 6551107, at 1).

1 Resort”) and an expansion of the facilities and infrastructure of the Front Sight Firearms Training
2 Institute (the "Training Facilities") located on a 550-acre site in Pahrump, Nevada (the “Project”).
3 All of the loan funds came from foreign citizens participating in the Federal Immigrant Investor
4 Program, known as “EB-5.” Material departures from the U.S. Citizenship and Immigration
5 Service (“USCIS”) approved plans for the Project, including delays in construction, and
6 diversion of funds from the Project to general corporate or personal uses, are all significant
7 breaches of the CLA and also potentially jeopardize the immigration status of the EB-5
8 Investors.³ The CLA, as well as the USCIS approved business plan and Confidential Offering
9 Memorandum that comply with both EB-5 legislation and U.S. securities laws and regulations,
10 specifically require that loan proceeds and disbursements be applied toward construction of the
11 Project and the creation of jobs.

12 The CLA also includes a contractually agreed upon construction schedule and
13 construction budget that were specifically approved by the USCIS and must be substantially
14 complied with in order to meet the immigrant investors’ obligations under the EB-5 Program.
15 Accordingly, Section 6.3 of the CLA (Dziubla Decl., Exhibit 3) and Section 7.2(d) of the Deed of
16 Trust (Dziubla Decl., Exhibit 1) specifically authorize Lender to take over and complete
17 construction of the Project in the event of certain defaults which place timely completion of the
18 project in jeopardy.

19 Based Front Sight’s breach of these contractual provisions in the CLA and Deed of Trust,
20

21 ³According to the US Citizenship and Immigration Services, the Immigrant Investor Program,
22 also known as “EB-5,” was created to stimulate the U.S. economy through job creation and capital
23 investment from immigrant investors by creating a new commercial enterprise or investing in a
24 troubled business. In this case, the immigrant investors are attempting to gain lawful permanent
25 residence for themselves and their families by participating in a Regional Center Pilot Program,
26 which requires them to make a capital investment of \$500,000, since this region is deemed to be a
27 Targeted Employment Area (“TEA”), i.e., “a rural area or an area that has experienced high
28 unemployment of at least 150 percent of the national average.” The new commercial enterprise must
create or preserve 10 full-time jobs for qualifying U.S. workers *within two years* (or under certain
circumstances, within a reasonable time after the two year period) of the immigrant investor’s
admission to the United States as a Conditional Permanent Resident (CPR).”
https://www.uscis.gov/archive/blog/2010/11/what-is-eb-5-program_30

1 which constitute conditions of default, and its Principal, Ignatius Piazza unlawfully siphoning
2 CLA loan proceeds for general corporate and personal benefit, LVD Fund's duty to its EB5
3 immigrant investors require that it foreclose on the property and take charge of the development
4 project. If LVD Fund didn't take such action, the EB-5 investors would not only be at risk for
5 losing their investments, but would also be at risk of losing their chance for citizenship through
6 the EB-5 Immigrant Investor Program and possibly being deported.

7 **II. STATEMENT OF FACTS**

8 **A. EB-5 FOREIGN INVESTOR FUNDING**

9 The Construction Loan Agreement dated October 6, 2016 (the "CLA") (as amended)⁴ is
10 the operative agreement for purposes of determining Front Sight's obligations as the "Borrower,"
11 and the remedies available to LVD Fund as the "Lender."⁵ The source of the funds for the CLA
12 is a group of immigrant investors, each of whom was required to invest a minimum of \$500,000
13 and, through the EB-5 Immigrant Investor Program, are anticipated to receive permanent
14 foreign resident status within the United States *assuming compliance with the EB-5 program*
15 *requirements and creation of 10 US jobs per investor.*

16 **B. DEFINITION OF EVENT OF DEFAULT**

17 Pursuant to the terms of §6.1 of the CLA, each of the following, without limitation,
18 constitutes an Event of Default:

19 "(a) Borrower shall default in any payment of principal **or interest** . . .

20
21 _____
22 ⁴The Construction Loan Agreement is attached as Dziubla Decl., Exhibit 3 to the Declaration
23 of Robert Dziubla. The First Amendment to the Construction Loan Agreement is attached to the
24 Dziubla Declaration as Dziubla Decl., Exhibit 4. The Second Amendment to the Construction Loan
25 Agreement is attached to the Dziubla Declaration as Dziubla Decl., Exhibit 10.

26 ⁵ The "Project" is described as construction of the Front Sight Resort & Vacation Club
27 ("FSRVC") and an expansion of the facilities and infrastructure of the Front Sight Firearms Training
28 Institute ("FSFTI") (the "Facilities") located in a 550 acre site in Pahrump, Nevada. The Facilities
will include 102 timeshare residential units, up to 150 luxury timeshare RV pads, an 85,000 square
foot restaurant, retail, classroom and offices building (to be known as the Patriot Pavilion) and
related infrastructure and amenities, all of which will be located at One Front Sight Road, Pahrump,
Nevada 89041.

1 (c) Borrower shall default in the performance or observance of any
2 agreement, covenant or condition required to be performed or
3 observed by Borrower under the terms of this Agreement, or any
4 other Loan Document, other than a default described elsewhere in
5 this Section . . .

6 (j) A default occurs in the performance of Borrower's obligations in
7 any of Section 5.6, 5.7, 5.8, 5.10, 5.13, 5.16, 5.18, 5.19, 5.22, 5.23
8 or 5.24, hereof;

9 (m) Any failure by Borrower to timely deliver the EB-5
10 information, which failure continues more than 5 days following
11 notice of such failure from Lender.”

12 As set forth below, Borrower is in default under each of these provisions.

13 **C. REMEDIES IN EVENT OF DEFAULT**

14 In the event of default, Lender can, *inter alia*: suspend the obligation to make further
15 advances of funds (CLA §6.2(b)); *foreclose on the Deed of Trust (CLA §6.2(e))*; and *“take over*
16 *and complete such construction in accordance with the Plans, with such changes therein as*
17 *Lender may, in its discretion, deem appropriate, all at the risk, cost and expense of Borrower.”*
18 (CLA §6.3).

19 As set forth below, Lender had the right to record the Notice of Default with the Nye
20 County Recorder’s Office and commence the foreclosure process in light of Borrower’s multiple
21 events of default, and take over the project to ensure that construction is completed in a manner
22 consistent with the terms of the CLA and Deed of Trust.

23 **D. BORROWER’S BREACHES AND DEFAULT UNDER THE CLA**

24 **Breach Number 1: Improper Use of Loan Proceeds - CLA § 1.7(e)**

25 Section 1.7(e) of the CLA provides that “Borrower shall use the proceeds of the Loan
26 solely for the purpose of funding directly, or advancing to Affiliates to pay, the costs of the
27 Project, in accordance with the terms and conditions of this Agreement, as set forth in the Budget
28

1 and the Project documents submitted to, and approved by, USCIS.” However, in its October 30,
2 2018 report to LVD Fund regarding EB-5 compliance, (Dziubla Decl., Exhibit 19), Front Sight
3 revealed that although it has spent all of the \$6,375,000 in loan proceeds since the initial
4 disbursement in October 2016, less than \$2.7 million of the proceeds were actually spent on
5 construction of the EB-5 project. (Dziubla Decl., ¶ 19). Thus, more than \$3.675 million of EB-5
6 loan proceeds have been diverted to fund matters that are not related to completion of the
7 approved EB-5 plan, such as payment of Front Sight’s general overhead expenses, thereby
8 severely prejudicing the EB-5 investors. (Id.)

9 This is significant to the EB5 investors because they do not obtain citizenship unless they
10 generate 10 new jobs through investment of their capital. As discussed in the Declaration of
11 economist Sean Flynn, Ph.D., filed herewith, i.e., the economist who prepared the economic
12 impact report (“Report”) that was submitted to the USCIS for this project, based on the type of
13 project being built here, there is one job created for every \$58,896 invested in construction costs.
14 (Flynn Decl., ¶5). There are no new jobs allocated to paying-off Front Sight’s preexisting debts.
15 (Id.).

16 That means that in order to create 10 jobs, \$588,960 must be spent on construction. Since
17 the EB5 investors only invest \$500,000 each, *all of their investment* plus an additional \$88,960
18 from the builder or another financing source must be committed to construction of the project for
19 each EB5 investor. Here, Front Sight has applied less than half the EB5 investors’ money toward
20 construction of the project. Accordingly, LVD Fund, who is duty bound to the EB5 investors, is
21 compelled to step in and resolve the problem.

22 It should also be noted that during the past two years, while Front Sight has been using
23 EB-5 loan proceeds to pay its general overhead operating costs, pre-existing debt service, and
24 multi-million shareholder distributions to Ignatius Piazza, Piazza meretriciously asserts that the
25 project has been languishing due to an alleged lack of funds. To wit, Front Sight’s principal,
26 Ignatius Piazza, pulled out \$10,968,803 in 2016, and \$7,505,895 in 2017 (in addition to his
27

1 \$250,000 annual salary).⁶ Assuming that his withdrawals for 2018 are comparable, he will have
2 diverted out of Front Sight, for his personal benefit, enough capital to have completed the Front
3 Sight Resort Project well within the time constraints approved by the USCIS for the EB-5
4 Project. By diverting profits generated by Front Sight’s operations to himself, and using EB-5
5 investor funds to pay Front Sight’s operating expenses and pre-existing loans, Ignatius Piazza is
6 misappropriating loan proceeds and violated terms of the CLA that **forbid related party**
7 **distributions without approval of the Lender.** (See Dziubla Decl., Exhibit 3, CLA §5.8).

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

9 Section 3.2 (b)(i) of the CLA requires that prior to the Commencement Date⁷ Front Sight
10 provide LVD Fund with “Plans, in the form previously submitted to Lender, as finally approved
11 for construction by the Project Architect and the applicable Governmental Authority.” (Dziubla
12 Decl., Ex. 3, pg. 20, §3.2(b)(ii)). This is to include “a schedule listing all Contractors, and
13 primary contracts relating to the Project having a contracts sum in excess of \$250,000 for any
14 such Contractor, and construction contracts, subcontracts and schedules relating to the Project.
15 (*Id.* CLA §3.2(b)(ii)). In a letter dated August 28, 2018, Robert Dziubla, on behalf of LVD Fund,
16 gave notice to Front Sight that it was in default for failure to provide construction plans and the
17 related lists of contractors, licenses, agreements and permits relating to the construction as
18 required under §§3.2(b)(i) and (ii) of the CLA. (Dziubla Decl., ¶15 and Ex.12, pg. 2, “Updated
19 Plans and Construction Schedule”).

20 Front Sight remains in default under these provisions of the CLA. (Dziubla Decl. ¶14 and
21

22 ⁶ As confirmed in Front Sight’s tax returns, Ignatius Piazza pulled \$10,968,803 out of Front
23 Sight in 2016 (\$4,903,525 as income to him and his two Dynasty Trusts and \$6,065,278 in “loans”
24 from Front Sight). (Dziubla Decl., Ex. 6). Then in 2017, he pulled another \$7,505,895 out for
25 himself and his trusts in 2017. This is in addition to his \$250,000 annual salary (Dziubla Decl., Ex.
26 7).

27 ⁷ The “Commencement Date” for the Project is defined in the First Amendment to Loan
28 Agreement effective July 1, 2017 as “October 6, 2016.” (Dziubla Decl., Ex. 2).

1 ¶16; Dziubla Supp Decl. ¶5). This is a material breach of the CLA, and is generally considered
2 to be a “material performance default because the lender is unable to monitor what is being
3 constructed. (Lowry Decl., ¶6.a.). Accordingly, it was appropriate for Lender to record the
4 Notice of Default for this material breach..

5 **Breach Number 3: Failure to Timely Complete Construction - CLA § 5.1**

6 Pursuant to Section 5.1 of the CLA, Front Sight was required to complete construction by
7 the “Completion Date” which is defined as “the date that is no later than thirty-six (36) months
8 from the Commencement Date.” (Dziubla Decl. Ex. 1, CLA pg. 3). Pursuant to the First
9 Amendment to the Loan Agreement, the “Commencement Date” is defined as “October 4, 2016.”
10 (Dziubla Decl. Ex. 2, §1). Therefore, construction of the project must be completed on or before
11 October 4, 2019.

12 As set forth in the Declaration of construction expert Terry Arnett, filed herewith, based
13 on where the Project appears to be at this time, it will take approximately 8 to 9 months to get the
14 construction plans completed and submitted to Nye Count, 3 to 4 months to get approval of the
15 plans and 18 to 24 months to build project. Thus, even assuming Front Sight starts today, the
16 project is 29 to 37 months away from completion. This puts completion of the project being
17 somewhere between August 2021 and April 2022, well past the October 4, 2019 deadline.⁸

18 This is a material event of Default, and is particularly prejudicial to the EB-5 investors
19 who risk losing their EB-5 benefits if the project is not completed in accordance with the terms
20 of the CLA. Immediate action is essential to make sure that the construction timeline is met.
21 Moreover, as noted in the declaration of construction financing expert Deborah Lowry, filed
22 herewith: “In the construction industry, a substantial delay in building the project would
23 generally be considered a material default. . .” (Lowery Decl., 5:11-16). Moreover, “If the

24
25 ⁸ Front Sight argues that because Ms. Debono Holmes states in her unverified, unsworn,
26 written statement that changes in the construction schedule are not always fatal to EB5 investors’
27 quest for citizenship, not completing the Project by the contractually agreed to date is not an event
28 of default. This is simply nonsense, since the events of default are determined by the terms of the
contract that was negotiated and agreed to by the parties, not by what Ms. Holmes of the USCIS do
or say. Interestingly, Ms. Holmes never discusses legal implications of the CLA.

1 project is not built, generally the value of the collateral for the loan is negatively impacted.”
2 (Lowery Decl., 3:23-25). Therefore, a failure to complete the project on time risks both the EB5
3 investors’ access to citizenship and return of their invested capital. Accordingly, recording the
4 Notice of Default is warranted.

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

6 Section 5.2 of the CLA states in pertinent part:

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

19 Front Sight has made multiple changes to the plans and schedule without obtaining
20 written consent from LVD Fund or the USCIS, including, *inter alia*, reducing the size of the
21 “Patriot Pavilion” from 85,000 square feet, as represented to USCIS, to approximately 25,000 -
22 30,000 square feet, while also modifying plans to eliminate foundations. (See Dziubla Decl.,
23 Exhibit 8, July 30, 2018 Notice of Multiple Defaults).

24 This appears to be a material change from the plans as defined in the CLA, which could
25 jeopardize the EB-5 investors’ rights and benefits under the EB-5 Program. As noted by
26 construction lending expert Deborah Lowry, “ a borrowers failure to obtain the lender’s approval
27 for material changes to costs, scope and timing is generally considered to be a material
28

1 performance default in the construction lending industry. (Lowry Decl., ¶6.d.) In light of
2 Borrower’s refusal to work with Lender and provide any information at all regarding the Project,
3 Lender’s only alternative was to record the Notice of Default and be prepared to proceed with
4 foreclosure if Borrower continues to refuse to cooperate with Lender.

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

6 Front Sight was required to obtain Senior Debt from a traditional construction lender,
7 originally by March 31, 2016 (Dziubla Decl. Ex.1, CLA, pg. 11 “Senior Debt” defined), then was
8 given an extension to December 31, 2017 (Dziubla Decl. Ex. 2, CLA 1st Amend., ¶4), and then
9 was given an extension to June 30, 2018 (Dziubla Decl. Ex. 3, CLA 2nd Amend., ¶1). To date,
10 Front Sight has not secured a Senior Debt that meets the requirements of the CLA. (Dziubla Ex.
11 11, NOD). While Front Sight was only required to use its best efforts to obtain the Senior Debt,
12 because Front Sight failed to obtain the Senior Debt, LVD Fund has the right, pursuant to
13 Section 5.27 of the CLA, to impose provisions “similar to those customarily found in
14 construction loans made by institutional lenders.” Front Sight is in breach of this provision of the
15 CLA because it has refused to allow LVD Fund to impose such provisions. (Dziubla Decl.,
16 Exhibit 9, at pages 5 and 6).

