

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

2
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.
11 WILLIAMS, DISTRICT COURT JUDGE,

12 Respondents,

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
28 Senior Vice President of LAS VEGAS
DEVELOPMENT FUND LLC and EB5
IMPACT ADVISORS LLC,

Real Parties in Interest.

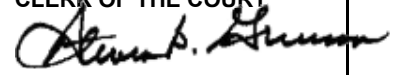
No.: _____ Electronically Filed
Dec 18 2019 10:45 a.m.
Elizabeth A. Brown
Dist. Ct. Case No: A-18-781084-B
Clerk of Supreme Court

1
2 **PETITION FOR EXTRAORDINARY WRIT RELIEF**

3
4 **PETITIONER’S APPENDIX**
5 **VOLUME XII**

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JON FLEMING and LINDA STANWOOD

EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

FRONT SIGHT MANAGEMENT LLC, a
Nevada Limited Liability Company,

Plaintiff,

vs.

LAS VEGAS DEVELOPMENT FUND LLC,
et al.,

Defendants.

) CASE NO.: A-18-781084-B
) DEPT NO.: 16
)
) **DEFENDANT EB5 IMPACT ADVISORS**
) **LLC'S OPPOSITION TO PLAINTIFF'S**
) **MOTION FOR SANCTIONS**

Hearing Date: October 23, 2019
Time: 9:00 a.m.

AND ALL RELATED COUNTERCLAIMS

1 Defendants EB5 IMPACT ADVISORS LLC, a Nevada Limited Liability Company
2 (“:EB5IA”), by and through its attorneys Keith Greer, Esq. and Catherine Holbert, Esq., hereby
3 file this Opposition to Plaintiff FRONT SIGHT MANAGEMENT, LLC’s (“Front Sight” or
4 “Plaintiff”) Motion for Sanctions. This Opposition is based on the pleadings and papers on file,
5 this Memorandum of Points and Authorities, the Declaration of Robert Dziubla filed herewith,
6 and such other and further oral or written evidence as may be presented at the time of the hearing
7 of this Motion for Sanctions.

8 **I. INTRODUCTION**

9 As a threshold issue, Plaintiff’s motion lacks clarity as to exactly what sanctions are
10 sought, but appears to ask this court to skip the discovery and trial process and either: (1) strike
11 the answer and counterclaim (Plaintiff’s Motion at 9:12 - 14:12 - 15:7); (2) alternatively, require
12 an adverse inference at trial;¹ or (3) award monetary sanctions equal to the total amount of money
13 paid by Plaintiff to Defendants. ² (Id. at 12:3-12). The Motion appears to be based on alternative
14 theories relating to the claimed deficiencies in the accounting provided by EB5IA and alleged
15 spoliation of evidence relating to certain underlying receipts and expense documentation. (Id. at
16 12:13 - 14:11 and 5:16 -12:2).

17 Contrary to Plaintiff’s assertions, Plaintiff’s motion is based on a fundamentally flawed
18 premise and is factually incorrect and misleading. First, Plaintiff’s motion is based on the flawed
19 premise that Defendant was required to specifically account for all funds expended by EB5IA; it
20 was not. Second, Plaintiff ignores the simple fact that Defendant has provided the original

21
22 ¹ Plaintiff never clearly identifies the adverse inference that it requests, merely stating
23 obliquely as an aside at the end of its motion that “The inference should include an
24 instruction to the jury that had the records, receipts, invoices, travel information, etc., been
25 maintained, those records would have shown Defendants’ misuse of funds and would have
supported Front Sight’s claims of fraud, misrepresentation, concealment, conversion, breach of
contract, and civil conspiracy.” (Mot at 15 9-13)

26 ² Front Sight requests unspecified amounts for “attorney’s fees and costs for having to bring
27 this Motion, as well as the other motions related to compelling an accounting from Defendant
28 EB5IA.”) (Mot at 12:8-9) as well as “an amount equal to the amount of money
Defendant EB5IA took from Plaintiff”. (Mot at 12:10-11).

1 ledgers and accounting records that account for every dollar received and spent by EB5IA.
2 Plaintiff also complains that certain back up documentation was discarded contemporaneously
3 **before litigation was contemplated**, in the ordinary course of business.

4 As discussed in detail below, Plaintiff’s motion should be denied for the very simple
5 reasons that: (1) Defendant EB5IA has provided an accounting which details how every single
6 dollar received by EB5IA was spent; and (2) any backup documents which were allegedly
7 discarded were discarded contemporaneously in the ordinary course of business, which was
8 before litigation was contemplated. Moreover, Defendant was not obligated to retain “every
9 scrap of paper.” *Danis v. USN Commc'ns, Inc.*, No. 98 C 7482, 2000 WL 1694325, at *32 (N.D.
10 Ill. Oct. 20, 2000) (“To be sure, the duty to preserve does not require a litigant to keep every
11 scrap of paper in its file.”); accord, *In re Old Banc One Shareholders Sec. Litig.*, No. 00 C 2100,
12 2005 WL 3372783, at *3 (N.D. Ill. Dec. 8, 2005).

13 **II. ARGUMENT**

14 **A. There Is No Basis for Sanctions Because Defendant Has Provided a Proper**
15 **Accounting.**

16 Defendant EB5IA has provided a complete accounting of every dollar received and every
17 dollar spent by providing a complete unredacted accounting ledger. Plaintiff’s motion blurs the
18 distinction between an accounting and an audit, but those instrumentalities are different concepts
19 and require different documentation. An accounting is the method used to keep track of
20 monetary transactions. The general ledger is the central component of the accounting process.
21 The general ledger provides a record of each financial transaction which takes place during the
22 accounting period. The general ledger holds account information that is needed to prepare the
23 company's financial statements, and transaction data is segregated by type into accounts for
24 assets, liabilities, owner’s equity, revenues, and expenses. In other words, the general ledger
25 contains all of the information necessary to have a complete understanding of the financial
26 transactions of a company.

27 Production of the general ledger is production of the complete accounting records. That
28

1 is what Defendant has done here and this is a complete accounting.

2 An audit on the other hand is a verification of the accuracy of the accounting records.
3 The auditor may examine the “audit trail.” The general ledger is the central record necessary to
4 the “audit process.” *See, Trustees of Carpenters for S. Nevada Health & Welfare Tr. v. Better*
5 *Bldg. Co.*, 101 Nev. 742, 746, 710 P.2d 1379, 1382 (1985) (“appellants were refused access to
6 the general ledger or cash disbursement journal. Without access to those records, no accurate
7 determination could be made of whether Better Building had fully reported”).

8 Plaintiff’s Motion dismissively refers to the documents produced as “summary
9 QuickBooks ledgers” (Plaintiff’s Motion at 10:9) and as “an alleged copy of EB5IA’s
10 QuickBooks transaction ledger” (Id. at 4:11). Plaintiff claims “Defendant EB5IA’s accounting is
11 vague, questionable, suspicious, and grossly incomplete[.]” (Id. at 14:6-7). This is a complete
12 mischaracterization of the general ledger which provides line item detail for every dollar spent by
13 EB5IA under penalty of perjury. In fact, the selected references claimed by Plaintiff as
14 improprieties reveal the line item level of detail provided by the printout of the general ledger.
15 *See, e.g. id.* at 13:12-13 (“On January 2, 2015, Defendant EB5IA paid money to the Las Vegas
16 Justice Court on Dziubla’s behalf for Citation #X01053227.”) This level of detail certainly would
17 not be included in a “summary,” “vague” and “incomplete” accounting.

18 In the present case, Defendant has produced the complete and unredacted general ledger
19 for EB5IA. This is, virtually by definition, a full and complete accounting. Thus, Defendant has
20 fully complied with the order to produce an accounting.

21 **B. There Is No Basis for Sanctions for Spoliation of Evidence**

22 **1. The Legal Standard for a Spoliation Sanction Award**

23 “When evidence is willfully suppressed, NRS 47.250(3) creates a rebuttable presumption
24 that the evidence would be adverse if produced. Other courts have determined that willful or
25 intentional spoliation of evidence requires the intent to harm another party through the
26 destruction and not simply the intent to destroy evidence. We agree. Thus, before a rebuttable
27 presumption that willfully suppressed evidence was adverse to the destroying party applies, the

1 party seeking the presumption's benefit has the burden of demonstrating that the evidence was
2 destroyed with intent to harm.” *Bass-Davis v. Davis*, 122 Nev. 442, 448 (2006).

3 “[I]n cases based on negligently lost or destroyed evidence, an adverse inference
4 instruction is tied to a showing that the party controlling the evidence **had notice that it was**
5 **relevant at the time when the evidence was lost or destroyed**. In other words, when presented
6 with a spoliation allegation, the threshold question should be whether the alleged spoliator was
7 under any obligation to preserve the missing or destroyed evidence.” *Bass-Davis v. Davis*, 122
8 Nev. 442, 449–50.[emphasis added] “[T]he prelitigation duty to preserve evidence is imposed
9 once a party is on “notice” of a potential legal claim. While few courts have expounded on the
10 concept of notice, those that have conclude that a party is on notice when litigation is reasonably
11 foreseeable.” *Id.* “Accordingly, ‘[a] party's duty to preserve specific types of documents does not
12 arise unless the party controlling the documents has notice of those documents' relevance.’
13 [Citation omitted.] This notice ordinarily comes from discovery requests or from the complaint
14 itself.” *In re Kmart Corp.*, 371 B.R. 823, 842 (Bankr. N.D. Ill. 2007); See also *Champion*
15 *Foodservice, LLC v. Vista Food Exch., Inc.*, No. 1:13-CV-1195, 2016 WL 6642228, at *16 (N.D.
16 Ohio Aug. 23, 2016) (“The burden of proof is on plaintiff to prove all of the elements of its
17 spoliation claim by a preponderance of the evidence. “)

18 Here, Plaintiff cannot show that Defendant knew the relevance of a document prior to the
19 contemplation of litigation. Moreover, Defendant has not and cannot show that discarding
20 documents during the normal course of business, before litigation, was a willful act to hurt
21 Plaintiff. Accordingly, Defendant did not spoliolate evidence, nor did Plaintiff satisfy its burden
22 proving spoliation by Defendant.

23 **2. Defendant Is Not Required to Maintain “Every Scrap of Paper”**

24 “The obligation to preserve evidence arises when the party has notice that the evidence is
25 relevant to litigation or when a party should have known that the evidence may be relevant to
26 future litigation.” Identifying the boundaries of the duty to preserve involves two related
27 inquiries: when does the duty to preserve attach, and what evidence must be preserved?”