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

18 “From and after the date of the first Advance of the Loan, Borrower shall deliver to
19 Lender on a monthly basis evidence of the Project costs funded during the preceding month.”
20 (CLA § 3.2(a)). Front Sight has not delivered the required Monthly Evidence of Project Costs.
21 (Dziubla Decl. ¶16, Dezuible Supp. Decl. ¶5). The failure to provide monthly project costs is not
22 only a breach of §3.2(a) of the CLA, such a failure is also “a powerful indicator that the
23 project may not be being built.” (Lowry Decl., ¶6.b.).

24 Because Front Sight is *not providing any monthly cost reports*, Lender can only assume
25 that there are no costs being incurred. Again, Lender has the right to file the Notice Default under
26 the terms of the CLA, and the threat of foreclosure is the only tool remaining that Lender has to
27 compel Borrower to comply with the terms of the CLA and provide Lender with sufficient

1 information to adequately monitor construction progress, confirm that loan proceeds are being
2 used properly and ensure compliance with the contractually agreed to construction timeline.

3 **Breach Number 7: Failure to Notify of Event of Default - CLA § 5.10**

4 Section 5.10(d) of the CLA requires the Borrower to notify Lender of the occurrence of
5 an Event of Default. “Within five (5) Business Days after the occurrence of any event
6 actually known to Borrower which constitutes a Default or an Event of Default, notice of
7 such occurrence, together with a detailed statement of the steps being taken to cure such
8 event, and the estimated date, if known, on which such action will be taken.” Front Sight has
9 failed to notify LVD Fund of either (1) the existence of certain events of default or (2) a detailed
10 statement of the steps being taken to cure the event of default. Front Sight has not cured this
11 default. (Dziubla Decl. ¶16, Dziubla Supp. Decl., ¶5).

12 **Breach Number 8: Refusal to Allow Inspection of Records - CLA § 5.4**

13 Section 5.4 of the CLA provides:

14 **Keeping of Records.** Borrower shall set up and maintain accurate
15 and complete books, accounts and records pertaining to the Project.
16 Borrower will permit representatives of Lender to have reasonable
17 access to and to inspect and copy such books, records and
18 contracts of Borrower and to inspect the Project and to discuss
19 Borrower's affairs, finances and accounts with any of its principal
20 officers, all at such times and as often as may reasonably be
21 requested by Lender.

22 LVD Fund made a demand to Inspect the Books and Records by Notice of Default and Letter
23 dated July 30, 2018. (See Dziubla Decl., Exhibit 8, pg. 4 (“Pursuant to articles 3.3 and 5.4 of the
24 CLA, we hereby serve you notice that we and our representatives will inspect the Project and
25 your books and records on Monday, August 27 commencing promptly at 9 a.m. We of course
26 know where the project is. Please immediately inform us the location of your corporate books
27 and records.”))

28 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.** [Emphasis in
the original]. In the Notice; you have included a "Notice of Inspections" which

1 alleges that "[P]ursuant to articles 3.3 and 5.4 of the CLA, we hereby serve you
2 notice that we and our representatives will inspect the Project and your books and
3 records on Monday, August 27." As set forth above and below herein, we contend
4 that Borrower is not in breach or default of any of its obligations under the Loan
5 Agreement; thus, **Borrower will not authorize any inspections whatsoever by
6 Lender or its representatives of the Project or its books and records on the
7 proposed date of August 27 [2018], or at any other time."**

8 (Dziubla Decl., Exhibit 9, pg. 13, latter emphasis added).

9 However, the right of inspection with advance notice pursuant to §3.3 and §5.4 of the
10 CLA is **not** contingent on whether there is an Event of Default. Thus, Borrower's refusal to
11 permit the inspection constitutes a separate Event of Default acknowledged in writing by Front
12 Sight.

13 As noted in the Declaration of Deborah Lowry, this type of behavior by a borrower is
14 typically considered a material default, and a warning sign that should cause any construction
15 lender to be concerned. (Lowry Decl., ¶6.f. and ¶8). The right of inspection is generally
16 considered important for the construction lender to determine, *inter alia*, appropriate use of loan
17 proceeds, construction progress, and possible impairment of security, which is necessary for the
18 lender to protect its interests. Failure to cooperate will justify proceeding to secure the Lender's
19 interests. *See, Elizabeth Retail Properties, LLC v. KeyBank Nat'l Assoc.*, No. 3:13-CV-02045-
20 SB, 2017 WL 1407662, at *12 (D. Or. Mar. 10, 2017), report and recommendation adopted, No.
21 3:13-CV-2045-SB, 2017 WL 1430611 (D. Or. Apr. 19, 2017), appeal dismissed, No. 17-35425,
22 2017 WL 6262200 (9th Cir. June 22, 2017)("Plaintiffs were far from diligent in providing
23 financial information to KeyBank"); *Capitol Radiology, LLC v. Sandy Spring Bank*, 439 F. App'x
24 222, 226–27 (4th Cir. 2011)(Lender properly declared borrower to be in default and accelerate
25 principal balance where borrower ignored lenders requests for information.")

26 Here, Front Sight, as the borrower, affirmatively refused LVD Fund's requested exercise
27 of the contractual right of inspection of relevant books and records, and thus further breached the

1 terms of the CLA and created yet another Event of Default. Accordingly, it was within LVD
2 Fund’s right under the CLA to file the Notice of Default with Nye County, and if necessary,
3 foreclose in the property.

4 **Breach Number 9: Refusal to Allow Inspection of the Project - CLA § 3.3**

5 Section 3.3 of the CLA provides:

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

16 As discussed in the section above, on July 30, 2018, LVD Fund made a demand to Front
17 Sight for permission to inspect the Project, with more than 72 hours notice, even though Events
18 of Default negated the need for advanced notice. (See Dziubla Decl., Exhibit 8, July 30, 2018
19 Notice of Default, at pg. 4: “Pursuant to articles 3.3 and 5.4 of the CLA, we hereby serve you
20 notice that we and our representatives will inspect the Project and your books and records on
21 Monday, August 27 . . .”) In response, Front Sight explicitly refused to comply with this
22 obligation under the CLA, stating: **“Borrower will not authorize any inspections whatsoever
23 by Lender or its representatives of the Project or its books and records on the proposed
24 date of August 27 [2018], or at any other time.”** (Dziubla Decl., Exhibit 9, August 20, 2018
25 letter from Ignatius Piazza, pg.13).

26 This is a material breach of the CLA justifying court intervention because the right of
27 inspection is necessary for Lender to determine, *inter alia*, appropriate use of loan proceeds,
28 construction progress, and possible impairment of security, which is necessary for Lender to
protect its interests. *See, Elizabeth Retail Properties, LLC, supra*, 2017 WL 107662, at *12;
Capitol Radiology, LLC, supra, 439 F. App’x at 226–27 (4th Cir. 2011). Not only is the refusal
to allow inspection a specified material breach of the CLA, but “[i]n the construction lending
industry, a borrower’s refusal to allow site inspections by a lender and its representatives would

1 generally be considered a material performance default.” (Lowry Decl. ¶6.e.). Accordingly, Front
2 Sight’s refusal to allow inspection of the property is another independent material breach which
3 supports LVD Fund’s right to record the Notice of Default and proceed with foreclosure, if
4 necessary.

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

6 In order to verify continuing eligibility for participation in the EB-5 Investor Program
7 with the USCIS, Front Sight was required to submit certain EB-5 information on a continuing
8 basis as a condition of the loan. “Borrower shall submit to Lender the EB-5 Information. Failure
9 of Borrower to use the proceeds of the Loan in accordance with the terms and conditions of
10 this Agreement or to provide the EB-5 Information shall be a default pursuant to Section
11 6.1.” (Dziubla Decl., Exhibit 3, §6.1). This obligation was further specified in the First
12 Amendment to the CLA requiring “Borrower [to] provide Lender with copies of major contracts,
13 bank statements, receipts, invoices and cancelled checks or credit card statements or other proof
14 of payment reasonably acceptable to Lender that document that Borrower has invested in the
15 Project at least the amount of money as has been disbursed by Lender to Borrower on or before
16 the First Amendment Effective Date.” (See July 1, 2017 First Amendment to Loan Agreement,
17 Dziubla Decl., Exhibit 4).

18 Front Sight has failed to provide the required EB-5 Information. (Dziubla Decl. ¶ 16;
19 Dziubla Supp. Decl. ¶5). This is another independent material breach of the CLA supporting
20 Lender’s right to record the Notice of Default and proceed with foreclosure, if necessary.

21 **Breach Number 11: Non Payment of Default Interest - CLA § 1.2**

22 Section 1.2 of the CLA provides that if there is an Event of Default, interest shall be
23 charged at the “Default Rate.” The “Default Rate” is defined as “the lesser of five percent (5%)
24 per annum in excess of the Loan Rate or the maximum lawful rate of interest which may be
25 charged.” (Dziubla Decl., Exhibit 3, CLA, pg. 4, “Default Rate Defined.”) Because Front Sight
26 is in default under multiple provisions of the CLA as detailed above, the Default Rate provisions
27 of Section 1.2 were properly triggered. Plaintiff Front Sight has failed and refused to pay the

1 Default Rate despite the demand therefor. (See Dziubla Decl., Exhibit 9, August 20, 2018 Piazza
2 letter, at pg. 17, ¶14; see also, Dziubla Decl., Exhibit 5, Notice of Default). Plaintiff Front Sight
3 is therefore, despite protestations to the contrary, in monetary default as well as non-monetary
4 default under the terms of the CLA.

5 **Breach Number 12: Non Payment of Legal Fees - CLA § 8.2**

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

17 **III. ARGUMENT**

18 **A. The Legal Standards for A Preliminary Injunction**

19 “A party seeking the issuance of a preliminary injunction bears the burden of establishing:
20 (1) a likelihood of success on the merits; and (2) a reasonable probability that the nonmoving
21 party's conduct, if allowed to continue, will cause irreparable harm for which compensatory
22 damage is an inadequate remedy.” *S.O.C., Inc. v. Mirage Casino-Hotel*, 117 Nev. 403, 408
23 (2001); *Int'l Union of Painters & Allied Trades Dist. Council 15 Local 159 v. Great Wash Park,*
24 *LLC*, No. 67453, 2016 WL 4499940, at *3 (Nev. App. Aug. 18, 2016)(reversing an order
25 granting preliminary injunction for failure to show likelihood of success.)

26 “The party seeking injunctive relief carries the burden of proving that there exists a
27 reasonable probability of irreparable harm for which compensatory damages would not provide

1 adequate remedy.” *Swarovski Retail Ventures Ltd. v. JGB Vegas Retail Lessee, LLC*, 416 P.3d
2 208 (Nev. 2018). Critically, Front Sight does NOT ever provide any declaration stating that
3 Front Sight is NOT in default under the CLA.⁹ “[E]ven if damages are an inadequate remedy, the
4 [moving party] must also show a reasonable likelihood of prevailing on the merits before a
5 preliminary injunction can issue. “ *Dixon v. Thatcher*, 103 Nev. 414, 416 (1987) (cited by
6 Plaintiff).

7 Moreover, injunctive relief is generally not appropriate where the allegedly irreparable
8 harm was actually contemplated by the contracting parties. See *Swarovski*, 416 P.3d 208 (Nev.
9 2018) (“Injunction to prevent early termination of shopping mall lease was properly denied
10 where ‘[d]amages attributable to such injury can ‘fairly and reasonably be considered as arising
11 naturally’” from a commercial lease, ‘or were reasonably contemplated by both parties at the
12 time they made the contract.’”)

13 Although loss of real property may under certain circumstances constitute irreparable
14 injury, it is the natural consequence of default on a mortgage. Nor, contrary to the implication of
15 Plaintiff’s moving papers, does there need to be a “monetary default” to trigger a proper
16 foreclosure. The court explicitly rejected such a limitation in *Lakeside Inn, Inc. v. Bank of the*
17 *West.*, No. 3:14-CV-00473-RCJ, 2015 WL 1331383, at *4 (D. Nev. Mar. 25, 2015). In that case,
18 the borrower argued that “foreclosure of real property is necessarily improper under Nevada law
19 where there is no monetary default, so long as the debt is fully secured.” *Id.* The Court flatly
20 rejected that argument.

21 _____
22 ⁹The Piazza Declaration in Support of the Temporary Restraining Order is simply a document
23 authentication Declaration and also includes an omnibus statement that Piazza has read the
24 Statement of Facts contained in the Motion. He never specifically declares that Front Sight is NOT
25 in default under the terms of the CLA and Deed of Trust. The closest that Front Sight comes to
26 actually statin that there is no default is in the Statement of Facts at page 13 where they state that no
27 “monetary defaults” exist but only that Front Sight “refutes” the “administrative defaults”.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

The only reason the mortgagee in *Manke* was required to prove that the alleged waste impaired the value of the security is because the covenant at issue was explicitly so limited. *See id.* at 682 (“and further that she will not make any alteration or alterations to said buildings or improvements *which would in any way reduce or impair or tend to reduce or impair the value of the property transferred hereunder.*” (emphasis added; internal quotation marks omitted)).

Indeed, in *Manke* [the case relied on by borrower], the impairment of the value of the collateral was not only a condition required for foreclosure based on the non-monetary default (affirmative or ameliorative waste), **it was incorporated directly into the very definition of the event of default.** That is, impairment of the value of the security was an element of the event of default itself. **The events of default at issue in the present case are not similarly limited or defined** under the TLA, and the Casino points to no authority indicating that such a limitation on events of default is inherent in the law. It has long been the case that in addition to adopting standard covenants by reference, **parties to deeds of trust in Nevada may generally enter into whatever covenants they wish.** *See Nev.Rev.Stat. § 107.050 (1927).*

Lakeside Inn, Inc. v. Bank of the West, No. 3:14-CV-00473-RCJ, 2015 WL 1331383, at *4 (D. Nev. Mar. 25, 2015)(emphasis added). Other courts have ruled similarly. *See Elizabeth Retail Properties, LLC v. KeyBank Nat'l Assoc.*, No. 3:13-CV-02045-SB, 2017 WL 1407662, at *7 (D. Or. Mar. 10, 2017), report and recommendation adopted, No. 3:13-CV-2045-SB, 2017 WL 1430611 (D. Or. Apr. 19, 2017), appeal dismissed, No. 17-35425, 2017 WL 6262200 (9th Cir. June 22, 2017) (“borrower either ‘ignored’ or ‘neglected to respond promptly’ to requests for financial information, failed to notify the bank about the judgment, allowed a writ of garnishment to issue, failed to report that a guarantor was subject to a lien, and allowed its principal to use accounts securing the loans for other expenses. *Id.* at 226-27. On these facts, the Fourth Circuit held that, as a matter of law, the bank had a good faith belief that it was insecure and, therefore, was entitled to take steps to protect its interests.”); *Nat'l Bank of Arizona v. Thruston*, 218 Ariz. 112, 120–21 (Ct. App. 2008), as amended (Jan. 23, 2008)(“although [borrower] cured the monetary default, an existing default, the non-monetary default, remained uncured. Consequently, the Bank was entitled to pursue foreclosure of the deed of trust securing the note.”); *Geneva Ltd. Partners v. Kemp*, 779 F. Supp. 1237, 1240 (N.D. Cal. 1990)(“The deed of trust and HUD's own regulations both provide the Secretary with the authority to foreclose based

1 on a non-monetary
2 default.”)

3 The *Lakeside Inn* court noted that the agreement between the parties, “[t]he copy of the
4 SA attached to the Verified Complaint lists twelve events of default, (*see* TLA § 5, at 11–13,
5 ECF No. 1–3, at 17), only two of which concern nonpayment. Section 5.3 makes it an event of
6 default for the Casino to breach any covenant that does not call for the payment of money if such
7 breach continues for 30 days. . . If the Casino has breached these provisions, there has been an
8 event of default under the TLA, and foreclosure is permitted under the SA.” *Id.*

9 As set forth more fully in the Statement of Facts, the Construction Loan herein, which
10 was negotiated at arms length between sophisticated parties, specifically defined Events of
11 Default in §6.1 to include both monetary and non monetary defaults. The negotiated Rights and
12 Remedies upon the occurrence of an Event of Default are set forth in §6.2 and explicitly include
13 the right to foreclose the Deed of Trust. LVD Fund has summarized the numerous Events of
14 Default under the terms of the CLA in the Statement of Facts, which is supported by the Dziubla
15 Declarations.

16 In addition to the circumstances naturally arising from the construction loan agreement,
17 Plaintiff’s Motion for injunctive relief must fail because Plaintiff has not satisfied its burden of
18 showing irreparable harm, since compensatory damages are not defined as irreparable harm and
19 Defendant has not filed an Notice of Intent Sell. *See Coronet Homes, Inc. v. Mylan*, 84 Nev. 435,
20 437, 442 P.2d 901, 902 (1968) (The moving party bears the burden of providing testimony,
21 exhibits, or documentary evidence to support its request for an injunction.); *Excellence Cmty.*
22 *Mgmt. v. Gilmore*, 131 Nev. Adv. Op. 38, 351 P.3d 720, 724 (2015) (“Irreparable harm is an
23 injury ‘for which compensatory damage is an inadequate remedy.’”) Currently, the only effect of
24 the Notice of Default is to start the waiting period that is necessary to file the Notice of Sale. This
25 does not constitute irreparable harm because the property is not part of a pending sale. As such,
26 there is simply no irreparable harm.

1 Further, Plaintiff has not provided any authority that support to support his position
2 because all the cases it sites are easily distinguishable. Plaintiff cites *State, Dept. of Bus. &*
3 *Indus., Fin. Institutions Div. v. Nevada Ass'n Services, Inc.*, 128 Nev. 362, 370, 294 P.3d 1223,
4 1228 (2012), to support the argument that “irreparable harm is established when
5 a company can show that a person committed acts ‘without just cause which unreasonably
6 interfere with a business or destroy its credit or profits.’” (Pltf Mtn 26:1-3) However, this case is
7 easily distinguishable and misleadingly quoted. In *State, Dept. of Bus. & Indus., Fin.*
8 *Institutions Div. v. Nevada Ass'n Services, Inc.*, the Court held that removal of a professional
9 license *may*, not shall, cause irreparable harm buy leaving the licensee with no means to profit
10 and damaging his reputation publically. That is simply not the case here, nor has Plaintiff
11 satisfied its burden by providing *any evidence* that it has lost a license or suffered irreparably
12 damage to its reputation. To the contrary, Plaintiff appears to be utilizing this litigation as a
13 source of public promotion to solicit more public sales.

14 Plaintiff cites only one case where the court actually enjoined a foreclosure sale. *Dixon v.*
15 *Thatcher*, 103 Nev. 414, 415 (1987) (Memo at p. 17, 24). Plaintiff cites the *Dixon* case for the
16 unremarkable proposition that under proper circumstances real property is generally considered
17 unique and loss of real property may be irreparable harm. If this were sufficient to obtain an
18 injunction to prevent foreclosure there could never be a foreclosure. Foreclosure is, in fact, the
19 natural and anticipated consequence of a default on a mortgage obligation. Accordingly,
20 Plaintiff’s motion must be denied.

21 **B. Plaintiff cannot Demonstrate A Likelihood Of Success Regarding Plaintiff’s**
22 **Defaults Under The Construction Loan Agreement to Justify an Injunction**
23 **to Stay Foreclosure**

24 As set forth above, Plaintiff has committed multiple material breaches of the CLA, and
25 therefore LVD Fund, as the lender, has the right to declare a default and record the Notice of
26 Default with the County recorder. Plaintiff sets forth a long twisted series of allegations
27 regarding the inability to raise the amount of funds desired by Plaintiff. In all of Plaintiff’s

1 disjointed factual recitations, however, Plaintiff barely references the actual negotiated
2 contractual agreements between the parties and certainly never discusses the actual terms
3 contained in those negotiated written agreements.

4 For purposes of the request to enjoin the foreclosure sale, the only facts that matter are the
5 terms of the CLA and whether Plaintiff is in default under those terms. Because Plaintiff did not
6 include the construction loan documents as part of its Motion for TRO/Preliminary Injunction, or
7 anywhere else in Plaintiff's pleadings, Defendant LVD Fund has provided them as attachments to
8 the Dziubla Declaration. The terms of the CLA are discussed more fully in the Statement of
9 Facts section of this Memorandum.

10 First, it must be remembered that the CLA is a detailed legal document setting forth the
11 rights and obligations of the parties negotiated at arms length by sophisticated businessmen. The
12 Construction Loan Agreement explicitly establishes the nature of the relationship. "The
13 relationship between Borrower and Lender created hereby and by the other Loan Documents
14 shall be that of a borrower and a lender only, and in no event shall Lender be deemed to be a
15 partner of, or a joint venturer with, Borrower." (CLA §8.14, Dziubla Dec. Exh 3.) Thus, contrary
16 to Plaintiff's current implications, there is no fiduciary or special relationship between Plaintiff
17 and Defendants. *See Shlesinger v. Bank of Am., N.A.*, No. 2:11-CV-2020-PMP-PAL, 2012 WL
18 2995698, at *7 (D. Nev. July 23, 2012) (" Absent exceptional circumstances, a lender does not
19 owe fiduciary duties to a borrower beyond contractual obligations."); *Giles v. Gen. Motors*
20 *Acceptance Corp.*, 494 F.3d 865 (9th Cir.2007)

21 Therefore, in the current case, the rights and duties of the parties toward each other are
22 defined by the terms of the written contract. As it relates to the foreclosure, it means the
23 negotiated terms of the CLA govern. "It has long been the case that in addition to adopting
24 standard covenants by reference, parties to deeds of trust in Nevada may generally enter into
25 whatever covenants they wish. *See Nev.Rev.Stat. § 107.050 (1927).*" *Lakeside Inn, Inc. v. Bank*
26 *of the W.*, No. 3:14-CV-00473-RCJ, 2015 WL 1331383, at *4 (D. Nev. Mar. 25, 2015)

1 Plaintiff argues that because it did not receive as large a loan as Plaintiff had hoped for,
2 Plaintiff is not obligated to follow the terms of the written loan agreement. Not only is the
3 argument absurd from a legal standpoint, it is also premised on a false factual premise; i.e., that
4 Defendants had a contractual obligation to raise any specific amount of funding. The
5 Engagement Letter attached as Exhibit 5 to the Piazza Declaration makes it explicitly clear that:
6 “Nothing contained in this Agreement is to be construed as a commitment by EB5IA, its
7 affiliates or its agents to lend to or invest in the contemplated financing. This is not a guarantee
8 that any such financing can be procured by EB5 IA for the Company on terms acceptable to he
9 Company, or a representation or guarantee that EB5 IA will be able to perform successfully the
10 services detailed in this Agreement.” (Piazza Dec. Exh 5 at p. 2.)

11 Moreover, the Engagement Letter contained an integration clause which explicitly
12 “supersedes and cancels any prior communications, understanding and agreements between the
13 parties.” (Piazza Exh 5 at p. 4.) Thus, no matter how much Front Sight alleged about the
14 discussions leading up to signing the written contract, they do not survive the execution of the
15 written agreement.

16 While Front Sight undoubtedly would have preferred it if EB5IA had successfully raised
17 \$75 million, or even \$25 million, the simple fact is there was no contractual obligation to raise
18 that amount or any specified sum. EB5IA was only obligated to “endeavor to obtain
19 commitments) for the contemplated financing . . .”. (Piazza Exh 5 at p. 3) Although Front Sight
20 is disappointed in the results of those endeavors, even Front Sight acknowledges those endeavors
21 were undertaken and resulted in disbursement of loan proceeds in excess of \$6 million to Front
22 Sight. While this amount fell short of the goal it is NOT a breach of any contractual or other
23 obligation.

24 Moreover, on May 12, 2016, Defendant Dziubla laid out the available alternatives for
25 Front Sight going forward, in light of changes in the EB5 environment and difficulty raising the
26 amount of money previously being considered. The alternatives enumerated were:

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- (1) Give the EB5 investors their money back, close the doors and part paths:
- (2) Restructure the capital stack by: (i) eliminating the minimum raise; and
(ii) bring in senior debt from a timeshare lender who understands the timeshare business; or
- (3) Sell the EB5 Impact Capital Regional Center and LVD Fund to Front Sight, and allow Front Sight to proceed as it wishes.

Front Sight subsequently advised him that it preferred the second option, i.e., restructure the deal, and the parties proceeded accordingly, resulting in the October 6, 2016 Construction Loan Agreement. (Dziubla Supp. Decl., ¶4, Exhibit A). Therefore, Front Sight entered into the CLA with knowledge of exactly how much money was, and wasn't available. It can not now argue that LVD Fund breached any contract with Front Sight based on the amount of money raised.

Accordingly, Front Sight can not meet its burden in this hearing to show that it is "likely to succeed" on the merits against LVD Fund. The Motion should thus be denied.

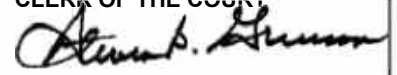
IV. CONCLUSION

For the reasons set forth above, Plaintiff can not meet its burden of showing both irreparable harm and likelihood of success on the merits. Therefore its motion for a temporary restraining order and preliminary injunction should be denied.

Dated: March 18, 2018

FARMER CASE & FEDOR
 2190 E. Pebble Rd., Suite #205
 Las Vegas, NV 89123
 Telephone: (702) 579-3900
 Facsimile: (702) 739-3001

/s/ Kathryn Holbert
 Kathryn Holbert, Esq.
 Attorney for Defendants



1 **DECL**
2 ANTHONY T. CASE, ESQ.
3 Nevada Bar No. 6589
4 tcase@farmercase.com
5 KATHRYN HOLBERT, ESQ.
6 Nevada Bar No. 10084
7 kholbert@farmercase.com
8 **FARMER CASE & FEDOR**
9 2190 E. Pebble Rd., Suite #205
10 Las Vegas, NV 89123
11 Telephone: (702) 579-3900
12 Facsimile: (702) 739-3001

13 C. KEITH GREER, ESQ.
14 keith.greer@greerlaw.biz
15 Cal. Bar No. 135537 [*Pro Hac Vice*]
16 **GREER & ASSOCIATES, A.P.C.**
17 17150 Via Del Campo, Suite #100
18 San Diego, California 92128
19 Telephone: (858) 613-6677
20 Facsimile : (858) 613-6680

21 Attorneys for Defendants
22 LAS VEGAS DEVELOPMENT FUND LLC, EB5
23 IMPACT CAPITAL REGIONAL CENTER LLC,
24 EB5 IMPACT ADVISORS LLC, ROBERT W. DZIUBLA,
25 JON FLEMING and LINDA STANWOOD

26 **EIGHTH JUDICIAL DISTRICT COURT**

27 **CLARK COUNTY, NEVADA**

28 FRONT SIGHT MANAGEMENT LLC, a)
Nevada Limited Liability Company,)
30 Plaintiff,)
31 vs.)
32 LAS VEGAS DEVELOPMENT FUND LLC, a)
Nevada Limited Liability Company; et al.,)
33 Defendants.)

CASE NO.: A-18-781084-B
DEPT NO.: 16

**SUPPLEMENTAL DECLARATION OF
DEFENDANT ROBERT DZIUBLA IN
SUPPORT OF DEFENDANT LAS
VEGAS DEVELOPMENT FUND,
LLC'S OPPOSITION TO PLAINTIFF'S
SECOND MOTION FOR
TEMPORARY RESTRAINING ORDER
AND PRELIMINARY INJUNCTION**

Date: March 21, 2019
Time: 9:30 a.m.

1 STATE OF CALIFORNIA)
2) ss:
3 COUNTY OF SAN DIEGO)
4

5 Affiant, being duly sworn, deposes and states the following:

6 1. I, Robert W. Dziubla, am an individual and a resident of the State of California,
7 County of San Diego.

8 2. I am a Defendant in this action and am an officer of Defendant Las Vegas
9 Development Fund, LLC (“LVD Fund”), and of the now dissolved Defendant EB5 Impact
10 Advisors, LLC (“EB5IA”).

11 3. I make this Declaration of my personal knowledge, and the matters stated herein
12 are true and correct. If called as a witness herein, I could, and would, testify competently thereto.

13 4. Attached hereto as Exhibit “A” is a true and correct copy of a string of emails
14 dated from May 10, 2016 to May 20, 2016, between me (rdziubla@eb5impactcapital.com), and
15 Front Sight representatives Ignatius Piazza (ignatius@frontsight.com) and Mike Meacher
16 (meacher@frontsight.com). In the May 12, 2016 email, I laid out the available alternatives for
17 Front Sight going forward, in light of changes in the EB5 environment and difficulty raising the
18 amount of money previously being considered. The alternatives enumerated were:

19 (1) Give the EB5 investors their money back, close the doors and part paths:

20 (2) Restructure the capital stack by: (i) eliminating the minimum raise; and
21 (ii) bring in senior debt from a timeshare lender who understands the
22 timeshare business; or

23 (3) Sell the EB5 Impact Capital Regional Center and LVD Fund to Front Sight,
24 and allow Front Sight to proceed as it wishes.

25 Front Sight subsequently advised me that it preferred the second option, i.e., restructure the deal,
26 and the parties proceeded accordingly, resulting in the October 6, 2016 Construction Loan
27

1 Agreement.

2 5. Attached hereto as Exhibit B is a true and correct copy of the letter I sent to Front
3 Sight on March 5, 2019, entitled Demand to Cure Defaults. As of today, Front Sight has not
4 cured any of the events of default identified in this demand letter, or any the same events of
5 default identified in the multiple previous notices sent to Front Sight, all of which are attached to
6 my prior Declaration in Support of Las Vegas Funding LLC's Motion for Appointment of a
7 Receiver, dated February 4, 2019. (See Notice of Default filed in Nye County on 1/18/19 (Exhibit
8 5); 7/30/18 Notice of Multiple Defaults (Exhibit 8); 8/24/18 Notice of Multiple Defaults
9 (Exhibit 11); 8/28/18 Notice of Multiple Defaults (Exhibit 12); 10/24/18 Demand to Cure (Exhibit
10 13)).

11 I declare under penalty of perjury under the laws of the State of Nevada and the State of
12 California that the foregoing is true and correct, and that this Declaration was executed on March
13 18, 2019, at Escondido California.

14 
15 Robert Dziubla

16
17
18
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE and/or MAILING

Pursuant to NRC 5(b), I hereby certify that I am an employee of Farmer Case & Fedor, and that on this date, I caused true and correct copies of the following document(s):

SUPPLEMENTAL DECLARATION OF DEFENDANT ROBERT DZIUBLA IN SUPPORT OF DEFENDANT LAS VEGAS DEVELOPMENT FUND, LLC'S OPPOSITION TO PLAINTIFF'S SECOND MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

to be served on the following individuals/entities, in the following manner,

John P. Aldrich, Esq.	Attorneys for Plaintiff
Catherine Hernandez, Esq.	FRONT SIGHT MANAGEMENT, LLC
ALDRICH LAW FIRM, LTD.	
1601 S. Rainbow Blvd., Suite 160	
Las Vegas, Nevada 89146	

By:
 ELECTRONIC SERVICE: Said document(s) was served electronically upon all eligible electronic recipients pursuant to the electronic filing and service order of the Court (NECRF 9).
 FACSIMILE: I caused said document(s) to be transmitted by facsimile transmission. The sending facsimile machine properly issued a transmission report confirming that the transmission was complete and without error.