1 *Zubulake v. UBS Warburg LLC*, 220 F.R.D. 212, 216 (S.D.N.Y. 2003). Here, neither of these
2 inquiries supports a finding of spoliation.

3 Defendant is only required to maintain documents where Defendant is on notice that the
4 documents may be relevant to future litigation. Defendant is not required to maintain *every*
5 *scrap of paper*. *Danis v. USN Communications*, 2000 WL 1694325, at *30, *32 (N.D.Ill. Oct.20,
6 2000) (“[T]he duty to preserve potentially discoverable information does not require a party to
7 keep every scrap of paper.”); *Wm. T. Thompson Co. v. Gen. Nutrition Corp.*, 593 F. Supp. 1443,
8 1454 (C.D. Cal. 1984) (“litigant is under no duty to keep or retain every document in its
9 possession once a complaint is filed.”) Instead, a party is required to keep relevant evidence over
10 which it had control of and reasonably knew or could foresee that it was material to the
11 litigation. See *Marrocco v. General Motors Corp.*, 966 F.2d 220, 224 (7th Cir.1992).” *In re Old*
12 *Banc One Shareholders Sec. Litig.*, No. 00 C 2100, 2005 WL 3372783, at *3 (N.D. Ill. Dec. 8,
13 2005); *Danis v. USN Commc'ns, Inc.*, No. 98 C 7482, 2000 WL 1694325, at *32 (N.D. Ill. Oct.
14 20, 2000);

15 In the present case, analogous to the aforementioned cases, Defendant was not obligated
16 to preserve every receipt or invoice for every expense incurred years prior to litigation. There
17 was no reason to believe that such documents would be relevant or material to future litigation
18 which was not contemplated at the time the documents were destroyed.

19 **3. Defendant’s Disposition of Certain Records Was Prior to the “Trigger**
20 **Date” and Pursuant to a Proper Document Retention Policy**

21 “[W]hen presented with a spoliation allegation, the threshold question should be whether
22 the alleged spoliator was under any obligation to preserve the missing or destroyed evidence.”
23 *Bass-Davis v. Davis*, 122 Nev. 442, 449–50 (2006). “[T]he parties, obliged to proceed before the
24 MCAD, incur obligations under the Federal Rules, to preserve evidence relevant to the plaintiff’s
25 claims and to be ready to turn such evidence over should formal litigation commence. Jamie S.
26 Gorelick et al., *Destruction of Evidence*, §§ 3.8–3.12 (1989) [] (one prerequisite of the
27 imposition of sanctions for destruction of evidence is the occurrence of the act either after suit

1 has been filed, or, if before, when filing of the suit is fairly perceived as imminent).” *McGuire v.*
2 *Acufex Microsurgical, Inc.*, 175 F.R.D. 149, 153 (D. Mass. 1997).

3 “Defendants engage in spoliation of documents as a matter of law **only if they had**
4 **‘some notice that the documents were potentially relevant’ to the litigation before they were**
5 **destroyed.’** *United States v. Kitsap Physicians Serv.*, 314 F.3d 995, 1001 (9th Cir. 2002)
6 [emphasis added]. There is no “spoliation” if “the documents were kept and destroyed in the
7 normal course of business.” *Id.*; *State of Idaho Potato Comm'n v. G & T Terminal Packaging,*
8 *Inc.*, 425 F.3d 708, 720 (9th Cir. 2005) (no spoliation if documents destroyed in accordance with
9 the business’ document retention policy).

10 Here, the evidence proffered by Plaintiff in support of its motion for sanctions makes
11 clear that any documents that were not retained, were discarded prior to there being an obligation
12 to preserve such evidence.

13 “Q. Have you disposed of any receipts, invoices, or underlying
14 documentation for expenses from EB-5IA since it was dissolved?

15 A. No.”

16 (Tr. June 3, 49, 17-20.)

17 The EB5IA dissolution was filed with the Nevada Secretary of State on August 6, 2018.
18 (SAC Exh 29). This action was not filed until over a month later on September 14, 2018.
19 Plaintiff did not send a “document preservation” letter until February 8, 2019, six months **after**
20 EB5IA was dissolved.

21 Moreover, the evidence is undisputed that no **receipts, invoices, or underlying**
22 **documentation for expenses** was disposed of after EB5IA was dissolved. Thus, the absolute
23 latest that any documents were disposed of was August 5, 2018, This date is prior to the “trigger
24 date” which would impose any obligation to maintain the records.

25 As set forth in the accompanying Declaration of Robert Dziubla, the custodian of records
26 for EB5IA, EB5IA utilized QuickBooks accounting software in order to keep its accounting
27 books and records. The general practice and policy of EB5IA was to retain invoices of a material

1 magnitude (which were produced as part of the accounting provided by EB5IA), and to discard
2 cash register receipts of what were considered immaterial amounts after the individual charges
3 were entered into the QuickBooks software general ledger. (Dziubla Decl. ¶5). The computer
4 generated accounting general ledger attached as Exhibit B to his April 3, 2019 Declaration is a
5 complete line by line item detail of all transactions for EB5IA. (Id. ¶6) This is the most complete
6 accounting available and was the accounting relied upon by EB5IA for all purposes. (Id.).
7 Moreover, at the time individual invoices were discarded consistent with the EB5IA document
8 retention policy and practice, Mr. Dziubla did not have any reason to believe that there would be
9 any future litigation between Front Sight and EB5IA and certainly had no reason to believe that
10 any individual invoices would be relevant or necessary for such litigation. (Id. ¶7) Many of
11 those documents were discarded years prior to the commencement of this lawsuit. (Id.). And
12 most importantly, no documents have been discarded since the commencement of this lawsuit in
13 September 2019 or after Plaintiff's counsel sent a document retention demand in February 2019.
14 (Id. ¶8).

15 “It defies logic to expect the plaintiffs to have collected and preserved documents from
16 board members before the reason why those documents are relevant (their disassociation) had
17 occurred.” *Greater New York Taxi Ass'n v. City of New York*, No. 13CIV3089VSBJCF, 2017
18 WL 4012051, at *3 (S.D.N.Y. Sept. 11, 2017). Similarly, it defies logic, to sanction Defendant
19 for following its normal business practices relating well before there was any reason to anticipate
20 that such documents would be relevant to future litigation that was not even contemplated at the
21 time.

22 **4. Imposition of the Severe Sanctions Requested Is Not Appropriate**

23 “Generally, sanctions may only be imposed where there has been willful noncompliance
24 with a court order or where the adversary process has been halted by the actions of the
25 unresponsive party.” *GNLV Corp. v. Serv. Control Corp.*, 111 Nev. 866, 869 (1995), *citing Fire*
26 *Ins. Exchange v. Zenith Radio Corp.*, 103 Nev. 648, 651, 747 P.2d 911, 913 (1987).
27 “Fundamental notions of fairness and due process require that discovery sanctions be just and

1 that sanctions relate to the specific conduct at issue.” *GNLV Corp. v. Serv. Control Corp.*, 111
2 Nev. 866, 870 (1995).

3 Defendants submit there has not been any non-compliance, either intentional or negligent,
4 and that an award of sanctions is inappropriate in this case. Moreover, the sanctions requested by
5 Plaintiff are draconian and wholly disproportionate.

6 Plaintiff seeks extremely severe sanctions of striking the Defendant’s Answer and
7 Counterclaim, imposing an adverse evidentiary inference, and ordering monetary sanctions equal
8 to the entire amount of money paid by Front Sight to Defendant (approximately \$336,000).
9 Before the court may impose such severe sanctions “a somewhat heightened standard of review
10 should apply.” *Young v. Johnny Ribeiro Bldg., Inc.*, 106 Nev. 88, 92 (1990). Any such severe
11 sanction order must “be supported by an express, careful and preferably written explanation of
12 the court’s analysis of the pertinent factors.” *Id.*; *Foster v. Dingwall*, 126 Nev. 56, 65, 227 P.3d
13 1042, 1048 (2010)(“heightened standard of review applies where the sanction strikes the
14 pleadings . . . Under this somewhat heightened standard, the district court abuses its discretion if
15 the sanctions are not just and do not relate to the claims at issue in the discovery order that was
16 violated.”)

17 Plaintiff’s request for monetary sanctions equal to the amount of money paid by Plaintiff
18 to Defendant is also improper. The case of *Nevada Power Co. v. Fluor Illinois*, 108 Nev. 638,
19 646 (1992) is instructive. In that case, the Nevada Supreme Court reversed a sanctions award
20 finding that the “district court abused its discretion in awarding respondents all of their attorneys’
21 fees and costs from the inception of the suit, more than \$5.2 million.” *Id.* “NRCP 37(b)(2) limits
22 an award of attorney’s fees to those incurred because of the alleged failure to obey the particular
23 order in question” *Id* at 646-647.

24 The *Nevada Power* court held that “sanctions, in the form of all of respondents’ attorneys’
25 fees and costs from the inception of the suit” were an abuse of discretion. “It is difficult for us to
26 understand how the appellants’ alleged violation ‘caused’ all of these fees and costs. We thus
27 conclude that the district court abused its discretion in awarding all attorneys’ fees and costs;

1 instead, under NRCP 37(b)(2), a district court should, if it properly finds that a party has violated
2 a discovery order, determine only those fees and costs associated with the violation of the
3 discovery order.” *Nevada Power Co. v. Fluor Illinois*, 108 Nev. 638, 647 (1992).

4 Applying these principles to the present motion, even assuming *arguendo* that Plaintiff’s
5 allegations have any merit, which they don’t, the sanctions sought are ridiculously
6 disproportionate to the handful of Starbucks and gas receipts that are no longer available, yet are
7 described in detail and appear to the penny in the ledgers that were produced. Thus the request
8 for sanctions should be denied.

9 **III. CONCLUSION**

10 As set forth above, Plaintiff’s Motion for Sanctions should be denied because: (1)
11 Defendant has provided a proper accounting; and (2) Plaintiff has not established a spoliation of
12 evidence required for imposition of sanctions.

13 Dated: September 30, 2019

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

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CERTIFICATE OF SERVICE and/or MAILING

Pursuant to NRCF 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):

DEFENDANT EB5 IMPACT ADVISORS LLC’S OPPOSITION TO PLAINTIFF’S MOTION FOR SANCTIONS

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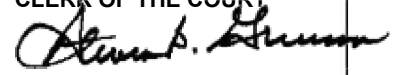
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By:

■ 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).