Dated: March 18, 2019

/s/ Kathryn Holbert
An Employee of FARMER CASE & FEDOR

EXHIBIT A

Keith Greer

From: Robert Dziubla <rdziubla@eb5impactcapital.com>
Sent: Monday, March 18, 2019 7:11 PM
To: Keith Greer
Subject: FW: EB-5 The next steps

From: Mike Meacher <meacher@frontsight.com>
Sent: Friday, May 20, 2016 1:22 PM
To: 'Robert Dziubla' <rdziubla@eb5impactcapital.com>; 'Jon Fleming' <jfleming@EB5impactcapital.com>
Cc: Ignatius Piazza <Ignatius@frontsight.com>
Subject: RE: EB-5 The next steps

Bob and Jon,

John Small was able to convince Hank Cairo to meet with Naish and me on June 2nd. We hope to have a tentative list of his lending prospects prior to that date.

You guys want to get back to marketing immediately and Front Sight wants some immediate capital to develop the project so our interest are the same to get the changes completed quickly and the current investor capital funded to Front Sight. Our goals are in sync. Front Sight confirms the preliminary budget you reference below and we will pay those charges promptly upon disbursement of the \$375,000 from the existing 4-6 investors into the Front Sight account.

Best regards to Travis on his graduation.

Mike
Meacher@frontsight.com
702-425-6550

From: Robert Dziubla [<mailto:rdziubla@eb5impactcapital.com>]
Sent: Friday, May 20, 2016 11:05 AM
To: 'Mike Meacher'; 'Jon Fleming'
Subject: RE: EB-5 The next steps

Dear Mike,

We too are pleased with the progress that was made, and we are working on the steps as outlined so that we can get the EB5 money disbursed to you.

I have confirmed with Matt that we can amend the USCIS filings as discussed (but we do NOT need USCIS approval for any of the changes) – namely, to eliminate the minimum raise and to allow for us to bring in bridge / senior financing -- and I will have our corporate / securities lawyer amend the PPM, subscription agreement and other deal documents to make the same changes. As I mentioned on Wednesday, he has already advised that we will need to notify the investors already in escrow of these changes and allow them the right to rescind / withdraw if they wish. We don't yet know how long that notice period will be, and that question is pending with our lawyer.

As discussed, we think it unlikely that any of the investors will withdraw, because then they'd need to find another project and move to the back of the line.

We have confirmed with Matt that once the documents have been amended and we have the EB5 loan agreement in place, then (a) we can disburse 75% of the current EB5 funds to Front Sight and that FS can apply those funds to reimburse itself for the grading and other project-related costs such as mortgage pay-down already incurred, and (b) on a go-forward basis, we would disburse the EB5 funds to FS as those funds come into escrow, and FS would provide us with construction and related receipts at the end of the project sufficient to cover the amount of EB5 money disbursed. None of us need to track EXACTLY that the EB5 funds went into a specific expenditure so long as there are sufficient project receipts that (i) cover the amount of EB5 funds disbursed to FS, and (ii) those receipts are tied to the project development outlined in the USCIS-approved business plan.

Please confirm that Front Sight approves the preliminary budget outlined in my email of May 12 as supplemented by my email of May 13. We would very much like to get Ethan back on board immediately, so request that FS fund the \$8k for May immediately.

Have you heard from John Small / Hank Cairo about Hank coming out to visit with you?

As we work through this new process, please do keep in mind that we will need to ensure that there is appropriate language in the timeshare financing loan agreement referencing the EB5 loan and that proceeds from the EB5 loan may be used to repay the timeshare financing. That way we will have complied with USCIS rules regarding bridge / interim financing that is used while the EB5 raise is being completed.

Thanks,

Bob

From: Mike Meacher [<mailto:meacher@frontsight.com>]

Sent: Friday, May 20, 2016 10:11 AM

To: Robert Dziubla <rdziubla@eb5impactcapital.com>; Jon Fleming <jfleming@EB5impactcapital.com>

Subject: EB-5 The next steps

Bob,

I was pleased at the productive end to our conversation in Oakland on Wednesday. Sorry Jon had to leave before we got to that.

As a followup to that please get the following things accomplished:

1. Get Matt to amend the paperwork as needed with USCIS to reflect our discussion
2. Next week, get Mike Brand, Letvia and Scott to amend the construction loan documents to reflect the new deal of Front Sight taking the money as it comes in with construction receipts provided to Bob for EB-5 investors when project is completed.
3. Arrange for Bob to release the funds for the 4-6 existing investors to Front Sight the following week.

Thanks,

Mike

Meacher@frontsight.com

702-425-6550

To: keith.greer@greerlaw.biz

[Remove](#) this sender from my allow list

From: rdziubla@eb5impactcapital.com

You received this message because the sender is on your allow list.

EXHIBIT B

Las Vegas Development Fund LLC

Las Vegas Development Fund, LLC
916 SOUTHWOOD BOULEVARD, SUITE 1G
P.O. BOX 3003
INCLINE VILLAGE, NEVADA 89450
Telephone: (844) 889-8628
Facsimile: (888) 332-1795

March 11, 2019

Via Email

Mr. Ignatius Piazza
Manager
Front Sight Management LLC
1 Front Sight Road
Pahrump, NV 89061

With an email copy to:

Scott A. Preston, Esq.
Preston Arza LLP
301 North Palm Canyon Drive
Suite 103-102
Palm Springs, CA 92262-5672

Re: Demand to Cure Defaults

Dear Mr. Piazza:

As the construction lender, we hereby make demand upon you as the Borrower under the Construction Loan Agreement dated October 6, 2016, as amended, plus related documents (collectively, "CLA"), as follows:

1. Immediately Provide Construction Plans.

- a. The definitions section of the CLA defines "Plans" as follows: "**Plans**" mean the final construction plans for the Improvements, including drawings, specifications, details and manuals, as approved by the applicable Governmental Authority responsible for reviewing and approving construction plans for compliance with applicable Governmental Requirements." (Emphasis added.)
- b. Article 3.2(b) of the CLA states in relevant part: "Prior to the Commencement Date, Borrower shall, in addition to satisfying all other conditions for an Advance in this Section, provide to Lender ... (ii) Plans, in the form previously submitted



to Lender, as finally approved for construction by the Project Architect and the applicable Governmental Authority.”

- c. The Commencement Date was October 4, 2016. You have never submitted the construction Plans to us, and we again demand that you immediately do so.
2. **Correct Material Delays in Construction.** There are multiple material delays in your construction of the Project, e.g.:
- a. On June 13, 2018, you provided us with a construction timeline for the Project. That construction timeline stated that construction of the Patriot Pavilion would start on August 20, 2018, and take 80 days to complete, i.e. November 8, 2018 (line 58). You have failed to commence, much less complete, building the Patriot Pavilion, which is a material delay.
 - b. The same construction timeline states that construction of the timeshare villas would commence on November 5, 2018 (line 101). You have failed to commence, much less complete, construction of the villas, which is a material delay.
 - c. We demand that you immediately commence remediation of these defaults.
3. **Immediately Correct and Update Changes to Construction Timeline.**
- a. Article 5.2 of the CLA states in relevant part: “Borrower shall deliver to Lender a revised construction schedule, if and when any target date set forth therein has been delayed by twenty (20) consecutive days or more, or when the aggregate of all such delays equals thirty (30) days or more.”
 - b. You have failed to deliver to us a revised construction schedule. We demand that you immediately remedy the same.
4. **Immediately Correct Material Changes to the Project Scope**
- a. Article 5.2 of the CLA states in relevant part: “Borrower shall not make or consent to any change or modification in such Plans, contracts or subcontracts, and no work shall be performed with respect to any such change or modification, without the prior written consent of Lender, if (i) such change or modification would in any material way alter the design or structure of the Project or change the rentable area thereof in any way, or increase or decrease the Project cost by \$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).”
 - b. The USCIS-approved *business* plan for the Project (as compared to the construction Plans required under the CLA, which we have demanded above) defines Patriot Pavilion as “85,000 square foot Patriot Pavilion, a large central facility that will accommodate classrooms for up to 2,000 students, more than double the current capacity. Within this facility the central Administration of the complex will be housed, along with large retail shops that specialize in

ZW11

merchandise related to the special interests of the students. In addition a food court is planned in the central core of the facility to meet the demand for breakfast (for those early arrivals) and lunch for the entire complement of students.”

- c. In oral conversations, Mr. Meacher stated that the Patriot Pavilion would be reduced to 25,000 – 30,000 square feet, which you now dispute, but even in your recent Opposition to Appointment of Receiver, you admit that “The size of the *classroom* in the Patriot Pavilion has been reduced....” (Original emphasis). Lender has never approved, nor accurately been informed of, these material changes to the Patriot Pavilion.
- d. We demand that you immediately provide us with the above construction Plans showing all of your proposed changes to the Patriot Pavilion and all other elements of the Project, including any cost changes of \$250,000 or more, for our approval.

5. Immediately Provide Monthly Project Costs.

- a. Article 3.2(a) of the CLA states in relevant part: “From and after the Commencement Date, Borrower shall deliver to Lender on a monthly basis evidence of the Project costs funded during the preceding month (whether from Loan proceeds or otherwise).”
- b. You have never delivered to us this monthly evidence of Project costs, and we demand that you immediately do so for every month from October 2016 through today.

6. Immediately Allow Site Inspection and Inspection of Books and Records

- a. Article 5.4 of the CLA states: “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.”
- b. We again demand that you immediately allow us and our representatives to have immediate access to the Project site and to discuss your affairs, finances and accounts with all your principal officers.
- c. We again demand that you immediately allow us and our representatives to have immediate access to and to inspect and copy your books, records and contracts as per the CLA.

7. Immediately Provide EB-5 Documentation

- a. Article 5.10(e) of the CLA states in relevant part: “Without limiting the foregoing, information to be provided to Lender by Borrower prior to October 31 of each year, shall specifically include:

(Handwritten initials)

(i) Annual report of expenditures on the project, showing amounts at least equal to the amount of money Lender has disbursed to Borrower have been spent on the Project.; this will include appropriate backup documentation, such as copies of major invoices & payment receipts, major contracts, **bank statements**, etc.”

- b. Your EB-5 prove-up letter of October 30, 2018 (“Prove-Up Letter”), fails to include any bank statements, nor have we ever received from you bank statements that confirm the Project related expenditures you claim.
- c. We demand that you immediately provide us with all bank statements confirming the EB-5 expenditures that you claim to have made since October 6, 2018.

8. Immediately Begin Funding Hard Construction Costs of the Project

- a. Article 1.7 of the CLA is entitled “**EB-5 Program Requirements**,” and subparagraph (e) states: “Borrower shall use the proceeds of the Loan solely for the purpose of funding directly, or advancing to Affiliates to pay, the costs of the Project, in accordance with the terms and conditions of this Agreement, as set forth in the Budget and the Project documents submitted to, and approved by, USCIS.”
- b. Page 6 of the “**The Economic and Jobs-Creation Impacts of the Exemplar Front Sight Firearms Training Institute Expansion Project in the Applicant EB5 Impact Capital Regional Center LLC**” (Economic Impact Analysis,” or “EIA”) that was submitted to and approved by USCIS specifically states as follows:

“The exemplar Project will generate EB-5 eligible jobs in four ways:

- 1. The expenditure of \$49.1 million in hard construction costs*
- 2. The creation of 408 new full-time jobs at the Front Sight Firearms Training Institute*
- 3. The creation of 145 new full-time jobs at the Front Sight Resort & Vacation Club.*
- 4. Increased tourism spending in the local economy resulting from the increase in student attendance that will be facilitated by the Project's expansion of the Front Sight Firearms Training Institute's teaching capacity.”*

- c. Your Prove-Up Letter confirms that you have spent less than \$2.7 Million on hard construction costs even though we have lent you \$6,375,000 of EB-5 loan proceeds.
- d. At the same time, your federal tax returns show that you have paid to Ignatius Piazza and his dynasty trusts almost \$17 Million during 2016 and 2017.
- e. You have misapplied the loan proceeds instead of funding hard construction costs that create the required jobs, which is the fundamental pillar of this entire transaction.

JND

- f. We demand that you immediately begin funding hard construction costs to the Project in accordance with the construction Plans that we have demanded above.

9. Senior Debt.

- a. Article 5.27 of the CLA states: "Borrower will use its best efforts to obtain Senior Debt as defined herein. Borrower and Lender expect that the Senior Debt documents will impose provisions concerning disbursement procedures, mechanisms to protect against mechanics liens and related matters as are customarily found in construction loans made by institutional lenders, which procedures also tend to help protect Lender. If Borrower has not obtained such Senior Debt by March 31, 2017 [extended to June 30, 2018], Borrower agrees that Lender may impose provisions concerning such matters similar to those customarily found in construction loans made by institutional lenders. In addition, Borrower will execute and deliver, upon request by Lender, such assignments of contracts relating to the Project as Lender shall request, including, but not limited to, the Management Agreement, documents concerning the construction of the Project and any leases."
- b. The definitions section of the CLA states:

"Senior Debt" means the additional loan that will be sought by Borrower, and which Borrower will use its best efforts to obtain, from a traditional financial institution specializing in financing projects such as the Project. Although the Senior Debt would be funded subsequent to this Loan, Lender agrees to subordinate its Deed of Trust to the new Senior Debt, so long as the Borrower is not in default and all of the following conditions are met;

- (a) The loan shall be evidenced by a promissory note not in excess of Fifty Million and no/1 00 United States Dollars (US\$50,000,000.00).
- (b) The loan proceeds shall be disbursed in payment, or in reimbursement for payment, of the construction and development of the Project.
- (c) The loan shall contain provisions concerning disbursement procedures, mechanisms to protect against mechanics liens and related matters as are customarily found in construction loans made by institutional lenders and Lender shall be provided with copies of such documents showing the progress of construction and the disbursement of funds as are provided to senior lender.

Borrower shall obtain such Senior debt no later than December 31, 2016."

rw

- c. You have claimed that the "LOAN AGREEMENT (Construction Line of Credit)" (the "LOC") between yourself as borrower and, on the other hand as lender, Top Rank Builders, Inc; Morales Construction, Inc.; and All American Concrete and Masonry, Inc., dated October 31, 2017, is in fact the Senior Debt.
- d. Even the most cursory look at the lenders' names confirms that that none of them is "a traditional financial institution specializing in financing projects such as the Project," and the LOC has none of the "provisions concerning disbursement procedures, mechanisms to protect against mechanics' liens and related matters as are customarily found in construction loans made by institutional lenders."
- e. We again demand that you immediately allow modification of the CLA to "impose provisions concerning such matters similar to those customarily found in construction loans made by institutional lenders," and we further demand an immediate assignment of all agreements concerning the construction of the Project, including but not limited to the LOC.

10. Immediately Pay Default Interest, Attorneys' Fees and Costs.

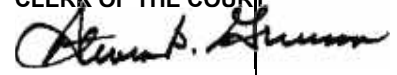
- a. Article 8.2(a) of the CLA states: "Borrower agrees to pay and reimburse Lender upon demand for all reasonable expenses paid or incurred by Lender (including reasonable fees and expenses of legal counsel) in connection with the collection and enforcement of the Loan Documents, or any of them."
- b. Article 4.7 of the Deed of Trust states: "Grantor shall pay or reimburse Lender and Trustee for all reasonable attorneys' fees, costs and expenses incurred by Lender or the Trustee in any action, legal proceeding or dispute of any kind which affects the Loan, the interest created herein, the Property or the Collateral, including but not limited to, any foreclosure of this Deed of Trust, enforcement of payment of the Note and other secured indebtedness, any condemnation action involving the Property, any bankruptcy proceeding or any action to protect the security hereof or to enforce Lender's rights and remedies hereunder. Any such amounts paid by Lender or Trustee shall be due and payable upon demand and shall become part of the secured indebtedness."
- c. We demand that you immediately pay all outstanding amounts as shown on the "Loan Statement & Invoice" dated February 20, 2019, sent to you by our loan servicer NES Financial, which amounts currently exceed \$300,000.

Sincerely,



Robert W. Dziubla
President & CEO

Cc: C. Keith Greer, Esq.