Dated: September 30, 2019

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



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16 EB5 IMPACT ADVISORS LLC, ROBERT W. DZIUBLA,
17 JON FLEMING and LINDA STANWOOD

18 **EIGHTH JUDICIAL DISTRICT COURT**
19 **CLARK COUNTY, NEVADA**

20 FRONT SIGHT MANAGEMENT LLC, a) CASE NO.: A-18-781084-B
21 Nevada Limited Liability Company,) DEPT NO.: 16
22)
23 Plaintiff,)
24 vs.) **DECLARATION OF ROBERT DZIUBLA IN**
25) **OPPOSITION TO PLAINTIFF'S MOTION**
26) **FOR SANCTIONS**
27 LAS VEGAS DEVELOPMENT FUND LLC,)
28 et al.,)
29) Hearing Date: October 23, 2019
30 Defendants.) Time: 9:00 a.m.
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1 STATE OF CALIFORNIA)
2) ss:
3 COUNTY OF SAN DIEGO)
4

5 Affiant, hereby states and declares as follows:

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 was the founder and an officer of EB5 Impact Advisors (“EB5IA”) from its
9 founding through and including its dissolution in August 2018. I am currently the designated
10 officer of EB5IA for “winding up” matters post dissolution.

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. At all times relevant hereto I was, and am, the custodian of records for EB5IA.

14 5. EB5IA utilized QuickBooks accounting software in order to keep its accounting
15 books and records. The general practice and policy of EB5IA was to retain invoices of a material
16 magnitude (which were produced as part of the accounting provided by EB5IA), and to discard
17 cash register receipts of what were considered immaterial amounts after the individual charges
18 were entered into the QuickBooks software general ledger.

19 6. The computer generated accounting general ledger attached as Exhibit B to my
20 April 3, 2019 Declaration is a complete line by line item detail of all transactions for EB5IA.
21 This is the most complete accounting available and was the accounting relied upon by EB5IA for
22 all purposes.

23 7. At the time individual invoices were discarded consistent with the EB5IA
24 document retention policy and practice, I did not have any reason to believe that there would be
25 any future litigation between Front Sight and EB5IA and certainly had no reason to believe that
26 any individual invoices would be relevant or necessary for such litigation. Many of those
27 documents were discarded years prior to the commencement of this lawsuit.

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8. Importantly, no documents have been discarded since the commencement of this lawsuit in September 2019 or after Plaintiff's counsel sent a document retention demand in February 2019.

I declare under penalty of perjury under the laws of the State of Nevada and the State of California that the foregoing is true and correct, and that this Declaration was executed on September 30, 2019 at Escondido, California.


Robert Dziubla

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CERTIFICATE OF SERVICE and/or MAILING

Pursuant to NRCF 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):

**DECLARATION OF ROBERT W. DZIUBLA IN
OPPOSITION TO MOTION FOR SANCTIONS**

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	

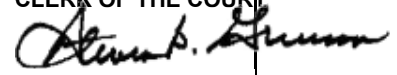
By:

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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.

Dated: September 30, 2019

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



1 ANS
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2 Nevada Bar No. 6877
Catherine Hernandez, Esq.
3 Nevada Bar No. 8410
Matthew B. Beckstead, Esq.
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7 *Attorneys for Plaintiff/Counterdefendants*

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

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

11 Plaintiff,

12 vs.

13 LAS VEGAS DEVELOPMENT FUND LLC, a
Nevada Limited Liability Company; et al.,

14 Defendants.
15 _____

16 AND ALL RELATED COUNTERCLAIMS.
17 _____

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

COUNTERDEFENDANTS VNV
DYNASTY TRUST I AND VNV
DYNASTY TRUST II'S ANSWER
TO COUNTERCLAIM

18 COME NOW Counterdefendants VNV DYNASTY TRUST I and VNV DYNASTY
19 TRUST II (hereinafter collectively "answering Counterdefendants"), by and through their
20 attorneys of record, John P. Aldrich, Esq., Catherine Hernandez, Esq., and Matthew B.
21 Beckstead, Esq., of the Aldrich Law Firm, Ltd., and for their Answer to Counterclaim on file
22 herein, deny, admit, and allege as follows:

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1 **GENERAL DENIAL**

2 These answering Counterdefendants have made an effort to respond to each and every
3 allegation. However, to the extent any allegation was overlooked or not responded to, these
4 answering Counterdefendants deny said allegations.

5 **ANSWER TO COUNTERCLAIM**

6 1. Answering Paragraph 1 of the Counterclaim, these answering Counterdefendants
7 deny each and every allegation contained therein.

8 **I.**

9 **PARTIES**

10 2. Answering Paragraph 2 of the Counterclaim, these answering Counterdefendants
11 state that they are without knowledge sufficient to form a belief as to the truth or falsity of the
12 allegations contained therein and, therefore, denys the same.

13 3. Answering Paragraph 3 of the Counterclaim, these answering Counterdefendants
14 state that they are without knowledge sufficient to form a belief as to the truth or falsity of the
15 allegations contained therein and, therefore, denys the same.

16 4. Answering Paragraph 4 of the Counterclaim, these answering Counterdefendants
17 state that they are without knowledge sufficient to form a belief as to the truth or falsity of the
18 allegations contained therein and, therefore, denys the same.

19 5. Answering Paragraph 5 of the Counterclaim, these answering Counterdefendants
20 state that they are without knowledge sufficient to form a belief as to the truth or falsity of the
21 allegations contained therein and, therefore, denys the same.

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6. Answering Paragraph 6 of the Counterclaim, these answering Counterdefendants state that they are without knowledge sufficient to form a belief as to the truth or falsity of the allegations contained therein and, therefore, deny the same.

7. Answering Paragraph 7 of the Counterclaim, these answering Counterdefendants deny each and every allegation contained therein.

8. Answering Paragraph 8 of the Counterclaim, these answering Counterdefendants state that the allegations contained therein constitute conclusions of law and thus require no answer; however, to the extent they contain allegations of fact, these answering Counterdefendants deny each and every allegation contained therein.

9. Answering Paragraph 9 of the Counterclaim, these answering Counterdefendants state that the allegations contained therein constitute conclusions of law and thus require no answer; however, to the extent they contain allegations of fact, these answering Counterdefendants deny each and every allegation contained therein.

10. Answering Paragraph 10 of the Counterclaim, these answering Counterdefendants deny each and every allegation contained therein.

II.

GENERAL ALLEGATIONS

11. Answering Paragraph 11 of the Counterclaim, these answering Counterdefendants state that there are no allegations against them in this paragraph, and thus they need not answer these allegations, but nevertheless, they are without knowledge sufficient to form a belief as to the truth or falsity of the allegations contained therein and, therefore, deny the same.

12. Answering Paragraph 12 of the Counterclaim, these answering Counterdefendants state that there are no allegations against them in this paragraph, and thus they need not answer

1 these allegations, but nevertheless, they are without knowledge sufficient to form a belief as to
2 the truth or falsity of the allegations contained therein and, therefore, deny the same.

3 13. Answering Paragraph 13 of the Counterclaim, these answering Counterdefendants
4 state that there are no allegations against them in this paragraph, and thus they need not answer
5 these allegations, but nevertheless, they are without knowledge sufficient to form a belief as to
6 the truth or falsity of the allegations contained therein and, therefore, deny the same.

7 14. Answering Paragraph 14 of the Counterclaim, these answering Counterdefendants
8 state that there are no allegations against them in this paragraph, and thus they need not answer
9 these allegations, but nevertheless, they are without knowledge sufficient to form a belief as to
10 the truth or falsity of the allegations contained therein and, therefore, deny the same.

11 15. Answering Paragraph 15 of the Counterclaim, these answering Counterdefendants
12 state that there are no allegations against them in this paragraph, and thus they need not answer
13 these allegations, but nevertheless, they are without knowledge sufficient to form a belief as to
14 the truth or falsity of the allegations contained therein and, therefore, deny the same.

15 16. Answering Paragraph 16 of the Counterclaim, these answering Counterdefendants
16 state that there are no allegations against them in this paragraph, and thus they need not answer
17 these allegations, but nevertheless, they are without knowledge sufficient to form a belief as to
18 the truth or falsity of the allegations contained therein and, therefore, deny the same.

19 17. Answering Paragraph 17 of the Counterclaim, these answering Counterdefendants
20 state that there are no allegations against them in this paragraph, and thus they need not answer
21 these allegations, but nevertheless, they are without knowledge sufficient to form a belief as to
22 the truth or falsity of the allegations contained therein and, therefore, deny the same.

1 18. Answering Paragraph 18 of the Counterclaim, these answering Counterdefendants
2 state that there are no allegations against them in this paragraph, and thus they need not answer
3 these allegations, but nevertheless, they are without knowledge sufficient to form a belief as to
4 the truth or falsity of the allegations contained therein and, therefore, deny the same.

5 **BORROWER’S BREACHES AND DEFAULT UNDER THE CLA**

6 **A. Breach Number 1: Improper Use of Loan Proceeds – CLA § 1.7(e)**

7 19. Answering Paragraph 19 of the Counterclaim, these answering Counterdefendants
8 state that there are no allegations against them in this paragraph, and thus they need not answer
9 these allegations, but nevertheless, they are without knowledge sufficient to form a belief as to
10 the truth or falsity of the allegations contained therein and, therefore, deny the same.

11 20. Answering Paragraph 20 of the Counterclaim, these answering Counterdefendants
12 state that there are no allegations against them in this paragraph, and thus they need not answer
13 these allegations, but nevertheless, they are without knowledge sufficient to form a belief as to
14 the truth or falsity of the allegations contained therein and, therefore, deny the same.

15 21. Answering Paragraph 21 of the Counterclaim, these answering Counterdefendants
16 deny each and every allegation contained therein.

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

18 22. Answering Paragraph 22 of the Counterclaim, these answering Counterdefendants
19 state that there are no allegations against them in this paragraph, and thus they need not answer
20 these allegations, but nevertheless, they are without knowledge sufficient to form a belief as to
21 the truth or falsity of the allegations contained therein and, therefore, deny the same.

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1 **C. Breach Number 3: Failure to Timely Complete Construction – CLA § 5.1**

2 23. Answering Paragraph 23 of the Counterclaim, these answering Counterdefendants
3 state that there are no allegations against them in this paragraph, and thus they need not answer
4 these allegations, but nevertheless, they are without knowledge sufficient to form a belief as to
5 the truth or falsity of the allegations contained therein and, therefore, deny the same.

6 24. Answering Paragraph 24 of the Counterclaim, these answering Counterdefendants
7 state that there are no allegations against them in this paragraph, and thus they need not answer
8 these allegations, but nevertheless, they are without knowledge sufficient to form a belief as to
9 the truth or falsity of the allegations contained therein and, therefore, deny the same.

10 25. Answering Paragraph 25 of the Counterclaim, these answering Counterdefendants
11 state that there are no allegations against them in this paragraph, and thus they need not answer
12 these allegations, but nevertheless, they are without knowledge sufficient to form a belief as to
13 the truth or falsity of the allegations contained therein and, therefore, deny the same.

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

15 26. Answering Paragraph 26 of the Counterclaim, these answering Counterdefendants
16 state that there are no allegations against them in this paragraph, and thus they need not answer
17 these allegations, but nevertheless, they are without knowledge sufficient to form a belief as to
18 the truth or falsity of the allegations contained therein and, therefore, deny the same.

19 27. Answering Paragraph 27 of the Counterclaim, these answering Counterdefendants
20 state that there are no allegations against them in this paragraph, and thus they need not answer
21 these allegations, but nevertheless, they are without knowledge sufficient to form a belief as to
22 the truth or falsity of the allegations contained therein and, therefore, deny the same.

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

2 28. Answering Paragraph 28 of the Counterclaim, these answering Counterdefendants
3 state that there are no allegations against them in this paragraph, and thus they need not answer
4 these allegations, but nevertheless, they are without knowledge sufficient to form a belief as to
5 the truth or falsity of the allegations contained therein and, therefore, deny the same.

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

7 29. Answering Paragraph 29 of the Counterclaim, these answering Counterdefendants
8 state that there are no allegations against them in this paragraph, and thus they need not answer
9 these allegations, but nevertheless, they are without knowledge sufficient to form a belief as to
10 the truth or falsity of the allegations contained therein and, therefore, deny the same.

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

12 30. Answering Paragraph 30 of the Counterclaim, these answering Counterdefendants
13 state that there are no allegations against them in this paragraph, and thus they need not answer
14 these allegations, but nevertheless, they are without knowledge sufficient to form a belief as to
15 the truth or falsity of the allegations contained therein and, therefore, deny the same.

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

17 31. Answering Paragraph 31 of the Counterclaim, these answering Counterdefendants
18 state that there are no allegations against them in this paragraph, and thus they need not answer
19 these allegations, but nevertheless, they are without knowledge sufficient to form a belief as to
20 the truth or falsity of the allegations contained therein and, therefore, deny the same.

21 32. Answering Paragraph 32 of the Counterclaim, these answering Counterdefendants
22 state that there are no allegations against them in this paragraph, and thus they need not answer
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1 these allegations, but nevertheless, they are without knowledge sufficient to form a belief as to
2 the truth or falsity of the allegations contained therein and, therefore, deny the same.

3 33. Answering Paragraph 33 of the Counterclaim, these answering Counterdefendants
4 state that there are no allegations against them in this paragraph, and thus they need not answer
5 these allegations, but nevertheless, they are without knowledge sufficient to form a belief as to
6 the truth or falsity of the allegations contained therein and, therefore, deny the same.

7 34. Answering Paragraph 34 of the Counterclaim, these answering Counterdefendants
8 state that there are no allegations against them in this paragraph, and thus they need not answer
9 these allegations, but nevertheless, they are without knowledge sufficient to form a belief as to
10 the truth or falsity of the allegations contained therein and, therefore, deny the same.

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

12 35. Answering Paragraph 35 of the Counterclaim, these answering Counterdefendants
13 state that there are no allegations against them in this paragraph, and thus they need not answer
14 these allegations, but nevertheless, they are without knowledge sufficient to form a belief as to
15 the truth or falsity of the allegations contained therein and, therefore, deny the same.

16 36. Answering Paragraph 36 of the Counterclaim, these answering Counterdefendants
17 state that there are no allegations against them in this paragraph, and thus they need not answer
18 these allegations, but nevertheless, they are without knowledge sufficient to form a belief as to
19 the truth or falsity of the allegations contained therein and, therefore, deny the same.

20 37. Answering Paragraph 37 of the Counterclaim, these answering Counterdefendants
21 state that there are no allegations against them in this paragraph, and thus they need not answer
22 these allegations, but nevertheless, they are without knowledge sufficient to form a belief as to
23 the truth or falsity of the allegations contained therein and, therefore, deny the same.
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1 **J. Breach Number 10: Failure to Provide EB-5 Information – CLA § 1.7(f)**

2 38. Answering Paragraph 38 of the Counterclaim, these answering Counterdefendants
3 state that there are no allegations against them in this paragraph, and thus they need not answer
4 these allegations, but nevertheless, they are without knowledge sufficient to form a belief as to
5 the truth or falsity of the allegations contained therein and, therefore, deny the same.

6 39. Answering Paragraph 39 of the Counterclaim, these answering Counterdefendants
7 state that there are no allegations against them in this paragraph, and thus they need not answer
8 these allegations, but nevertheless, they are without knowledge sufficient to form a belief as to
9 the truth or falsity of the allegations contained therein and, therefore, deny the same.

10 **K. Breach Number 12[sic]: Transferring Assets to Related Parties – CLA § 5.18**

11 40. Answering Paragraph 40 of the Counterclaim, these answering Counterdefendants
12 state that there are no allegations against them in this paragraph, and thus they need not answer
13 these allegations, but nevertheless, they are without knowledge sufficient to form a belief as to
14 the truth or falsity of the allegations contained therein and, therefore, deny the same.

15 41. Answering Paragraph 41 of the Counterclaim, these answering Counterdefendants
16 state that there are no allegations against them in this paragraph, and thus they need not answer
17 these allegations, but nevertheless, they are without knowledge sufficient to form a belief as to
18 the truth or falsity of the allegations contained therein and, therefore, deny the same.

19 42. Answering Paragraph 42 of the Counterclaim, these answering Counterdefendants
20 deny each and every allegation contained therein.

21 43. Answering Paragraph 43 of the Counterclaim, these answering Counterdefendants
22 deny each and every allegation contained therein.

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1 44. Answering Paragraph 44 of the Counterclaim, these answering Counterdefendants
2 deny each and every allegation contained therein.

3 **L. Breach Number 11: Non Payment of Default Interest – CLA § 1.2**

4 45. Answering Paragraph 45 of the Counterclaim, these answering Counterdefendants
5 state that there are no allegations against them in this paragraph, and thus they need not answer
6 these allegations, but nevertheless, they are without knowledge sufficient to form a belief as to
7 the truth or falsity of the allegations contained therein and, therefore, deny the same.

8 46. Answering Paragraph 46 of the Counterclaim, these answering Counterdefendants
9 state that there are no allegations against them in this paragraph, and thus they need not answer
10 these allegations, but nevertheless, they are without knowledge sufficient to form a belief as to
11 the truth or falsity of the allegations contained therein and, therefore, deny the same.

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

13 47. Answering Paragraph 47 of the Counterclaim, these answering Counterdefendants
14 state that there are no allegations against them in this paragraph, and thus they need not answer
15 these allegations, but nevertheless, they are without knowledge sufficient to form a belief as to
16 the truth or falsity of the allegations contained therein and, therefore, deny the same.

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

18 48. Answering Paragraph 48 of the Counterclaim, these answering Counterdefendants
19 state that there are no allegations against them in this paragraph, and thus they need not answer
20 these allegations, but nevertheless, they are without knowledge sufficient to form a belief as to
21 the truth or falsity of the allegations contained therein and, therefore, deny the same.

22 49. Answering Paragraph 49 of the Counterclaim, these answering Counterdefendants
23 state that there are no allegations against them in this paragraph, and thus they need not answer
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1 these allegations, but nevertheless, they are without knowledge sufficient to form a belief as to
2 the truth or falsity of the allegations contained therein and, therefore, deny the same.

3 50. Answering Paragraph 50 of the Counterclaim, these answering Counterdefendants
4 state that there are no allegations against them in this paragraph, and thus they need not answer
5 these allegations, but nevertheless, they are without knowledge sufficient to form a belief as to
6 the truth or falsity of the allegations contained therein and, therefore, deny the same.

7 51. Answering Paragraph 51 of the Counterclaim, these answering Counterdefendants
8 state that there are no allegations against them in this paragraph, and thus they need not answer
9 these allegations, but nevertheless, they are without knowledge sufficient to form a belief as to
10 the truth or falsity of the allegations contained therein and, therefore, deny the same.

11 **FIRST CAUSE OF ACTION**
12 **(Breach of Contract Against Front Sight)**

13 52-59. Counterclaimant's First Cause of Action has been dismissed as against all
14 Counterdefendants pursuant to this Court's Order filed September 13, 2019.

15 **SECOND CAUSE OF ACTION**
16 **(Contractual Breach of the Implied Covenant of Good Faith and Fair Dealing Against**
17 **Front Sight)**

18 60-66. Counterclaimant's Second Cause of Action has been dismissed as against all
19 Counterdefendants pursuant to this Court's Order filed September 13, 2019.

20 **THIRD CAUSE OF ACTION**
21 **(Intentional Interference with Contractual Relationships Against Ignatius Piazza, Jennifer**
22 **Piazza, and VNV Trust Defendants)**

23 67. Answering Paragraph 67 of the Counterclaim, these answering Counterdefendants
24 repeat and reallege, and incorporate herein by reference, each and every allegation contained in
Paragraphs 1 through 66 of the Counterclaim as though fully set forth herein.

1 68. Answering Paragraph 68 of the Counterclaim, these answering Counterdefendants
2 state that there are no allegations against them in this paragraph, and thus they need not answer
3 these allegations, but nevertheless, they are without knowledge sufficient to form a belief as to
4 the truth or falsity of the allegations contained therein and, therefore, deny the same.

5 69. Answering Paragraph 69 of the Counterclaim, these answering Counterdefendants
6 deny each and every allegation contained therein.

7 70. Answering Paragraph 70 of the Counterclaim, these answering Counterdefendants
8 deny each and every allegation contained therein.

9 71. Answering Paragraph 71 of the Counterclaim, these answering Counterdefendants
10 state that there are no allegations against them in this paragraph, and thus they need not answer
11 these allegations, but nevertheless, they are without knowledge sufficient to form a belief as to
12 the truth or falsity of the allegations contained therein and, therefore, deny the same.