1 **NEO**
John P. Aldrich, Esq.
2 Nevada Bar No. 6877
Catherine Hernandez, Esq.
3 Nevada Bar No. 8410
ALDRICH LAW FIRM, LTD.
4 7866 West Sahara Avenue
Las Vegas, Nevada 89117
5 Telephone: (702) 853-5490
Facsimile: (702) 227-1975
6 *Attorneys for Plaintiff*

7 **EIGHTH JUDICIAL DISTRICT COURT**

8 **CLARK COUNTY, NEVADA**

9 FRONT SIGHT MANAGEMENT LLC, a
Nevada Limited Liability Company,

10 Plaintiff,

11 vs.

12 LAS VEGAS DEVELOPMENT FUND LLC, a
13 Nevada Limited Liability Company; EB5
IMPACT CAPITAL REGIONAL CENTER
14 LLC, a Nevada Limited Liability Company;
EB5 IMPACT ADVISORS LLC, a Nevada
15 Limited Liability Company; ROBERT W.
DZIUBLA, individually and as President and
16 CEO of LAS VEGAS DEVELOPMENT
FUND LLC and EB5 IMPACT ADVISORS
17 LLC; JON FLEMING, individually and as an
agent of LAS VEGAS DEVELOPMENT
18 FUND LLC and EB5 IMPACT ADVISORS
LLC; LINDA STANWOOD, individually and
19 as Senior Vice President of LAS VEGAS
DEVELOPMENT FUND LLC and EB5
20 IMPACT ADVISORS LLC; DOES 1-
10, inclusive; and ROE CORPORATIONS 1-
21 10, inclusive,

22 Defendants.

CASE NO.: A-18-781084-B
DEPT NO.: 16

NOTICE OF ENTRY OF ORDER

1 **NOTICE OF ENTRY OF ORDER**

2 PLEASE TAKE NOTICE that an Order Granting in Part and Denying in Part Plaintiff's
3 Motion to Seal and or Redact Pleadings and Exhibits to Protect Confidential Information and
4 Motion to Amend Paragraph 2.3 of Protective Order was entered by the Court in the above-
5 captioned action on the 18th day of March, 2019, a true and correct copy of which is attached
6 hereto.

7 DATED this 19th day of March, 2019.

8 **ALDRICH LAW FIRM, LTD.**

9 /s/ John P. Aldrich
10 John P. Aldrich, Esq.
11 Nevada Bar No. 6877
12 Catherine Hernandez, Esq.
13 Nevada Bar No. 8410
14 7866 West Sahara Avenue
15 Las Vegas, NV 89117
16 Tel (702) 853-5490
17 Fax (702) 226-1975
18 *Attorneys for Plaintiff*

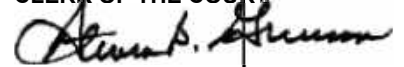
1 **CERTIFICATE OF SERVICE**

2 I HEREBY CERTIFY that on the 19th day of March, 2019, I caused the foregoing
3 **NOTICE OF ENTRY OF ORDER** to be electronically filed and served with the Clerk of the
4 Court using Wiznet which will send notification of such filing to the email addresses denoted on
5 the Electronic Mail Notice List, or by U.S. mail, postage prepaid, if not included on the
6 Electronic Mail Notice List, to the following parties:

7 Anthony T. Case, Esq.
Kathryn Holbert, Esq.
8 FARMER CASE & FEDOR
2190 E. Pebble Rd., Suite #205
9 Las Vegas, NV 89123
Attorneys for Defendants LAS VEGAS DEVELOPMENT FUND
10 *LLC, EB5IMPACT CAPITAL REGIONAL CENTER LLC,*
EB5 IMPACT ADVISORS LLC, ROBERT W. DZIUBLA,
11 *JON FLEMING and LINDA STANWOOD*

12 C. Keith Greer, Esq.
17150 Via del Campo, Suite 100
13 San Diego, CA 92127
Attorneys for Defendants LAS VEGAS DEVELOPMENT FUND
14 *LLC, EB5IMPACT CAPITAL REGIONAL CENTER LLC,*
EB5 IMPACT ADVISORS LLC, ROBERT W. DZIUBLA,
15 *JON FLEMING and LINDA STANWOOD*

16
17
18 /s/ T. Bixenmann
An employee of ALDRICH LAW FIRM, LTD.



1 **ORDER**
2 John P. Aldrich, Esq.
3 Nevada Bar No. 6877
4 Catherine Hernandez, Esq.
5 Nevada Bar No. 8410
6 **ALDRICH LAW FIRM, LTD.**
7 7866 West Sahara Avenue
8 Las Vegas, NV 89117
9 Telephone: (702) 853-5490
10 Facsimile: (702) 227-1975
11 *Attorneys for Plaintiff*

12 **EIGHTH JUDICIAL DISTRICT COURT**

13 **CLARK COUNTY, NEVADA**

14 FRONT SIGHT MANAGEMENT LLC, a
15 Nevada Limited Liability Company,

16 Plaintiff,

17 vs.

18 LAS VEGAS DEVELOPMENT FUND LLC, a
19 Nevada Limited Liability Company; EB5
20 IMPACT CAPITAL REGIONAL CENTER
21 LLC, a Nevada Limited Liability Company;
22 EB5 IMPACT ADVISORS LLC, a Nevada
23 Limited Liability Company; ROBERT W.
24 DZIUBLA, individually and as President and
CEO of LAS VEGAS DEVELOPMENT
FUND LLC and EB5 IMPACT ADVISORS
LLC; JON FLEMING, individually and as an
agent of LAS VEGAS DEVELOPMENT
FUND LLC and EB5 IMPACT ADVISORS
LLC; LINDA STANWOOD, individually and
as Senior Vice President of LAS VEGAS
DEVELOPMENT FUND LLC and EB5
IMPACT ADVISORS LLC; DOES 1-
10, inclusive; and ROE CORPORATIONS 1-
10, inclusive,

Defendants.

CASE NO.: A-18-781084-B
DEPT NO.: 16

**ORDER GRANTING IN PART AND
DENYING IN PART PLAINTIFF'S
MOTION TO SEAL AND/OR
REDACT PLEADINGS AND
EXHIBITS TO PROTECT
CONFIDENTIAL INFORMATION
AND MOTION TO AMEND
PARAGRAPH 2.3 OF PROTECTIVE
ORDER**

03-11-19 PM 1:49 RCVD

1 This matter having come before the Court, on February 20, 2019 at 9:00 a.m. on
2 Plaintiff's Motion to Seal and/or Redact Pleadings and Exhibits to Protect Confidential
3 Information and Motion to Amend Paragraph 2.3 of Protective Order, John P. Aldrich, Esq.
4 appearing on behalf of Plaintiff and Kathryn Holbert, Esq. and C. Keith Greer, Esq., appearing
5 on behalf of Defendants, the Court having reviewed the pleadings on file herein, having heard
6 oral argument by the parties, and for good cause appearing therefore.

7 **IT IS HEREBY ORDERED** that Plaintiff's Motion to Seal and/or Redact Pleadings
8 and Exhibits to Protect Confidential Information and Motion to Amend Paragraph 2.3 of
9 Protective Order is GRANTED IN PART and DENIED IN PART.

10 **IT IS FURTHER ORDERED** that with regard to portions of Plaintiff's tax returns that
11 were filed in the court record, the motion is granted and the Clerk of Court is directed to seal
12 Exhibits 6 and 7 to the Declaration of Robert Dziubla filed on February 6, 2019.

13 **IT IS FURTHER ORDERED** that with regard to the redactions of the portions of the
14 pleadings requested by Plaintiff, the motion to redact is denied.

15 **IT IS FURTHER ORDERED** that with regard to the motion to revise and amend
16 paragraph 2.3 of the Protective Order, that motion is denied as well. However, in the event any
17 party wishes to file any financial documents of any party, before filing any such documents, the

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

1 parties are to meet and confer regarding the intended submission, and if the parties are unable to
2 work out a resolution, the Court will hold a conference call with the parties and resolve the issue.

3 **IT IS SO ORDERED.**

4 DATED this 12 day of March, 2019.


5 
6 **DISTRICT COURT JUDGE** *eg*

7 Respectfully submitted by:

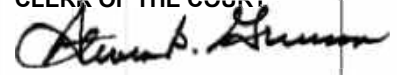
Approved as to form and content:

8 **ALDRICH LAW FIRM, LTD.**

9 **FARMER CASE & FEDOR**

10 
11 John P. Aldrich, Esq.
12 Nevada Bar No. 6877
13 Catharine Hernandez, Esq.
14 Nevada Bar No. 8410
7866 West Sahara Avenue
Las Vegas, Nevada 89117
Tel: (702) 853-5490
Fax: (702) 227-1975
Attorneys for Plaintiff

Anthony T. Case, Esq.
Nevada Bar No. 6589
Kathryn Holbert, Esq.
Nevada Bar No. 10084
2190 E. Pebble Rd., Suite #205
Las Vegas, NV 89123
Tel: (702) 579-3900
Fax: (702) 739-3001
Attorneys for Defendants



1 **ERR**
2 ANTHONY T. CASE, ESQ.
3 Nevada Bar No. 6589
4 tcase@farmercase.com
5 KATHRYN HOLBERT, ESQ.
6 Nevada Bar No. 10084
7 kholtbert@farmercase.com
8 **FARMER CASE & FEDOR**
9 2190 E. Pebble Rd., Suite #205
10 Las Vegas, NV 89123
11 Telephone: (702) 579-3900
12 Facsimile: (702) 739-3001
13
14 C. KEITH GREER, ESQ.
15 Cal. Bar. No. 135537 (*Pro Hac Vice*)
16 Keith.greer@greerlaw.biz
17 **GREER & ASSOCIATES, A.P.C.**
18 17150 Via Del Campo, Suite #100
19 San Diego, California 92128
20 Telephone: (858) 613-6677
21 Facsimile: (858) 613-6680
22
23 Attorneys for Defendants
24 LAS VEGAS DEVELOPMENT FUND LLC,
25 EB5 IMPACT CAPITAL REGIONAL CENTER, LLC,
26 EB6 IMPACT ADVISORS, LLC, ROBERT W. DZIUBLA,
27 JON FLEMING and LINDA STANWOOD

EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, STATE OF NEVADA

18 FRONT SIGHT MANAGEMENT, LLC., a
19 Nevada Limited Liability Company,
20
21 Plaintiff,
22
23 v.
24 LAS VEGAS DEVELOPMENT FUND LLC,
25 a Nevada Limited Liability Company, EB5
26 IMPACT CAPITAL REGIONAL CENTER
27 LLC, a Nevada Limited Company, EB5
28 IMPACT ADVISORS LLC, a Nevada
29 Limited Liability Company; ROBERT W.
30 DZIUBLA, individually and as President and
31 CEO of LAS VEGAS DEVELOPMENT
32 FUND LLC and EB5 IMPACT ADVISORS
33 LLC; JON FLEMING, individually and as an
34 agent of LAS VEGAS DEVELOPMENT
35 FUND LLC and EB5 IMPACT ADVISORS

CASE NO.: A-18-781084-B
DEPT NO.: XVI

ERRATA TO SUPPLEMENTAL
DECLARATION OF ROBERT
DZIUBLA IN SUPPORT OF
DEFENDANTS' OPPOSITION TO
PLAINTIFF'S SECOND MOTION
FOR TEMPORARY
RESTRAINING ORDER AND
PRELIMINARY INJUNCTION

Front Sight Management LLC v. Las Vegas Development Fund LLC, et al., Case No.: A-18-781084-B Dept. No.: XVI
**ERRATA TO DECLARATION OF TERRY ARNETT IN SUPPORT OF DEFENDANTS' OPPOSITION TO
PLAINTIFF'S SECOND MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

1 LLC; LINDA STANWOOD, individually and)
2 as Senior Vice President of LAS VEGAS)
3 DEVELOPMENT FUND LLC and EB5)
4 IMPACT ADVISORS LLC; CHICAGO)
5 TITLE COMPANY, a California corporation;)
6 DOES 1-10, inclusive; and ROE)
7 CORPORATIONS 1-10, inclusive,)
8
9 Defendants.)

6 COMES NOW Defendants and submits this Errata to the Supplemental Declaration of
7 Robert Dziubla which was filed in support of Defendants' Opposition to Plaintiff's Second
8 Motion for Temporary Restraining Order and Preliminary Injunction. The Supplemental
9 Declaration of Mr. Dziubla correctly identified the email string which was attached as Exhibit A.
10 However, such email string which was attached was inadvertently missing several pages. The
11 complete email string is attached hereto as Exhibit A.
12

13 DATED this 20th day of March, 2019.

FARMER CASE & FEDOR

14
15 

16 KATHRYN HOLBERT, ESQ.
17 Nevada Bar No. 10084
18 2190 E. Pebble Rd., Suite #205
19 Las Vegas, NV 89123
20 Telephone: (702) 579-3900
21 kholbert@farmercase.com
22 Attorney for Defendants
23 LAS VEGAS DEVELOPMENT FUND
24 LLC., EB5 IMPACT CAPITAL REGIONAL
25 CENTER, LLC, EB6 IMPACT ADVISORS,
26 LLC, ROBERT W. DZIUBLA, JON
27 FLEMING and LINDA STANWOOD
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE and/or MAILING

Pursuant to NRCP 5(b), I hereby certify that I am an employee of Farmer Case & Fedor,
and that on this date, I caused true and correct copies of the following document(s):

**ERRATA TO SUPPLEMENTAL DECLARATION OF ROBERT DZIUBLA
IN SUPPORT OF DEFENDANTS' OPPOSITION TO PLAINTIFF'S
SECOND MOTION FOR TEMPORARY RESTRAINING ORDER
AND PRELIMINARY INJUNCTION**

to be served on the following individuals/entities, in the following manner,

John P. Aldrich, Esq.	Attorneys for Plaintiff
Catherine Hernandez, Esq.	FRONT SIGHT MANAGEMENT, LLC
ALDRICH LAW FIRM, LTD.	
7866 West Sahara Avenue	
Las Vegas, Nevada 89117	

By:

■ **ELECTRONIC SERVICE:** Said document(s) was served electronically upon all eligible electronic recipients pursuant to the electronic filing and service order of the Court (NECRF 9).

■ **U.S. MAIL:** I deposited a true and correct copy of said document(s) in a sealed, postage prepaid envelope, in the United States Mail, to those parties and/or above named individuals which were not on the Court's electronic service list.

FACSIMILE: I caused said document(s) to be transmitted by facsimile transmission. The sending facsimile machine properly issued a transmission report confirming that the transmission was complete and without error.

Dated: March 20th, 2019


An Employee of FARMER CASE & FEDOR

EXHIBIT A

Keith Greer

From: Robert Dziubla <rdziubla@eb5impactcapital.com>
Sent: Monday, March 18, 2019 7:11 PM
To: Keith Greer
Subject: FW: EB-5 The next steps

From: Mike Meacher <meacher@frontsight.com>
Sent: Friday, May 20, 2016 1:22 PM
To: 'Robert Dziubla' <rdziubla@eb5impactcapital.com>; 'Jon Fleming' <jfleming@EB5impactcapital.com>
Cc: Ignatius Piazza <ignatius@frontsight.com>
Subject: RE: EB-5 The next steps

Bob and Jon,

John Small was able to convince Hank Cairo to meet with Naish and me on June 2nd. We hope to have a tentative list of his lending prospects prior to that date.

You guys want to get back to marketing immediately and Front Sight wants some immediate capital to develop the project so our interest are the same to get the changes completed quickly and the current investor capital funded to Front Sight. Our goals are in sync. Front Sight confirms the preliminary budget you reference below and we will pay those charges promptly upon disbursement of the \$375,000 from the existing 4-6 investors into the Front Sight account.

Best regards to Travis on his graduation.