13 72. Answering Paragraph 72 of the Counterclaim, these answering Counterdefendants
14 state that there are no allegations against them in this paragraph, and thus they need not answer
15 these allegations, but nevertheless, they are without knowledge sufficient to form a belief as to
16 the truth or falsity of the allegations contained therein and, therefore, deny the same.

17 73. Answering Paragraph 73 of the Counterclaim, these answering Counterdefendants
18 deny each and every allegation contained therein.

19 74. Answering Paragraph 74 of the Counterclaim, these answering Counterdefendants
20 deny each and every allegation contained therein.

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FOURTH CAUSE OF ACTION
(Conversion Against Front Sight, Ignatius Piazza and Jennifer Piazza)

75. Answering Paragraph 75 of the Counterclaim, these answering Counterdefendants repeat and reallege, and incorporate herein by reference, each and every allegation contained in Paragraphs 1 through 74 of the Counterclaim as though fully set forth herein.

76. Answering Paragraph 76 of the Counterclaim, these answering Counterdefendants state that there are no allegations against them in this paragraph, and thus they need not answer these allegations, but nevertheless, they are without knowledge sufficient to form a belief as to the truth or falsity of the allegations contained therein and, therefore, deny the same.

77. Answering Paragraph 77 of the Counterclaim, these answering Counterdefendants state that there are no allegations against them in this paragraph, and thus they need not answer these allegations, but nevertheless, they are without knowledge sufficient to form a belief as to the truth or falsity of the allegations contained therein and, therefore, deny the same.

78. Answering Paragraph 78 of the Counterclaim, these answering Counterdefendants state that there are no allegations against them in this paragraph, and thus they need not answer these allegations, but nevertheless, they are without knowledge sufficient to form a belief as to the truth or falsity of the allegations contained therein and, therefore, deny the same.

FIFTH CAUSE OF ACTION
(Civil Conspiracy Against all Counterdefendants)

79. Answering Paragraph 79 of the Counterclaim, these answering Counterdefendants repeat and reallege, and incorporate herein by reference, each and every allegation contained in Paragraphs 1 through 78 of the Counterclaim as though fully set forth herein.

80. Answering Paragraph 80 of the Counterclaim, this answering Counterdefendant deny each and every allegation contained therein.

1 81. Answering Paragraph 81 of the Counterclaim, this answering Counterdefendant
2 deny each and every allegation contained therein.

3 82. Answering Paragraph 82 of the Counterclaim, this answering Counterdefendant
4 deny each and every allegation contained therein.

5 83. Answering Paragraph 83 of the Counterclaim, this answering Counterdefendant
6 deny each and every allegation contained therein.

7 84. Answering Paragraph 84 of the Counterclaim, this answering Counterdefendant
8 deny each and every allegation contained therein.

9 85. Answering Paragraph 85 of the Counterclaim, this answering Counterdefendant
10 deny each and every allegation contained therein.

11 **SIXTH CAUSE OF ACTION**
12 **(Judicial Foreclosure Against Front Sight)**

13 86. Answering Paragraph 86 of the Counterclaim, these answering Counterdefendants
14 repeat and reallege, and incorporate herein by reference, each and every allegation contained in
15 Paragraphs 1 through 85 of the Counterclaim as though fully set forth herein.

16 87. Answering Paragraph 87 of the Counterclaim, these answering Counterdefendants
17 state that there are no allegations against them in this paragraph, and thus they need not answer
18 these allegations, but nevertheless, they are without knowledge sufficient to form a belief as to
19 the truth or falsity of the allegations contained therein and, therefore, deny the same.

20 88. Answering Paragraph 88 of the Counterclaim, these answering Counterdefendants
21 state that there are no allegations against them in this paragraph, and thus they need not answer
22 these allegations, but nevertheless, they are without knowledge sufficient to form a belief as to
23 the truth or falsity of the allegations contained therein and, therefore, deny the same.
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1 89. Answering Paragraph 89 of the Counterclaim, these answering Counterdefendants
2 state that there are no allegations against them in this paragraph, and thus they need not answer
3 these allegations, but nevertheless, they are without knowledge sufficient to form a belief as to
4 the truth or falsity of the allegations contained therein and, therefore, deny the same.

5 90. Answering Paragraph 90 of the Counterclaim, these answering Counterdefendants
6 state that there are no allegations against them in this paragraph, and thus they need not answer
7 these allegations, but nevertheless, they are without knowledge sufficient to form a belief as to
8 the truth or falsity of the allegations contained therein and, therefore, deny the same.

9 91. Answering Paragraph 91 of the Counterclaim, these answering Counterdefendants
10 state that there are no allegations against them in this paragraph, and thus they need not answer
11 these allegations, but nevertheless, they are without knowledge sufficient to form a belief as to
12 the truth or falsity of the allegations contained therein and, therefore, deny the same.

13 92. Answering Paragraph 92 of the Counterclaim, these answering Counterdefendants
14 state that there are no allegations against them in this paragraph, and thus they need not answer
15 these allegations, but nevertheless, they are without knowledge sufficient to form a belief as to
16 the truth or falsity of the allegations contained therein and, therefore, deny the same.

17 93. Answering Paragraph 93 of the Counterclaim, these answering Counterdefendants
18 state that there are no allegations against them in this paragraph, and thus they need not answer
19 these allegations, but nevertheless, they are without knowledge sufficient to form a belief as to
20 the truth or falsity of the allegations contained therein and, therefore, deny the same.

21 94. Answering Paragraph 94 of the Counterclaim, these answering Counterdefendants
22 state that there are no allegations against them in this paragraph, and thus they need not answer
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1 these allegations, but nevertheless, they are without knowledge sufficient to form a belief as to
2 the truth or falsity of the allegations contained therein and, therefore, deny the same.

3 **SEVENTH CAUSE OF ACTION**
4 **(Waste Against All Counterdefendants)**

5 95. Answering Paragraph 95 of the Counterclaim, these answering Counterdefendants
6 repeat and reallege, and incorporate herein by reference, each and every allegation contained in
7 Paragraphs 1 through 94 of the Counterclaim as though fully set forth herein.

8 96. Answering Paragraph 96 of the Counterclaim, these answering Counterdefendants
9 state that the allegations contained therein constitute conclusions of law and thus require no
10 answer; however, to the extent they contain allegations of fact, these answering
11 Counterdefendants deny each and every allegation contained therein.

12 97. Answering Paragraph 97 of the Counterclaim, these answering Counterdefendants
13 admit the allegations contained therein.

14 98. Answering Paragraph 98 of the Counterclaim, these answering Counterdefendants
15 deny each and every allegation contained therein.

16 99. Answering Paragraph 99 of the Counterclaim, these answering Counterdefendants
17 deny each and every allegation contained therein.

18 100. Answering Paragraph 100 of the Counterclaim, these answering
19 Counterdefendants deny each and every allegation contained therein.

20 101. Answering Paragraph 101 of the Counterclaim, these answering
21 Counterdefendants deny each and every allegation contained therein.

22 102. Answering Paragraph 102 of the Counterclaim, these answering
23 Counterdefendants deny each and every allegation contained therein.

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1 **AFFIRMATIVE DEFENSES**

2 These answering Counterdefendants assert the following Affirmative Defenses to the
3 Counterclaim, and the claims asserted therein, and these answering Counterdefendants
4 specifically incorporate into their Affirmative Defenses their answers to the preceding
5 paragraphs of the Counterclaim as if fully set forth herein.

6 **FIRST AFFIRMATIVE DEFENSE**

7 Counterclaimant's Counterclaim, and all of the claims for relief alleged therein, fails to
8 state a claim against these answering Counterdefendants upon which relief can be granted.

9 **SECOND AFFIRMATIVE DEFENSE**

10 Counterclaimant's claims are barred, in whole or in part, by the doctrine of unclean
11 hands.

12 **THIRD AFFIRMATIVE DEFENSE**

13 Counterclaimant's claims are barred, in whole or in part, by Counterclaimant's bad faith
14 in bringing this action including, but not limited to, its wrongful conduct as set forth more fully
15 in the Complaint on file in this action.

16 **FOURTH AFFIRMATIVE DEFENSE**

17 Counterclaimant has not been damaged directly, indirectly, proximately or in any manner
18 whatsoever by any conduct of these answering Counterdefendants.

19 **FIFTH AFFIRMATIVE DEFENSE**

20 These answering Counterdefendants are not in breach of any agreement with
21 Counterclaimant, and, thus, are not in default under the terms of any agreement with
22 Counterclaimant. If any party is in breach of any agreement, it is Counterclaimant for the
23 reasons set forth more fully in the Complaint on file in this action.
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SIXTH AFFIRMATIVE DEFENSE

Counterclaimant’s claims are barred, in whole or in part, by doctrine of waiver.

SEVENTH AFFIRMATIVE DEFENSE

Counterclaimant’s claims are barred, in whole or in part, by doctrines of promissory, equitable, and/or contractual estoppel.

EIGHTH AFFIRMATIVE DEFENSE

Counterclaimant’s claims are barred, in whole or in part, on the ground that these answering Counterdefendants have fully complied with any and all agreements between the parties.

NINTH AFFIRMATIVE DEFENSE

Counterclaimant’s claims are barred, in whole or in part, by the doctrine of laches and/or the applicable statute of limitations.

TENTH AFFIRMATIVE DEFENSE

To the extent any agreement exists between Counterclaimant and these answering Counterdefendants, Counterclaimant failed to perform its obligations under said agreements and breached its obligations there under.

ELEVENTH AFFIRMATIVE DEFENSE

The damages, if any, which Counterclaimant has suffered were caused, in whole or in part, by the acts or omissions of Counterclaimant or its agents and representatives, or were caused by the acts or omissions of a third party over whom these answering Counterdefendants have no control.

TWELFTH AFFIRMATIVE DEFENSE

Counterclaimant has failed to mitigate its damages.

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THIRTEENTH AFFIRMATIVE DEFENSE

Counterclaimant's claims are barred, in whole or in part, by Counterclaimant's own bad faith, fraudulent acts, omissions and misrepresentations, whether intentional, negligent, or constructive.

FOURTEENTH AFFIRMATIVE DEFENSE

Counterclaimant's claims are barred, in whole or in part, as a result of its own conduct.

FIFTEENTH AFFIRMATIVE DEFENSE

Counterclaimant is involved in conduct which, if carried to its fruition, would materially alter the parties understanding, thereby releasing these answering Counterdefendants from any obligation under any alleged agreement.

SIXTEENTH AFFIRMATIVE DEFENSE

Counterclaimant's claims, to the extent they are asserted against these answering Counterdefendants, are barred, in whole or in part, by the fiduciary shield doctrine and, as a consequence thereof, this Court lacks jurisdiction over these individuals and any and all claims asserted in this action against them should be dismissed with prejudice.

SEVENTEENTH AFFIRMATIVE DEFENSE

Counterclaimant, with full knowledge of all the facts connected with or relating to the transaction alleged in the Counterclaim, ratified and confirmed in all respects the acts of these answering Counterdefendants.

EIGHTEENTH AFFIRMATIVE DEFENSE

The claims, and each of them, are barred, in whole or in part, by the failure of the Counterclaimant to plead those claims with particularity.

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NINETEENTH AFFIRMATIVE DEFENSE

These answering Counterdefendants are not the alter-ego of the other or that of the Counterdefendants to this action and, as a consequence thereof, this Court lacks jurisdiction over said Counterdefendants. Consequently, to the extent any claim asserted in the Counterclaim is based upon Counterclaimant’s alter-ego claim, any and all such claims should be dismissed with prejudice as to all, or any one, of these answering Counterdefendants.

TWENTIETH AFFIRMATIVE DEFENSE

Counterclaimant has failed to mitigate damages and is therefore barred from recovering alleged damages.

TWENTY-FIRST AFFIRMATIVE DEFENSE

The damages, if any, suffered by Counterclaimant were proximately caused or contributed to by Counterclaimant’s own negligence, and such negligence was greater than the negligence, if any, of these answering Counterdefendants.

TWENTY-SECOND AFFIRMATIVE DEFENSE

These answering Counterdefendants allege that they have performed each and every one of its obligations, if any, under the written agreement. Nevertheless, to the extent that these answering Counterdefendants are found to have failed to perform any of its obligations under their agreement with Counterclaimant, these answering Counterdefendants are informed and believe that they have done so only because Counterclaimant prevented these answering Counterdefendants’ performance by, among other things, making material misstatements and material omissions to these answering Counterdefendants, in violation of Counterclaimant’s contractual agreement with these answering Counterdefendants.

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TWENTY-THIRD AFFIRMATIVE DEFENSE

These answering Counterdefendants did not commit any acts of oppression, fraud or malice, express or implied.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

These answering Counterdefendants allege on information and belief that they have performed each and every one of their obligations, if any, under their written agreement with Counterclaimant. Nevertheless, to the extent that these answering Counterdefendants are found to have failed to fulfill any of their obligations under the written agreement with Counterclaimant, these answering Counterdefendants are informed and believe that such obligations were impossible to perform at the time they were to have performed them because Counterclaimant made material misstatements and material omissions to these answering Counterdefendants that prevented it from performing their obligations under the written agreement.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

These answering Counterdefendants allege on information and belief that they have performed each and every one of their obligations, if any, under their written agreement with Counterclaimant. Nevertheless, to the extent that these answering Counterdefendants are found to have failed to fulfill their obligations under the written agreement, these answering Counterdefendants are informed and believe that Counterclaimant’s material misstatements and material omissions have operated to excuse these answering Counterdefendants’ performance under the Doctrine of Frustration of Purpose.

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TWENTY-SIXTH AFFIRMATIVE DEFENSE

Counterclaimant failed to perform its obligations under the agreement at issue and breached his obligations thereunder, thereby discharging these answering Counterdefendants' obligations to perform.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

It has been necessary for these answering Counterdefendants to retain the services of an attorney to defend this action and they are entitled to a reasonable sum as and for attorneys' fees.

TWENTY-EIGHTH AFFIRMATIVE DEFENSE

Counterclaimant's claims are barred by Counterclaimant's own fraudulent acts, fraud, fraudulent inducements, constructive fraud, omissions and misrepresentations whether intentional, negligent, or constructive.

TWENTY-NINTH AFFIRMATIVE DEFENSE

Counterclaimant's alter-ego claim is barred as the requisite unity of interest and ownership required by Nevada law is lacking.

THIRTIETH AFFIRMATIVE DEFENSE

Counterclaimant's civil conspiracy claim is barred as Nevada does not recognize conspiracy between a corporation and its agents since agents and employees of a corporation cannot conspire with the corporate principal where they act in their official capacities on behalf of the corporation.

THIRTY-FIRST AFFIRMATIVE DEFENSE

Counterclaimant's civil conspiracy claim is barred since there is no combination of two or more persons who, by some concerted action, intended to accomplish some unlawful objective for the purpose of harming another which resulted in damages to Counterclaimant.

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THIRTY-SECOND AFFIRMATIVE DEFENSE

Counterclaimant’s concert of action is barred as Nevada does not recognize such a cause of action and, thus, this claim is not cognizable under any set of circumstances.

THIRTY-THIRD AFFIRMATIVE DEFENSE

These answering Counterdefendants are informed, believe, and thereon allege that if any contract, obligations, or amendments, as alleged in Counterclaimant’s Counterclaim on file herein, have been entered into, any duty or performance of these answering Counterdefendants is excused by reason of failure of consideration, waiver, breach of condition precedent, breach by the Counterclaimant, impossibility of performance, material breach by the Counterclaimant, prevention by Counterclaimant, frustration of purpose, and/or acceptance by Counterclaimant.

THIRTY-FOURTH AFFIRMATIVE DEFENSE

The contract and/or contracts existing between the Counterclaimant and these answering Counterdefendants are unconscionable.

THIRTY-FIFTH AFFIRMATIVE DEFENSE

Counterclaimant’s material misstatements and material omissions require rescission of the contract(s), if any, between these answering Counterdefendants and Counterclaimant.

THIRTY-SIXTH AFFIRMATIVE DEFENSE

At all times relevant to this action, these answering Counterdefendants have acted in good faith under the terms of any written agreement that may exist or have existed between either of these answering Counterdefendants and Counterclaimant.

THIRTY-SEVENTH AFFIRMATIVE DEFENSE

Pursuant to Nevada Rules of Civil Procedure, all possible affirmative defenses may not have been alleged herein insofar as sufficient facts were not available after reasonable inquiry

1 upon the filing of this Answer and, therefore, these answering Counterdefendants reserve the
2 right to amend this Answer to allege additional Affirmative Defenses if subsequent investigation
3 warrants.

4 **THIRTY-EIGHTH AFFIRMATIVE DEFENSE**

5 As applicable, these answering Counterdefendants assert the affirmative defenses
6 referenced in NRCP 8(c).

7 **PRAYER FOR RELIEF**

8 WHEREFORE, as to Defendant's Counterclaim, these answering Counterdefendants
9 pray for judgment as follows:

- 10 1. That Defendant takes nothing by way of its Counterclaim;
- 11 2. For costs of suit incurred herein;
- 12 3. For reasonable attorneys' fees incurred herein; and
- 13 4. For such other and further relief as the Court may deem just and proper.

14 Dated this 30th day of September, 2019.

15 **ALDRICH LAW FIRM, LTD.**

16 /s/ John P. Aldrich
17 John P. Aldrich, Esq.
18 Nevada Bar No. 6877
19 Catherine Hernandez, Esq.
20 Nevada Bar No. 8410
21 Matthew B. Beckstead, Esq.
22 Nevada Bar No. 14168
23 7866 West Sahara Avenue
24 Las Vegas, Nevada 89117
Telephone: (702) 853-5490
Facsimile: (702) 227-1975
Attorneys for Plaintiff/Counterdefendants

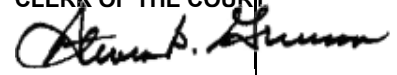
1 **CERTIFICATE OF SERVICE**

2 I HEREBY CERTIFY that on the 30th day of September, 2019, I caused the foregoing
3 **COUNTERDEFENDANTS VNV DYNASTY TRUST I AND VNV DYNASTY TRUST II'S**
4 **ANSWER TO COUNTERCLAIM** to be electronically filed and served with the Clerk of the
5 Court using Wiznet which will send notification of such filing to the email addresses denoted on
6 the Electronic Mail Notice List, or by U.S. mail, postage prepaid, if not included on the
7 Electronic Mail Notice List, to the following parties:

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

13 C. Keith Greer, Esq.
14 16855 West Bernardo Drive, Suite 255
San Diego, CA 92127
Attorneys for Defendants LAS VEGAS DEVELOPMENT FUND
15 *LLC, EB5IMPACT CAPITAL REGIONAL CENTER LLC,*
16 *EB5 IMPACT ADVISORS LLC, ROBERT W. DZIUBLA,*
JON FLEMING and LINDA STANWOOD

17
18 /s/ T. Bixenmann
19 An employee of ALDRICH LAW FIRM, LTD.
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ANS
John P. Aldrich, Esq.
Nevada Bar No. 6877
Catherine Hernandez, Esq.
Nevada Bar No. 8410
Matthew B. Beckstead, Esq.
Nevada Bar No. 14168
ALDRICH LAW FIRM, LTD.
7866 West Sahara Avenue
Las Vegas, NV 89117
Telephone: (702) 853-5490
Facsimile: (702) 227-1975
Attorneys for Plaintiff/Counterdefendants

**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.

**COUNTERDEFENDANT DR.
IGNATIUS PIAZZA'S ANSWER TO
COUNTERCLAIM**

LAS VEGAS DEVELOPMENT FUND LLC, a
Nevada Limited Liability Company; et al.,

Defendants.

AND ALL RELATED COUNTERCLAIMS.

COMES NOW Counterdefendant DR. IGNATIUS PIAZZA (hereinafter “answering Counterdefendant”), by and through his attorneys of record, John P. Aldrich, Esq., Catherine Hernandez, Esq., and Matthew B. Beckstead, Esq., of the Aldrich Law Firm, Ltd., and for his Answer to Counterclaim on file herein, denies, admits, and alleges as follows:

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1 **GENERAL DENIAL**

2 This answering Counterdefendant has made an effort to respond to each and every
3 allegation. However, to the extent any allegation was overlooked or not responded to, this
4 answering Counterdefendant denies said allegations.

5 **ANSWER TO COUNTERCLAIM**

6 1. Answering Paragraph 1 of the Counterclaim, this answering Counterdefendant
7 denies each and every allegation contained therein.