Mike
[Meacher@frontsight.com](mailto:meacher@frontsight.com)
702-425-6550

From: Robert Dziubla [<mailto:rdziubla@eb5impactcapital.com>]
Sent: Friday, May 20, 2016 11:05 AM
To: 'Mike Meacher'; 'Jon Fleming'
Subject: RE: EB-5 The next steps

Dear Mike,

We too are pleased with the progress that was made, and we are working on the steps as outlined so that we can get the EB5 money disbursed to you.

I have confirmed with Matt that we can amend the USCIS filings as discussed (but we do NOT need USCIS approval for any of the changes) – namely, to eliminate the minimum raise and to allow for us to bring in bridge / senior financing – and I will have our corporate / securities lawyer amend the PPM, subscription agreement and other deal documents to make the same changes. As I mentioned on Wednesday, he has already advised that we will need to notify the investors already in escrow of these changes and allow them the right to rescind / withdraw if they wish. We don't yet know how long that notice period will be, and that question is pending with our lawyer.

As discussed, we think it unlikely that any of the investors will withdraw, because then they'd need to find another project and move to the back of the line.

We have confirmed with Matt that once the documents have been amended and we have the EB5 loan agreement in place, then (a) we can disburse 75% of the current EB5 funds to Front Sight and that FS can apply those funds to reimburse itself for the grading and other project-related costs such as mortgage pay-down already incurred, and (b) on a go-forward basis, we would disburse the EB5 funds to FS as those funds come into escrow, and FS would provide us with construction and related receipts at the end of the project sufficient to cover the amount of EB5 money disbursed. None of us need to track EXACTLY that the EB5 funds went into a specific expenditure so long as there are sufficient project receipts that (i) cover the amount of EB5 funds disbursed to FS, and (ii) those receipts are tied to the project development outlined in the USCIS-approved business plan.

Please confirm that Front Sight approves the preliminary budget outlined in my email of May 12 as supplemented by my email of May 13. We would very much like to get Ethan back on board immediately, so request that FS fund the \$8k for May immediately.

Have you heard from John Small / Hank Cairo about Hank coming out to visit with you?

As we work through this new process, please do keep in mind that we will need to ensure that there is appropriate language in the timeshare financing loan agreement referencing the EB5 loan and that proceeds from the EB5 loan may be used to repay the timeshare financing. That way we will have complied with USCIS rules regarding bridge / interim financing that is used while the EB5 raise is being completed.

Thanks,

Bob

From: Mike Meacher [<mailto:meacher@frontsight.com>]
Sent: Friday, May 20, 2016 10:11 AM
To: Robert Dziubla <rdziubla@eb5impactcapital.com>; Jon Fleming <jfleming@EB5ImpactCapital.com>
Subject: EB-5 The next steps

Bob,

I was pleased at the productive end to our conversation in Oakland on Wednesday. Sorry Jon had to leave before we got to that.

As a followup to that please get the following things accomplished:

1. Get Matt to amend the paperwork as needed with USCIS to reflect our discussion
2. Next week, get Mike Brand, Letvia and Scott to amend the construction loan documents to reflect the new deal of Front Sight taking the money as it comes in with construction receipts provided to Bob for EB-5 investors when project is completed.
3. Arrange for Bob to release the funds for the 4-6 existing investors to Front Sight the following week.

Thanks,

Mike
Meacher@frontsight.com
702-425-6550

Total Control Panel

[Login](#)

To: keith.greer@greerlaw.biz

[Remove this sender from my allow list](#)

From: rdziubis@eb5impactcapital.com

You received this message because the sender is on your allow list.

Robert Dziubla

From: Robert Dziubla <rdziubla@eb5impactcapital.com>
Sent: Thursday, May 12, 2016 2:49 PM
To: 'Mike Meacher'
Cc: Jon Fleming
Subject: RE: Meeting on May 18th

Flag Status: Flagged

Mike,

I wish I could accommodate that request, but I really can't push my departure from Oakland back that late given my already-altered travel plans to attend my son's graduation.

We would like to tee up the agenda for our Oakland meeting so that we can make efficient use of the two hours we will have together.

Background:

As we all know, the EBS world has changed a lot since we first started down this road and then had to wait 18 months for USCIS to approve the project. The Front Sight raise is turning out to be much harder and taking longer than we had expected, and all of us are horribly frustrated and upset by this turn of events.

Jon and I love the Front Sight project and have been busting our butts to accomplish the EBS raise and do so within the budget we agreed three years ago. However, we have now been working without pay for three years, have exhausted our personal resources, and can no longer continue without some major changes. We had to let Ethan go at the end of last week as we have no money to pay him because the modest amount of income we had anticipated from the admin fee while achieving the minimum raise is going to the greedy agents.

Of course there is enormous detail to all of the above, but discussing that won't fix the problem.

Choices:

After a lot of thought, it seems to us that we have three choices:

1. Call it a day, shake hands, and part ways as friends. Naturally, as part of that we first refund the EBS money that is in escrow to the investors and then close our doors.
2. Restructure the capital stack by (i) eliminating the minimum raise and (ii) bringing in senior debt from a timeshare lender who understands the timeshare business. Elements of this approach include:
 - a. We have discussed item (ii) with a very experienced consultant in the timeshare finance industry who has closed over 2,000 financings. He believes that he can source one or more lenders who will provide construction financing and timeshare receivables financing at a blended rate of around 6 - 7%. Financing costs from the lender will be around 1.25% of the commitment. That is positive news and allays your concern about having to pay Guido-the-loanshark-rates.
 - b. By getting this timeshare financing into place ASAP, you can then start construction ASAP. With the timeshare financing in place and construction started, you can start pre-selling the timeshares and generating revenues.

- c. By eliminating the minimum raise, we can start disbursing the EB5 money that is already in escrow to the project while we continue to raise as much EB5 money as possible. We would need to ensure that the EB5 money is applied to the project development where the 10 jobs are being created. (We need to have further discussion with our EB5 lawyer on this point and some others.)
 - d. The timeshare financing would have a 1st position mortgage (paying off the Holocek mortgage) and the EB5 money would have a second mortgage. We would need to negotiate an inter-creditor agreement between the timeshare lender and the EB5 money to sort out their respective rights etc.
 - e. We would have to amend the PPM, subscription agreement and other project documents to reflect the above changes.
 - f. We likely would have to give a rescission right to the EB5 investors who are already in escrow. We anticipate that none of them would exercise that right because then they would have to pull their I-526 application back from USCIS and find another project for their investment, thus putting them at the end of an ever-longer line.
 - g. FS would have a new loan agreement with the timeshare lender.
 - h. The EB5 loan agreement that Scott and Letvia have been reviewing would need to be revised to incorporate the above.
 - i. We would continue the EB5 marketing and raise as much EB5 money as possible. We have discussed the above changes to the capital stack with our agents, and they think those changes would make the project much more attractive to the investors because the project would no longer be an outlier, as the vast majority of projects being marketed these days have senior commercial debt and therefore have a much higher EB5 job surplus.
 - j. A preliminary budget for the above (not including costs that the timeshare lender might incur):
 - i. Upfront legal fees of \$11k: i.e., \$3k to amend the EB5 loan agreement, \$3k to amend the PPM and other project legal documents, \$5k to amend the EB5 documents and file them with USCIS.
 - ii. \$8k per month for us to keep our doors open and rehire Ethan (assuming that he hasn't found another job) until we have \$10m of EB5 money invested into the project (anticipated by Sept. 30).
 - iii. Additional legal fees of probably \$5 – 7k or so for the inter-creditor agreement.
3. We sell the EB5 Impact Capital Regional Center LLC and Las Vegas Development Fund LLC entities to you, and you then proceed as you wish.

We look forward to our meeting on Wednesday and hope that we can achieve a speedy resolution.

Bob

From: Mike Meacher [mailto:meacher@frontsight.com]
Sent: Wednesday, May 11, 2016 3:53 PM
To: 'Robert Dziubla' <rdziubla@eb5impactcapital.com>
Subject: RE: Meeting on May 18th

Bob,

I just noticed your flights only allow for about a 2 hour meeting presuming you need to be at the airport an hour before flight time. I suggest you change to the 5:50 departure (flight 2671) and then move to the earlier one if we are completed in time. I don't want to rush this discussion.

Thanks,

Mike
Meacher@frontsight.com
 702-425-6550

From: Robert Dziubla [<mailto:rdziubla@eb5impactcapital.com>]
Sent: Wednesday, May 11, 2016 3:22 PM
To: 'Mike Meacher'; 'Jon Fleming'
Cc: 'Ignatius Piazza'
Subject: RE: Meeting on May 18th

Dear Mike,

I was planning to be traveling that day for my son's graduation but have rearranged that trip so we can meet with you and Naish as requested on Wednesday, May 18.

Jon and I are booked to arrive into Oakland at 11:55 a.m. on Southwest #696 and depart at 3:30 pm on Southwest #1701.

Cheers,

Bob

From: Mike Meacher [<mailto:meacher@frontsight.com>]
Sent: Wednesday, May 11, 2016 2:04 PM
To: 'Robert Dziubla' <rdziubla@eb5impactcapital.com>; 'Jon Fleming' <jffleming@EB5impactcapital.com>
Cc: Ignatius Piazza <ignatius@frontsight.com>
Subject: Meeting on May 18th
Importance: High

Bob and Jon,

Thanks for the update.

Naish wants to have a face to face meeting in Oakland on Wednesday, May 18th to discuss all the issues surrounding EB-5 and to work toward a solution of getting Front Sight funded. He and I have discussed the topics you raised about reducing the minimum raise and adjusting the capital stack. He is amenable to both ideas but wants to discuss the details.

I will arrive at 11:00AM in Oakland. See if you two can arrange to be there about this time. We can have a leisurely lunch and discuss all the considerations and depart late afternoon.

Please confirm ASAP.

Thanks,

Mike
Meacher@frontsight.com
702-425-6550

From: Robert Dziubla [<mailto:rdziubla@eb5impactcapital.com>]
Sent: Wednesday, May 11, 2016 11:21 AM
To: 'Mike Meacher'; 'Jon Fleming'
Subject: RE: Update

Dear Mike,

Please find attached the marketing report for the period through Saturday.

We had a good talk with Ralf, and he now understands EB5 and the FS deal much better, so will start reaching out to folks he knows in Panama who work with high-net worth investors, i.e. primarily attorneys and accountants. Ralf was musing, though, that most of the HNW Panamanians he knows probably wouldn't be interested in an EB5 green card because they already have long-term US visas and don't really need to have a US green card.

Also, on a separate point, John Small kindly introduced us to a couple of his contacts who he explained have been successful in sourcing EB5 investors from Latin America. We of course are following up on that.

We are awaiting word from Sinowel on their investor tour later this month. We also are awaiting further word from our Shanghai agent whose investors visited Front Sight.

When would you be available to talk with me and Jon over the next two days, as we have some important discussions and decisions? I am up in LA tonight for meetings and may end up spending the evening there, so sometime on Thursday afternoon or anytime on Friday except for one hour from 10:30 – 11:30 works for us. Please advise.

Thanks,

Bob

From: Mike Meacher [<mailto:meacher@frontsight.com>]

Sent: Tuesday, May 10, 2016 2:08 PM

To: Robert Dziubla <rdziubla@eb5impactcapital.com>; Jon Fleming <jfleming@EB5ImpactCapital.com>

Subject: Update

Bob and Jon,

How did your call go with Ralf?

What is the status of the Sinowel investor group tour later this month?

How many investors from the Shanghai group are moving forward?

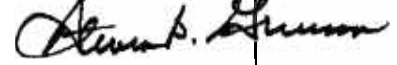
Please give me a marketing update for the last week.

Thanks,

Mike

Meacher@frontsight.com

702-425-6550



1 **NEO**
John P. Aldrich, Esq.
2 Nevada Bar No. 6877
Catherine Hernandez, Esq.
3 Nevada Bar No. 8410
ALDRICH LAW FIRM, LTD.
4 7866 West Sahara Avenue
Las Vegas, Nevada 89117
5 Telephone: (702) 853-5490
Facsimile: (702) 227-1975
6 *Attorneys for Plaintiff*

7 **EIGHTH JUDICIAL DISTRICT COURT**

8 **CLARK COUNTY, NEVADA**

9 FRONT SIGHT MANAGEMENT LLC, a
Nevada Limited Liability Company,

10 Plaintiff,

11 vs.

12 LAS VEGAS DEVELOPMENT FUND LLC, a
13 Nevada Limited Liability Company; EB5
IMPACT CAPITAL REGIONAL CENTER
14 LLC, a Nevada Limited Liability Company;
EB5 IMPACT ADVISORS LLC, a Nevada
15 Limited Liability Company; ROBERT W.
DZIUBLA, individually and as President and
16 CEO of LAS VEGAS DEVELOPMENT
FUND LLC and EB5 IMPACT ADVISORS
17 LLC; JON FLEMING, individually and as an
agent of LAS VEGAS DEVELOPMENT
18 FUND LLC and EB5 IMPACT ADVISORS
LLC; LINDA STANWOOD, individually and
19 as Senior Vice President of LAS VEGAS
DEVELOPMENT FUND LLC and EB5
20 IMPACT ADVISORS LLC; DOES 1-
10, inclusive; and ROE CORPORATIONS 1-
21 10, inclusive,

22 Defendants.

CASE NO.: A-18-781084-B
DEPT NO.: 16

NOTICE OF ENTRY OF ORDER

1 **NOTICE OF ENTRY OF ORDER**

2 PLEASE TAKE NOTICE that an Order Denying Defendant Las Vegas Development
3 Fund LLC's Motion for Appointment of a Receiver was entered by the Court in the above-
4 captioned action on the 9th day of April, 2019, a true and correct copy of which is attached
5 hereto.

6 DATED this 10th day of April, 2019.

7 **ALDRICH LAW FIRM, LTD.**

8 /s/ John P. Aldrich
9 John P. Aldrich, Esq.
10 Nevada Bar No. 6877
11 Catherine Hernandez, Esq.
12 Nevada Bar No. 8410
13 7866 West Sahara Avenue
14 Las Vegas, NV 89117
15 Tel (702) 853-5490
16 Fax (702) 226-1975
17 *Attorneys for Plaintiff*
18
19
20
21
22
23
24

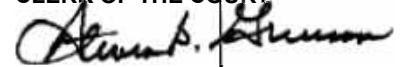
1 **CERTIFICATE OF SERVICE**

2 I HEREBY CERTIFY that on the 10th day of April, 2019, I caused the foregoing
3 **NOTICE OF ENTRY OF ORDER** to be electronically filed and served with the Clerk of the
4 Court using Wiznet which will send notification of such filing to the email addresses denoted on
5 the Electronic Mail Notice List, or by U.S. mail, postage prepaid, if not included on the
6 Electronic Mail Notice List, to the following parties:

7 Anthony T. Case, Esq.
Kathryn Holbert, Esq.
8 FARMER CASE & FEDOR
2190 E. Pebble Rd., Suite #205
9 Las Vegas, NV 89123
Attorneys for Defendants LAS VEGAS DEVELOPMENT FUND
10 *LLC, EB5IMPACT CAPITAL REGIONAL CENTER LLC,*
EB5 IMPACT ADVISORS LLC, ROBERT W. DZIUBLA,
11 *JON FLEMING and LINDA STANWOOD*

12 C. Keith Greer, Esq.
17150 Via del Campo, Suite 100
13 San Diego, CA 92127
Attorneys for Defendants LAS VEGAS DEVELOPMENT FUND
14 *LLC, EB5IMPACT CAPITAL REGIONAL CENTER LLC,*
EB5 IMPACT ADVISORS LLC, ROBERT W. DZIUBLA,
15 *JON FLEMING and LINDA STANWOOD*

16
17
18 /s/ T. Bixenmann
An employee of ALDRICH LAW FIRM, LTD.



1 **ORDER**
John P. Aldrich, Esq.
2 Nevada Bar No. 6877
Catherine Hernandez, Esq.
3 Nevada Bar No. 8410
ALDRICH LAW FIRM, LTD.
4 7866 West Sahara Avenue
Las Vegas, NV 89117
5 Telephone: (702) 853-5490
Facsimile: (702) 227-1975
6 *Attorneys for Plaintiff*

7 **EIGHTH JUDICIAL DISTRICT COURT**

8 **CLARK COUNTY, NEVADA**

9 FRONT SIGHT MANAGEMENT LLC, a
Nevada Limited Liability Company,

10 Plaintiff,

11 vs.

12 LAS VEGAS DEVELOPMENT FUND LLC, a
13 Nevada Limited Liability Company; EB5
IMPACT CAPITAL REGIONAL CENTER
14 LLC, a Nevada Limited Liability Company;
EB5 IMPACT ADVISORS LLC, a Nevada
15 Limited Liability Company; ROBERT W.
DZIUBLA, individually and as President and
16 CEO of LAS VEGAS DEVELOPMENT
FUND LLC and EB5 IMPACT ADVISORS
17 LLC; JON FLEMING, individually and as an
agent of LAS VEGAS DEVELOPMENT
18 FUND LLC and EB5 IMPACT ADVISORS
LLC; LINDA STANWOOD, individually and
19 as Senior Vice President of LAS VEGAS
DEVELOPMENT FUND LLC and EB5
20 IMPACT ADVISORS LLC; DOES 1-
10, inclusive; and ROE CORPORATIONS 1-
21 10, inclusive,

22 Defendants.

CASE NO.: A-18-781084-B
DEPT NO.: 16

**ORDER DENYING DEFENDANT
LAS VEGAS DEVELOPMENT FUND
LLC'S MOTION FOR
APPOINTMENT OF A RECEIVER**

1 This matter having come before the Court, on February 28, 2019 at 9:00 a.m. on
2 Defendant Las Vegas Development Fund LLC's Motion for Appointment of a Receiver, John
3 P. Aldrich, Esq. appearing on behalf of Plaintiff and Kathryn Holbert, Esq. and C. Keith Greer,
4 Esq., appearing on behalf of Defendants, the Court having reviewed the pleadings on file
5 herein, having heard oral argument by the parties, and for good cause appearing therefore,

6 **IT IS HEREBY ORDERED** that Defendant Las Vegas Development Fund LLC's
7 Motion for Appointment of a Receiver is DENIED without prejudice.

8 **IT IS SO ORDERED.**

9 DATED this 5 day of April, 2019.


10 
11 DISTRICT COURT JUDGE *CR*


12 Respectfully submitted by:

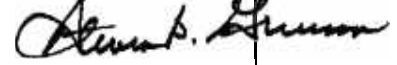
Approved as to form and content:

13 **ALDRICH LAW FIRM, LTD.**

FARMER CASE & FEDOR

14 
15 John P. Aldrich, Esq.
16 Nevada Bar No. 6877
17 Catherine Hernandez, Esq.
18 Nevada Bar No. 8410
19 7866 West Sahara Avenue
Las Vegas, Nevada 89117
Tel: (702) 853-5490
Fax: (702) 227-1975
Attorneys for Plaintiff


Anthony T. Case, Esq.
Nevada Bar No. 6589
Kathryn Holbert, Esq.
Nevada Bar No. 10084
2190 E. Pebble Rd., Suite #205
Las Vegas, NV 89123
Tel: (702) 579-3900
Fax: (702) 739-3001
Attorneys for Defendants



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

NEO
John P. Aldrich, Esq.
Nevada Bar No. 6877
Catherine Hernandez, Esq.
Nevada Bar No. 8410
ALDRICH LAW FIRM, LTD.
7866 West Sahara Avenue
Las Vegas, Nevada 89117
Telephone: (702) 853-5490
Facsimile: (702) 227-1975
Attorneys for Plaintiff

EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

FRONT SIGHT MANAGEMENT LLC, a
Nevada Limited Liability Company,

Plaintiff,

CASE NO.: A-18-781084-B
DEPT NO.: 16

vs.

NOTICE OF ENTRY OF ORDER

LAS VEGAS DEVELOPMENT FUND LLC, a
Nevada Limited Liability Company; EB5
IMPACT CAPITAL REGIONAL CENTER
LLC, a Nevada Limited Liability Company;
EB5 IMPACT ADVISORS LLC, a Nevada
Limited Liability Company; ROBERT W.
DZIUBLA, individually and as President and
CEO of LAS VEGAS DEVELOPMENT
FUND LLC and EB5 IMPACT ADVISORS
LLC; JON FLEMING, individually and as an
agent of LAS VEGAS DEVELOPMENT
FUND LLC and EB5 IMPACT ADVISORS
LLC; LINDA STANWOOD, individually and
as Senior Vice President of LAS VEGAS
DEVELOPMENT FUND LLC and EB5
IMPACT ADVISORS LLC; DOES 1-
10, inclusive; and ROE CORPORATIONS 1-
10, inclusive,

Defendants.

1 **NOTICE OF ENTRY OF ORDER**

2 PLEASE TAKE NOTICE that an Order Granting in Part and Denying in Part Plaintiff's
3 Second Motion for Temporary Restraining Order and Setting Preliminary Injunction Hearing
4 was entered by the Court in the above-captioned action on the 9th day of April, 2019, a true and
5 correct copy of which is attached hereto.

6 DATED this 10th day of April, 2019.

7 **ALDRICH LAW FIRM, LTD.**

8 /s/ John P. Aldrich
9 John P. Aldrich, Esq.
10 Nevada Bar No. 6877
11 Catherine Hernandez, Esq.
12 Nevada Bar No. 8410
13 7866 West Sahara Avenue
14 Las Vegas, NV 89117
15 Tel (702) 853-5490
16 Fax (702) 226-1975
17 *Attorneys for Plaintiff*
18
19
20
21
22
23
24

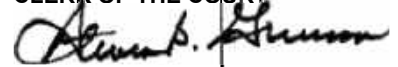
1 **CERTIFICATE OF SERVICE**

2 I HEREBY CERTIFY that on the 10th day of April, 2019, I caused the foregoing
3 **NOTICE OF ENTRY OF ORDER** to be electronically filed and served with the Clerk of the
4 Court using Wiznet which will send notification of such filing to the email addresses denoted on
5 the Electronic Mail Notice List, or by U.S. mail, postage prepaid, if not included on the
6 Electronic Mail Notice List, to the following parties:

7 Anthony T. Case, Esq.
Kathryn Holbert, Esq.
8 FARMER CASE & FEDOR
2190 E. Pebble Rd., Suite #205
9 Las Vegas, NV 89123
Attorneys for Defendants LAS VEGAS DEVELOPMENT FUND
10 *LLC, EB5IMPACT CAPITAL REGIONAL CENTER LLC,*
EB5 IMPACT ADVISORS LLC, ROBERT W. DZIUBLA,
11 *JON FLEMING and LINDA STANWOOD*

12 C. Keith Greer, Esq.
17150 Via del Campo, Suite 100
13 San Diego, CA 92127
Attorneys for Defendants LAS VEGAS DEVELOPMENT FUND
14 *LLC, EB5IMPACT CAPITAL REGIONAL CENTER LLC,*
EB5 IMPACT ADVISORS LLC, ROBERT W. DZIUBLA,
15 *JON FLEMING and LINDA STANWOOD*

16
17
18 /s/ T. Bixenmann
An employee of ALDRICH LAW FIRM, LTD.



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

ORDER
John P. Aldrich, Esq.
Nevada Bar No. 6877
Catherine Hernandez, Esq.
Nevada Bar No. 8410
ALDRICH LAW FIRM, LTD.
7866 West Sahara Avenue
Las Vegas, NV 89117
Telephone: (702) 853-5490
Facsimile: (702) 227-1975
Attorneys for Plaintiff

EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

FRONT SIGIIT MANAGEMENT LLC, a
Nevada Limited Liability Company,

Plaintiff,

vs.

LAS VEGAS DEVELOPMENT FUND LLC, a
Nevada Limited Liability Company; EB5
IMPACT CAPITAL REGIONAL CENTER
LLC, a Nevada Limited Liability Company;
EB5 IMPACT ADVISORS LLC, a Nevada
Limited Liability Company; ROBERT W.
DZIUBLA, individually and as President and
CEO of LAS VEGAS DEVELOPMENT
FUND LLC and EB5 IMPACT ADVISORS
LLC; JON FLEMING, individually and as an
agent of LAS VEGAS DEVELOPMENT
FUND LLC and EB5 IMPACT ADVISORS
LLC; LINDA STANWOOD, individually and
as Senior Vice President of LAS VEGAS
DEVELOPMENT FUND LLC and EB5
IMPACT ADVISORS LLC; DOES 1-
10, inclusive; and ROE CORPORATIONS 1-
10, inclusive,

Defendants.

CASE NO.: A-18-781084-B
DEPT NO.: 16

ORDER GRANTING IN PART AND
DENYING IN PART PLAINTIFF'S
SECOND MOTION FOR
TEMPORARY RESTRAINING
ORDER AND SETTING
PRELIMINARY INJUNCTION
HEARING

1 This matter having come before the Court on March 21, 2019 at 9:30 a.m. on Plaintiff's
2 Second Motion for Temporary Restraining Order and Preliminary Injunction, John P. Aldrich,
3 Esq. appearing on behalf of Plaintiff and Kathryn Holbert, Esq. and C. Keith Greer, Esq.,
4 appearing on behalf of Defendants, the Court having reviewed the pleadings on file herein,
5 having heard oral argument by the parties, and for good cause appearing therefore,

6 **IT IS HEREBY ORDERED** that Plaintiff's Motion for Temporary Restraining Order
7 is GRANTED in part, as set forth herein.

8 **IT IS FURTHER ORDERED** that a temporary restraining order is hereby entered
9 enjoining Defendants from proceeding with the foreclosure process in any fashion, filing a
10 Notice of Sale, and/or selling the subject property under the Notice of Breach and Default and
11 of Election to Sell Under Deed of Trust which was recorded with the Nye County Recorder's
12 Office on January 18, 2019.

13 **IT IS FURTHER ORDERED** that Plaintiff's request for an Order expunging the Notice
14 of Breach and Default and of Election to Sell Under Deed of Trust recorded on January 18, 2019
15 is DENIED without prejudice.

16 **IT IS FURTHER ORDERED** that, pursuant to the stipulation of the parties, this
17 temporary restraining order shall remain in effect until further order of this Court.

18 **IT IS FURTHER ORDERED** that the hearing on Plaintiff's Motion for Preliminary
19 Injunction is set for May 2, 2019 at 1:15 p.m. before this Court.

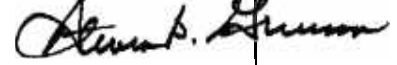
20 ///

21 ///

22 ///

23 ///

24



1 **NEO**
John P. Aldrich, Esq.
2 Nevada Bar No. 6877
Catherine Hernandez, Esq.
3 Nevada Bar No. 8410
ALDRICH LAW FIRM, LTD.
4 7866 West Sahara Avenue
Las Vegas, Nevada 89117
5 Telephone: (702) 853-5490
Facsimile: (702) 227-1975
6 *Attorneys for Plaintiff*

7 **EIGHTH JUDICIAL DISTRICT COURT**

8 **CLARK COUNTY, NEVADA**

9 FRONT SIGHT MANAGEMENT LLC, a
Nevada Limited Liability Company,

10 Plaintiff,

11 vs.

12 LAS VEGAS DEVELOPMENT FUND LLC, a
13 Nevada Limited Liability Company; EB5
IMPACT CAPITAL REGIONAL CENTER
14 LLC, a Nevada Limited Liability Company;
EB5 IMPACT ADVISORS LLC, a Nevada
15 Limited Liability Company; ROBERT W.
DZIUBLA, individually and as President and
16 CEO of LAS VEGAS DEVELOPMENT
FUND LLC and EB5 IMPACT ADVISORS
17 LLC; JON FLEMING, individually and as an
agent of LAS VEGAS DEVELOPMENT
18 FUND LLC and EB5 IMPACT ADVISORS
LLC; LINDA STANWOOD, individually and
19 as Senior Vice President of LAS VEGAS
DEVELOPMENT FUND LLC and EB5
20 IMPACT ADVISORS LLC; DOES 1-
10, inclusive; and ROE CORPORATIONS 1-
21 10, inclusive,

22 Defendants.

CASE NO.: A-18-781084-B
DEPT NO.: 16

NOTICE OF ENTRY OF ORDER

1 **NOTICE OF ENTRY OF ORDER**

2 PLEASE TAKE NOTICE that an Order Granting In Part and Denying in Part Plaintiff's
3 Motion to Compel and for Sanctions was entered by the Court in the above-captioned action on
4 the 9th day of April, 2019, a true and correct copy of which is attached hereto.

5 DATED this 10th day of April, 2019.

6 **ALDRICH LAW FIRM, LTD.**

7 /s/ John P. Aldrich
8 John P. Aldrich, Esq.
9 Nevada Bar No. 6877
Catherine Hernandez, Esq.
10 Nevada Bar No. 8410
7866 West Sahara Avenue
Las Vegas, NV 89117
11 Tel (702) 853-5490
Fax (702) 226-1975
12 *Attorneys for Plaintiff*

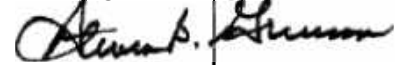
1 **CERTIFICATE OF SERVICE**

2 I HEREBY CERTIFY that on the 10th day of April, 2019, I caused the foregoing
3 **NOTICE OF ENTRY OF ORDER** to be electronically filed and served with the Clerk of the
4 Court using Wiznet which will send notification of such filing to the email addresses denoted on
5 the Electronic Mail Notice List, or by U.S. mail, postage prepaid, if not included on the
6 Electronic Mail Notice List, to the following parties:

7 Anthony T. Case, Esq.
Kathryn Holbert, Esq.
8 FARMER CASE & FEDOR
2190 E. Pebble Rd., Suite #205
9 Las Vegas, NV 89123
Attorneys for Defendants LAS VEGAS DEVELOPMENT FUND
10 *LLC, EB5IMPACT CAPITAL REGIONAL CENTER LLC,*
EB5 IMPACT ADVISORS LLC, ROBERT W. DZIUBLA,
11 *JON FLEMING and LINDA STANWOOD*

12 C. Keith Greer, Esq.
17150 Via del Campo, Suite 100
13 San Diego, CA 92127
Attorneys for Defendants LAS VEGAS DEVELOPMENT FUND
14 *LLC, EB5IMPACT CAPITAL REGIONAL CENTER LLC,*
EB5 IMPACT ADVISORS LLC, ROBERT W. DZIUBLA,
15 *JON FLEMING and LINDA STANWOOD*

16
17
18 /s/ T. Bixenmann
An employee of ALDRICH LAW FIRM, LTD.



1 **ORDER**

2 John P. Aldrich, Esq.
3 Nevada Bar No. 6877
4 Catherine Hernandez, Esq.
5 Nevada Bar No. 8410

6 **ALDRICH LAW FIRM, LTD.**

7 7866 West Sahara Avenue
8 Las Vegas, NV 89117
9 Telephone: (702) 853-5490
10 Facsimile: (702) 227-1975
11 *Attorneys for Plaintiff*

12 **EIGHTH JUDICIAL DISTRICT COURT**

13 **CLARK COUNTY, NEVADA**

14 FRONT SIGHT MANAGEMENT LLC, a
15 Nevada Limited Liability Company,

16 Plaintiff,

17 vs.

18 LAS VEGAS DEVELOPMENT FUND LLC, a
19 Nevada Limited Liability Company; EB5
20 IMPACT CAPITAL REGIONAL CENTER
21 LLC, a Nevada Limited Liability Company;
22 EB5 IMPACT ADVISORS I.L.C, a Nevada
23 Limited Liability Company; ROBERT W.
24 DZIUBLA, individually and as President and
CEO of LAS VEGAS DEVELOPMENT
FUND LLC and EB5 IMPACT ADVISORS
LLC; JON FLEMING, individually and as an
agent of LAS VEGAS DEVELOPMENT
FUND LLC and EB5 IMPACT ADVISORS
LLC; LINDA STANWOOD, individually and
as Senior Vice President of LAS VEGAS
DEVELOPMENT FUND I.L.C and EB5
IMPACT ADVISORS LLC; DOES 1-
10, inclusive; and ROE CORPORATIONS 1-
10, inclusive,

Defendants.