8 **I.**

9 **PARTIES**

10 2. Answering Paragraph 2 of the Counterclaim, this answering Counterdefendant
11 admits that Las Vegas Development Fund LLC is a Nevada limited liability company. As to the
12 remaining allegations set forth in Paragraph 2, this answering Counterdefendant states that the
13 allegations contained therein constitute conclusions of law and thus require no answer; however,
14 to the extent they contain allegations of fact, this answering Counterdefendant denies each and
15 every allegation contained therein.

16 3. Answering Paragraph 3 of the Counterclaim, this answering Counterdefendant
17 admits that Front Sight Management LLC is a Nevada limited liability company. As to the
18 remaining allegations set forth in Paragraph 2, this answering Counterdefendant denies each and
19 every allegation contained therein.

20 4. Answering Paragraph 4 of the Counterclaim, this answering Counterdefendant
21 admits that VNV Dynasty Trust I was organized and exists under the laws of Nevada. As to the
22 remaining allegations set forth in Paragraph 4, this answering Counterdefendant denies each and
23 every allegation contained therein.
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1 5. Answering Paragraph 5 of the Counterclaim, this answering Counterdefendant
2 admits that VNV Dynasty Trust II was organized and exists under the laws of Nevada. As to the
3 remaining allegations set forth in Paragraph 5, this answering Counterdefendant denies each and
4 every allegation contained therein.

5 6. Answering Paragraph 6 of the Counterclaim, this answering Counterdefendant
6 admits that Ignatius A. Piazza, II is the owner of Front Sight Management LLC. As to the
7 remaining allegations set forth in Paragraph 6, this answering Counterdefendant denies each and
8 every allegation contained therein.

9 7. Answering Paragraph 7 of the Counterclaim, this answering Counterdefendant
10 denies each and every allegation contained therein.

11 8. Answering Paragraph 8 of the Counterclaim, this answering Counterdefendant
12 states that the allegations contained therein constitute conclusions of law and thus require no
13 answer; however, to the extent they contain allegations of fact, this answering Counterdefendant
14 denies each and every allegation contained therein.

15 9. Answering Paragraph 9 of the Counterclaim, this answering Counterdefendant
16 states that the allegations contained therein constitute conclusions of law and thus require no
17 answer; however, to the extent they contain allegations of fact, this answering Counterdefendant
18 denies each and every allegation contained therein.

19 10. Answering Paragraph 10 of the Counterclaim, this answering Counterdefendant
20 denies each and every allegation contained therein.

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1 II.

2 GENERAL ALLEGATIONS

3 11. Answering Paragraph 11 of the Counterclaim, this answering Counterdefendant
4 states that the allegations contained therein constitute conclusions of law and thus require no
5 answer; however, to the extent they contain allegations of fact, this answering Counterdefendant
6 denies each and every allegation contained therein.

7 12. Answering Paragraph 12 of the Counterclaim, this answering Counterdefendant
8 asserts that the Counterclaim does not indicate whom Counterclaimant claims described the
9 “Project” as described in Paragraph 12 of the Counterclaim. Consequently, this answering
10 Counterdefendant is without knowledge sufficient for form a belief as to the truth or falsity of the
11 allegations contained in Paragraph 12, and therefore denies the facts asserted therein.

12 13. Answering Paragraph 13 of the Counterclaim, this answering Counterdefendant
13 states that it is without knowledge sufficient to form a belief as to the truth or falsity of the
14 allegations contained therein and, therefore, denies the same.

15 14. Answering Paragraph 14 of the Counterclaim, this answering Counterdefendant
16 states that the allegations contained therein constitute conclusions of law and thus require no
17 answer; however, to the extent they contain allegations of fact, this answering Counterdefendant
18 states that it is without knowledge sufficient to form a belief as to the truth or falsity of the
19 allegations contained therein and, therefore, denies the same.

20 15. Answering Paragraph 15 of the Counterclaim, this answering Counterdefendant
21 states that the allegations contained therein constitute conclusions of law and thus require no
22 answer; however, to the extent they contain allegations of fact, this answering Counterdefendant
23 denies each and every allegation contained therein.

1 16. Answering Paragraph 16 of the Counterclaim, this answering Counterdefendant
2 asserts that the document speaks for itself and denies facts inconsistent with the document.

3 17. Answering Paragraph 17 of the Counterclaim, this answering Counterdefendant
4 asserts that the document speaks for itself and denies facts inconsistent with the document.

5 18. Answering Paragraph 18 of the Counterclaim, this answering Counterdefendant
6 asserts that the document speaks for itself and denies facts inconsistent with the document.

7 **BORROWER’S BREACHES AND DEFAULT UNDER THE CLA**

8 **A. Breach Number 1: Improper Use of Loan Proceeds – CLA § 1.7(e)**

9 19. Answering Paragraph 19 of the Counterclaim, this answering Counterdefendant
10 denies each and every allegation contained therein.

11 20. Answering Paragraph 20 of the Counterclaim, this answering Counterdefendant
12 denies each and every allegation contained therein.

13 21. Answering Paragraph 21 of the Counterclaim, this answering Counterdefendant
14 denies each and every allegation contained therein.

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

16 22. Answering Paragraph 22 of the Counterclaim, this answering Counterdefendant
17 asserts that the document speaks for itself and denies facts inconsistent with the document.
18 Additionally, this answering Counterdefendant states that the allegations contained therein
19 constitute conclusions of law and thus require no answer; however, to the extent they contain
20 allegations of fact, this answering Counterdefendant denies each and every allegation contained
21 therein.

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1 **C. Breach Number 3: Failure to Timely Complete Construction – CLA § 5.1**

2 23. Answering Paragraph 23 of the Counterclaim, this answering Counterdefendant
3 asserts that the document speaks for itself and denies facts inconsistent with the document.
4 Additionally, this answering Counterdefendant states that the allegations contained therein
5 constitute conclusions of law and thus require no answer; however, to the extent they contain
6 allegations of fact, this answering Counterdefendant denies each and every allegation contained
7 therein.

8 24. Answering Paragraph 24 of the Counterclaim, this answering Counterdefendant
9 denies each and every allegation contained therein.

10 25. Answering Paragraph 25 of the Counterclaim, this answering Counterdefendant
11 denies each and every allegation contained therein.

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

13 26. Answering Paragraph 26 of the Counterclaim, this answering Counterdefendant
14 asserts that the document speaks for itself and denies facts inconsistent with the document.

15 27. Answering Paragraph 27 of the Counterclaim, this answering Counterdefendant
16 denies each and every allegation contained therein.

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

18 28. Answering Paragraph 28 of the Counterclaim, this answering Counterdefendant
19 asserts that the document speaks for itself and denies facts inconsistent with the document.

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

21 29. Answering Paragraph 29 of the Counterclaim, this answering Counterdefendant
22 denies each and every allegation contained therein.

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

2 30. Answering Paragraph 30 of the Counterclaim, this answering Counterdefendant
3 asserts that the document speaks for itself and denies facts inconsistent with the document.

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

5 31. Answering Paragraph 31 of the Counterclaim, this answering Counterdefendant
6 asserts that the document speaks for itself and denies facts inconsistent with the document.

7 32. Answering Paragraph 32 of the Counterclaim, this answering Counterdefendant
8 states that the allegations contained therein constitute conclusions of law and thus require no
9 answer; however, to the extent they contain allegations of fact, this answering Counterdefendant
10 denies each and every allegation contained therein.

11 33. Answering Paragraph 33 of the Counterclaim, this answering Counterdefendant
12 asserts that the document speaks for itself and denies facts inconsistent with the document.
13 Additionally, this answering Counterdefendant states that the allegations contained therein
14 constitute conclusions of law and thus require no answer; however, to the extent they contain
15 allegations of fact, this answering Counterdefendant denies each and every allegation contained
16 therein.

17 34. Answering Paragraph 34 of the Counterclaim, this answering Counterdefendant
18 states that the allegations contained therein constitute conclusions of law and thus require no
19 answer; however, to the extent they contain allegations of fact, this answering Counterdefendant
20 denies each and every allegation contained therein.

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

22 35. Answering Paragraph 35 of the Counterclaim, this answering Counterdefendant
23 asserts that the document speaks for itself and denies facts inconsistent with the document.

1 36. Answering Paragraph 36 of the Counterclaim, this answering Counterdefendant
2 states that the allegations contained therein constitute conclusions of law and thus require no
3 answer; however, to the extent they contain allegations of fact, this answering Counterdefendant
4 denies each and every allegation contained therein.

5 37. Answering Paragraph 37 of the Counterclaim, this answering Counterdefendant
6 states that the allegations contained therein constitute conclusions of law and thus require no
7 answer; however, to the extent they contain allegations of fact, this answering Counterdefendant
8 denies each and every allegation contained therein.

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

10 38. Answering Paragraph 38 of the Counterclaim, this answering Counterdefendant
11 asserts that the document speaks for itself and denies facts inconsistent with the document.
12 Additionally, this answering Counterdefendant states that the allegations contained therein
13 constitute conclusions of law and thus require no answer; however, to the extent they contain
14 allegations of fact, this answering Counterdefendant denies each and every allegation contained
15 therein.

16 39. Answering Paragraph 39 of the Counterclaim, this answering Counterdefendant
17 states that the allegations contained therein constitute conclusions of law and thus require no
18 answer; however, to the extent they contain allegations of fact, this answering Counterdefendant
19 denies each and every allegation contained therein.

20 **K. Breach Number 12[sic]: Transferring Assets to Related Parties – CLA § 5.18**

21 40. Answering Paragraph 40 of the Counterclaim, this answering Counterdefendant
22 asserts that the document speaks for itself and denies facts inconsistent with the document.
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1 41. Answering Paragraph 41 of the Counterclaim, this answering Counterdefendant
2 denies each and every allegation contained therein.

3 42. Answering Paragraph 42 of the Counterclaim, this answering Counterdefendant
4 denies each and every allegation contained therein.

5 43. Answering Paragraph 43 of the Counterclaim, this answering Counterdefendant
6 denies each and every allegation contained therein.

7 44. Answering Paragraph 44 of the Counterclaim, this answering Counterdefendant
8 denies each and every allegation contained therein.

9 **L. Breach Number 11: Non Payment of Default Interest – CLA § 1.2**

10 45. Answering Paragraph 45 of the Counterclaim, this answering Counterdefendant
11 asserts that the document speaks for itself and denies facts inconsistent with the document.
12 Additionally, this answering Counterdefendant states that the allegations contained therein
13 constitute conclusions of law and thus require no answer; however, to the extent they contain
14 allegations of fact, this answering Counterdefendant denies each and every allegation contained
15 therein.