CASE NO.: A-18-781084-B

DEPT NO.: 16

**ORDER GRANTING IN PART AND
DENYING IN PART PLAINTIFF'S
MOTION TO COMPEL AND FOR
SANCTIONS**

..-03--9A 9:30 RCVD

1 This matter having come before the Court, on February 28, 2019 at 9:00 a.m. on
2 Plaintiff's Motion to Compel and for Sanctions and Defendants' Countermotion for Relief
3 From the November 20, 2018 Court Order Granting Plaintiff's Petition for an Accounting of
4 Defendant EB5 Impact Advisors LLC, John P. Aldrich, Esq. appearing on behalf of Plaintiff
5 and Kathryn Holbert, Esq. and C. Keith Greer, Esq., appearing on behalf of Defendants, the
6 Court having reviewed the pleadings on file herein, having heard oral argument by the parties,
7 and for good cause appearing therefore, AND

8 Further discussions regarding a deadline for supplementation of financial documents
9 pursuant to the November 20, 2018 Court Order Granting Plaintiff's Petition for an Accounting
10 of Defendant EB5 Impact Advisors LLC having occurred following the hearing on Plaintiff's
11 Second Motion for Temporary Restraining Order on Thursday, March 21, 2019,

12 **IT IS HEREBY ORDERED** that as to Plaintiff's Motion to Compel is GRANTED IN
13 PART and DENIED IN PART. While the Court finds good faith and substantial compliance
14 by Defendants at this time, Defendants have an obligation to supplement pursuant to Rule 16.1,
15 and pursuant to the November 20, 2018 Order, Defendants must fully comply with the Order to
16 "provide Plaintiff with an accounting of all funds it has received from Front Sight. Said
17 accounting must include all money received from Plaintiff by EB5Impact Advisors LLC, how
18 all funds were spent, identification of who received any portion of the funds, and any and all
19 documentation to support payments made or funds spent," with the remaining disclosure of
20 accounting documents to occur on or before April 4, 2019.

21 **IT IS FURTHER ORDERED** that Defendants' Countermotion for Relief From the
22 November 20, 2018 Court Order Granting Plaintiff's Petition for an Accounting of Defendant
23 EB5 Impact Advisors LLC is DENIED without prejudice.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

IT IS FURTHER ORDERED that Plaintiff's request for sanctions is denied at this time.

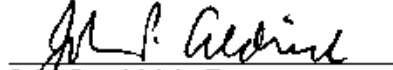
IT IS SO ORDERED.

DATED this 5 day of April, 2019.


DISTRICT COURT JUDGE *ce*

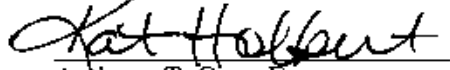
Respectfully submitted by:

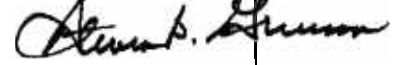
ALDRICH LAW FIRM, LTD.


John P. Aldrich, Esq.
Nevada Bar No. 6877
Catherine Hernandez, Esq.
Nevada Bar No. 8410
7866 West Sahara Avenue
Las Vegas, Nevada 89117
Tel: (702) 853-5490
Fax: (702) 227-1975
Attorneys for Plaintiff

Approved as to form and content:

FARMER CASE & FEDOR


Anthony T. Case, Esq.
Nevada Bar No. 6589
Kathryn Holbert, Esq.
Nevada Bar No. 10084
2190 E. Pebble Rd., Suite #205
Las Vegas, NV 89123
Tel: (702) 579-3900
Fax: (702) 739-3001
Attorneys for Defendants



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

NEO
John P. Aldrich, Esq.
Nevada Bar No. 6877
Catherine Hernandez, Esq.
Nevada Bar No. 8410
ALDRICH LAW FIRM, LTD.
7866 West Sahara Avenue
Las Vegas, Nevada 89117
Telephone: (702) 853-5490
Facsimile: (702) 227-1975
Attorneys for Plaintiff

EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

FRONT SIGHT MANAGEMENT LLC, a
Nevada Limited Liability Company,

Plaintiff,

CASE NO.: A-18-781084-B
DEPT NO.: 16

vs.

NOTICE OF ENTRY OF ORDER

LAS VEGAS DEVELOPMENT FUND LLC, a
Nevada Limited Liability Company; EB5
IMPACT CAPITAL REGIONAL CENTER
LLC, a Nevada Limited Liability Company;
EB5 IMPACT ADVISORS LLC, a Nevada
Limited Liability Company; ROBERT W.
DZIUBLA, individually and as President and
CEO of LAS VEGAS DEVELOPMENT
FUND LLC and EB5 IMPACT ADVISORS
LLC; JON FLEMING, individually and as an
agent of LAS VEGAS DEVELOPMENT
FUND LLC and EB5 IMPACT ADVISORS
LLC; LINDA STANWOOD, individually and
as Senior Vice President of LAS VEGAS
DEVELOPMENT FUND LLC and EB5
IMPACT ADVISORS LLC; DOES 1-
10, inclusive; and ROE CORPORATIONS 1-
10, inclusive,

Defendants.

1 **NOTICE OF ENTRY OF ORDER**

2 PLEASE TAKE NOTICE that an Order Regarding Defendants' Motions to Dismiss
3 Plaintiff's Second Amended Complaint and Motion to Strike Portions of Second Amended
4 Complaint was entered by the Court in the above-captioned action on the 9th day of April, 2019,
5 a true and correct copy of which is attached hereto.

6 DATED this 10th day of April, 2019.

7 **ALDRICH LAW FIRM, LTD.**

8 /s/ John P. Aldrich
9 John P. Aldrich, Esq.
10 Nevada Bar No. 6877
11 Catherine Hernandez, Esq.
12 Nevada Bar No. 8410
13 7866 West Sahara Avenue
14 Las Vegas, NV 89117
15 Tel (702) 853-5490
16 Fax (702) 226-1975
17 *Attorneys for Plaintiff*
18
19
20
21
22
23
24

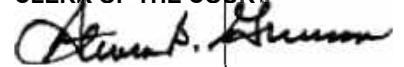
1 **CERTIFICATE OF SERVICE**

2 I HEREBY CERTIFY that on the 10th day of April, 2019, I caused the foregoing
3 **NOTICE OF ENTRY OF ORDER** to be electronically filed and served with the Clerk of the
4 Court using Wiznet which will send notification of such filing to the email addresses denoted on
5 the Electronic Mail Notice List, or by U.S. mail, postage prepaid, if not included on the
6 Electronic Mail Notice List, to the following parties:

7 Anthony T. Case, Esq.
Kathryn Holbert, Esq.
8 FARMER CASE & FEDOR
2190 E. Pebble Rd., Suite #205
9 Las Vegas, NV 89123
Attorneys for Defendants LAS VEGAS DEVELOPMENT FUND
10 *LLC, EB5IMPACT CAPITAL REGIONAL CENTER LLC,*
EB5 IMPACT ADVISORS LLC, ROBERT W. DZIUBLA,
11 *JON FLEMING and LINDA STANWOOD*

12 C. Keith Greer, Esq.
17150 Via del Campo, Suite 100
13 San Diego, CA 92127
Attorneys for Defendants LAS VEGAS DEVELOPMENT FUND
14 *LLC, EB5IMPACT CAPITAL REGIONAL CENTER LLC,*
EB5 IMPACT ADVISORS LLC, ROBERT W. DZIUBLA,
15 *JON FLEMING and LINDA STANWOOD*

16
17 /s/ T. Bixenmann
18 An employee of ALDRICH LAW FIRM, LTD.
19
20
21
22
23
24



1 **ORDER**

2 John P. Aldrich, Esq.
3 Nevada Bar No. 6877
4 Catherine Hernandez, Esq.
5 Nevada Bar No. 8410
6 **ALDRICH LAW FIRM, LTD.**
7 7866 West Sahara Avenue
8 Las Vegas, NV 89117
9 Telephone: (702) 853-5490
10 Facsimile: (702) 227-1975
11 *Attorneys for Plaintiff*

12 **EIGHTH JUDICIAL DISTRICT COURT**

13 **CLARK COUNTY, NEVADA**

14 FRONT SIGHT MANAGEMENT LLC, a
15 Nevada Limited Liability Company,

16 Plaintiff,

17 vs.

18 LAS VEGAS DEVELOPMENT FUND LLC, a
19 Nevada Limited Liability Company; EB5
20 IMPACT CAPITAL REGIONAL CENTER
21 LLC, a Nevada Limited Liability Company;
22 EB5 IMPACT ADVISORS LLC, a Nevada
23 Limited Liability Company; ROBERT W.
24 DZIUBLA, individually and as President and
CEO of LAS VEGAS DEVELOPMENT
FUND LLC and EB5 IMPACT ADVISORS
LLC; JON FLEMING, individually and as an
agent of LAS VEGAS DEVELOPMENT
FUND LLC and EB5 IMPACT ADVISORS
LLC; LINDA STANWOOD, individually and
as Senior Vice President of LAS VEGAS
DEVELOPMENT FUND LLC and EB5
IMPACT ADVISORS LLC; DOES 1-
10, inclusive; and ROE CORPORATIONS 1-
10, inclusive,

Defendants.

CASE NO.: A-18-781084-B
DEPT NO.: 16

ORDER REGARDING
DEFENDANTS' MOTIONS TO
DISMISS PLAINTIFF'S SECOND
AMENDED COMPLAINT AND
MOTION TO STRIKE PORTIONS
OF SECOND AMENDED
COMPLAINT

A-18-781084-B DEPT 16

1 This matter having come before the Court on March 19, 2019 at 1:30 p.m. on (1)
2 Motion to Dismiss Plaintiff's Second Amended Complaint filed by Defendants Las Vegas
3 Development Fund, Robert Dziubla and EB 5 Impact Advisors; (2) Motion to Dismiss
4 Plaintiff's Second Amended Complaint filed by Defendant Jon Fleming; (3) Motion to Dismiss
5 Plaintiff's Second Amended Complaint filed by Defendant EB5 Impact Capital Regional
6 Center; (4) Motion to Dismiss Plaintiff's Second Amended Complaint filed by Defendant
7 Linda Stanwood; and (5) Defendants' Motion to Strike Portions of Plaintiff's Second Amended
8 Complaint, John P. Aldrich, Esq. appearing on behalf of Plaintiff and Kathryn Holbert, Esq.
9 and C. Keith Greer, Esq., appearing on behalf of Defendants, the Court having reviewed the
10 pleadings on file herein, having heard oral argument by the parties, and for good cause
11 appearing therefore,

12 As to the First Cause of Action (Fraud/Intentional Misrepresentation/Concealment
13 Against All Defendants) of Plaintiff's Second Amended Complaint, **IT IS HEREBY**
14 **ORDERED** that the Motions to Dismiss are DENIED without prejudice as to all Defendants.

15 As to the Second Cause of Action (Breach of Fiduciary Duty Against All Defendants)
16 of Plaintiff's Second Amended Complaint, **IT IS HEREBY ORDERED** that the Motions to
17 Dismiss are GRANTED without prejudice.

18 As to the Third Cause of Action (Conversion Against All Defendants) of Plaintiff's
19 Second Amended Complaint, **IT IS HEREBY ORDERED** that the Motions to Dismiss are
20 DENIED without prejudice as to all Defendants.

21 As to the Fourth Cause of Action (Civil Conspiracy Against All Defendants) of
22 Plaintiff's Second Amended Complaint, **IT IS HEREBY ORDERED** that the Motions to
23 Dismiss are DENIED without prejudice as to all Defendants.

1 As to the Fifth Cause of Action (Breach of Contract Against Defendants EB5IA and
2 LVDF) of Plaintiff's Second Amended Complaint, **IT IS HEREBY ORDERED** that the
3 Motions to Dismiss are DENIED without prejudice.

4 As to the Sixth Cause of Action (Contractual Breach of Implied Covenant of Good
5 Faith and Fair Dealing Against the Entity Defendants) of Plaintiff's Second Amended
6 Complaint, **IT IS HEREBY ORDERED** that the Motions to Dismiss are DENIED, without
7 prejudice as to Defendants EB5IA and LVDF and GRANTED without prejudice as to
8 Defendant EB5IC.

9 As to the Seventh Cause of Action (Tortious Breach of Implied Covenant of Good Faith
10 and Fair Dealing Against the Entity Defendants) of Plaintiff's Second Amended Complaint, **IT**
11 **IS HEREBY ORDERED** that the Motions to Dismiss are GRANTED without prejudice.

12 As to the Eighth Cause of Action (Intentional Interference with Prospective Economic
13 Advantage Against the Entity Defendants and Defendant Dziubla) of Plaintiff's Second
14 Amended Complaint, **IT IS HEREBY ORDERED** that the Motions to Dismiss are DENIED,
15 without prejudice as to Defendants Dziubla and LVDF and GRANTED without prejudice as to
16 Defendants EB5IC and EB5IA.

17 As to the Ninth Cause of Action (Unjust Enrichment Against All Defendants) of
18 Plaintiff's Second Amended Complaint, **IT IS HEREBY ORDERED** that the Motions to
19 Dismiss are GRANTED without prejudice.

20 As to the Tenth Cause of Action (Negligent Misrepresentation Against All Defendants)
21 of Plaintiff's Second Amended Complaint, **IT IS HEREBY ORDERED** that the Motions to
22 Dismiss are DENIED without prejudice as to Defendants EB5IA and Dziubla and GRANTED
23 without prejudice as to Defendants Stanwood, Fleming, EB5IC and LVDF.

1 As to the Eleventh Cause of Action (Negligence Against All Defendants) of Plaintiff's
2 Second Amended Complaint, **IT IS HEREBY ORDERED** that the Motions to Dismiss are
3 GRANTED without prejudice.

4 As to the Twelfth Cause of Action (Alter Ego Against Defendants Dziubla, LVDF,
5 EB5IA, and EB5IC) of Plaintiff's Second Amended Complaint, **IT IS HEREBY ORDERED**
6 that the Motions to Dismiss are GRANTED as to this claim as a stand-alone cause of action,
7 but DENIED as to this claim as a remedy.

8 As to Defendants' Motion to Strike Portions of Plaintiff's Second Amended Complaint,
9 as revised in Defendants' Reply brief to seek only the striking of Exhibits 1-5, 7, 8, 10-18, 20-
10 26, 28, and 29 to the Second Amended Complaint, the Court GRANTS the Motion to Strike
11 those exhibits from the Second Amended Complaint, with the explicit caveat that there is no
12 waiver, estoppel, or other negative effect that will inure to Plaintiff's detriment related to the
13 striking of these exhibits.

14 **IT IS SO ORDERED.**

15 DATED this 5 day of April, 2019.

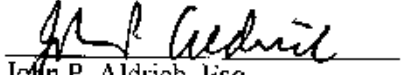
16 
17 DISTRICT COURT JUDGE *CR*

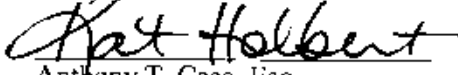
18 Respectfully submitted by:

Approved as to form and content:

19 **ALDRICH LAW FIRM, LTD.**

FARMER CASE & FEDOR

20 
21 John P. Aldrich, Esq.
22 Nevada Bar No. 6877
23 Catherine Hernandez, Esq.
24 Nevada Bar No. 8410
7866 West Sahara Avenue
Las Vegas, Nevada 89117
Tel: (702) 853-5490
Fax: (702) 227-1975
Attorneys for Plaintiff


Anthony T. Case, Esq.
Nevada Bar No. 6589
Kathryn Holbert, Esq.
Nevada Bar No. 10084
2190 E. Pebble Rd., Suite #205
Las Vegas, NV 89123
Tel: (702) 579-3900
Fax: (702) 739-3001
Attorneys for Defendants