16 46. Answering Paragraph 46 of the Counterclaim, this answering Counterdefendant
17 states that the allegations contained therein constitute conclusions of law and thus require no
18 answer; however, to the extent they contain allegations of fact, this answering Counterdefendant
19 denies each and every allegation contained therein.

20 **M. Breach Number 12: Non Payment of Legal Fees – CLA § 8.2**

21 47. Answering Paragraph 47 of the Counterclaim, this answering Counterdefendant
22 asserts that the document speaks for itself and denies facts inconsistent with the document.
23 Additionally, this answering Counterdefendant states that the allegations contained therein
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1 constitute conclusions of law and thus require no answer; however, to the extent they contain
2 allegations of fact, this answering Counterdefendant denies each and every allegation contained
3 therein.

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

5 48. Answering Paragraph 48 of the Counterclaim, this answering Counterdefendant
6 asserts that the document speaks for itself and denies facts inconsistent with the document.

7 49. Answering Paragraph 49 of the Counterclaim, this answering Counterdefendant
8 denies each and every allegation contained therein.

9 50. Answering Paragraph 50 of the Counterclaim, this answering Counterdefendant
10 denies each and every allegation contained therein.

11 51. Answering Paragraph 51 of the Counterclaim, this answering Counterdefendant
12 denies each and every allegation contained therein.

13 **FIRST CAUSE OF ACTION**
14 **(Breach of Contract Against Front Sight)**

15 52-59. Counterclaimant's First Cause of Action has been dismissed as against all
16 Counterdefendants pursuant to this Court's Order filed September 13, 2019.

17 **SECOND CAUSE OF ACTION**
18 **(Contractual Breach of the Implied Covenant of Good Faith and Fair Dealing Against**
19 **Front Sight)**

20 60-66. Counterclaimant's Second Cause of Action has been dismissed as against all
21 Counterdefendants pursuant to this Court's Order filed September 13, 2019.

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1 **THIRD CAUSE OF ACTION**
2 **(Intentional Interference with Contractual Relationships Against Ignatius Piazza, Jennifer**
3 **Piazza, and VNV Trust Defendants)**

3 67. Answering Paragraph 67 of the Counterclaim, this answering Counterdefendant
4 repeats and realleges, and incorporates herein by reference, each and every allegation contained
5 in Paragraphs 1 through 66 of the Counterclaim as though fully set forth herein.

6 68. Answering Paragraph 68 of the Counterclaim, this answering Counterdefendant
7 states that the allegations contained therein constitute conclusions of law and thus require no
8 answer; however, to the extent they contain allegations of fact, this answering Counterdefendant
9 denies each and every allegation contained therein.

10 69. Answering Paragraph 69 of the Counterclaim, this answering Counterdefendant
11 states that the allegations contained therein constitute conclusions of law and thus require no
12 answer; however, to the extent they contain allegations of fact, this answering Counterdefendant
13 denies each and every allegation contained therein.

14 70. Answering Paragraph 70 of the Counterclaim, this answering Counterdefendant
15 denies each and every allegation contained therein.

16 71. Answering Paragraph 71 of the Counterclaim, this answering Counterdefendant
17 denies each and every allegation contained therein.

18 72. Answering Paragraph 72 of the Counterclaim, this answering Counterdefendant
19 denies each and every allegation contained therein.

20 73. Answering Paragraph 73 of the Counterclaim, this answering Counterdefendant
21 denies each and every allegation contained therein.

22 74. Answering Paragraph 74 of the Counterclaim, this answering Counterdefendant
23 denies each and every allegation contained therein.

1 **FOURTH CAUSE OF ACTION**
2 **(Conversion Against Front Sight, Ignatius Piazza and Jennifer Piazza)**

3 75. Answering Paragraph 75 of the Counterclaim, this answering Counterdefendant
4 repeats and realleges, and incorporates herein by reference, each and every allegation contained
5 in Paragraphs 1 through 74 of the Counterclaim as though fully set forth herein.

6 76. Answering Paragraph 76 of the Counterclaim, this answering Counterdefendant
7 denies each and every allegation contained therein.

8 77. Answering Paragraph 77 of the Counterclaim, this answering Counterdefendant
9 denies each and every allegation contained therein.

10 78. Answering Paragraph 78 of the Counterclaim, this answering Counterdefendant
11 denies each and every allegation contained therein.

12 **FIFTH CAUSE OF ACTION**
13 **(Civil Conspiracy Against all Counterdefendants)**

14 79. Answering Paragraph 79 of the Counterclaim, this answering Counterdefendant
15 repeats and realleges, and incorporates herein by reference, each and every allegation contained
16 in Paragraphs 1 through 78 of the Counterclaim as though fully set forth herein.

17 80. Answering Paragraph 80 of the Counterclaim, this answering Counterdefendant
18 denies each and every allegation contained therein.

19 81. Answering Paragraph 81 of the Counterclaim, this answering Counterdefendant
20 denies each and every allegation contained therein.

21 82. Answering Paragraph 82 of the Counterclaim, this answering Counterdefendant
22 denies each and every allegation contained therein.

23 83. Answering Paragraph 83 of the Counterclaim, this answering Counterdefendant
24 denies each and every allegation contained therein.

1 84. Answering Paragraph 84 of the Counterclaim, this answering Counterdefendant
2 denies each and every allegation contained therein.

3 85. Answering Paragraph 85 of the Counterclaim, this answering Counterdefendant
4 denies each and every allegation contained therein.

5 **SIXTH CAUSE OF ACTION**
6 **(Judicial Foreclosure Against Front Sight)**

7 86. Answering Paragraph 86 of the Counterclaim, this answering Counterdefendant
8 repeats and realleges, and incorporates herein by reference, each and every allegation contained
9 in Paragraphs 1 through 85 of the Counterclaim as though fully set forth herein.

10 87. Answering Paragraph 87 of the Counterclaim, this answering Counterdefendant
11 states that there are no allegations against him in this paragraph, and thus he need not answer
12 these allegations, but nevertheless, he is without knowledge sufficient to form a belief as to the
13 truth or falsity of the allegations contained therein and, therefore, denies the same.

14 88. Answering Paragraph 88 of the Counterclaim, this answering Counterdefendant
15 states that there are no allegations against him in this paragraph, and thus he need not answer
16 these allegations, but nevertheless, he is without knowledge sufficient to form a belief as to the
17 truth or falsity of the allegations contained therein and, therefore, denies the same.

18 89. Answering Paragraph 89 of the Counterclaim, this answering Counterdefendant
19 states that there are no allegations against him in this paragraph, and thus he need not answer
20 these allegations, but nevertheless, he is without knowledge sufficient to form a belief as to the
21 truth or falsity of the allegations contained therein and, therefore, denies the same.

22 90. Answering Paragraph 90 of the Counterclaim, this answering Counterdefendant
23 states that there are no allegations against him in this paragraph, and thus he need not answer
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1 these allegations, but nevertheless, he is without knowledge sufficient to form a belief as to the
2 truth or falsity of the allegations contained therein and, therefore, denies the same.

3 91. Answering Paragraph 91 of the Counterclaim, this answering Counterdefendant
4 states that there are no allegations against him in this paragraph, and thus he need not answer
5 these allegations, but nevertheless, he is without knowledge sufficient to form a belief as to the
6 truth or falsity of the allegations contained therein and, therefore, denies the same.

7 92. Answering Paragraph 92 of the Counterclaim, this answering Counterdefendant
8 states that there are no allegations against him in this paragraph, and thus he need not answer
9 these allegations, but nevertheless, he is without knowledge sufficient to form a belief as to the
10 truth or falsity of the allegations contained therein and, therefore, denies the same.

11 93. Answering Paragraph 93 of the Counterclaim, this answering Counterdefendant
12 states that there are no allegations against him in this paragraph, and thus he need not answer
13 these allegations, but nevertheless, he is without knowledge sufficient to form a belief as to the
14 truth or falsity of the allegations contained therein and, therefore, denies the same.

15 94. Answering Paragraph 94 of the Counterclaim, this answering Counterdefendant
16 states that there are no allegations against him in this paragraph, and thus he need not answer
17 these allegations, but nevertheless, he is without knowledge sufficient to form a belief as to the
18 truth or falsity of the allegations contained therein and, therefore, denies the same.

19 **SEVENTH CAUSE OF ACTION**
20 **(Waste Against All Counterdefendants)**

21 95. Answering Paragraph 95 of the Counterclaim, this answering Counterdefendant
22 repeats and realleges, and incorporates herein by reference, each and every allegation contained
23 in Paragraphs 1 through 94 of the Counterclaim as though fully set forth herein.
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FIRST AFFIRMATIVE DEFENSE

Counterclaimant’s Counterclaim, and all of the claims for relief alleged therein, fails to state a claim against this answering Counterdefendant upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Counterclaimant’s claims are barred, in whole or in part, by the doctrine of unclean hands.

THIRD AFFIRMATIVE DEFENSE

Counterclaimant’s claims are barred, in whole or in part, by Counterclaimant’s bad faith in bringing this action including, but not limited to, its wrongful conduct as set forth more fully in the Complaint on file in this action.

FOURTH AFFIRMATIVE DEFENSE

Counterclaimant has not been damaged directly, indirectly, proximately or in any manner whatsoever by any conduct of this answering Counterdefendant.

FIFTH AFFIRMATIVE DEFENSE

This answering Counterdefendant is not in breach of any agreement with Counterclaimant, and, thus, is not in default under the terms of any agreement with Counterclaimant. If any party is in breach of any agreement, it is Counterclaimant for the reasons set forth more fully in the Complaint on file in this action.

SIXTH AFFIRMATIVE DEFENSE

Counterclaimant’s claims are barred, in whole or in part, by doctrine of waiver.

SEVENTH AFFIRMATIVE DEFENSE

Counterclaimant’s claims are barred, in whole or in part, by doctrines of promissory, equitable, and/or contractual estoppel.

1 **EIGHTH AFFIRMATIVE DEFENSE**

2 Counterclaimant's claims are barred, in whole or in part, on the ground that this
3 answering Counterdefendant has fully complied with any and all agreements between the parties.

4 **NINTH AFFIRMATIVE DEFENSE**

5 Counterclaimant's claims are barred, in whole or in part, by the doctrine of laches and/or
6 the applicable statute of limitations.

7 **TENTH AFFIRMATIVE DEFENSE**

8 To the extent any agreement exists between Counterclaimant and this answering
9 Counterdefendant, Counterclaimant failed to perform its obligations under said agreements and
10 breached its obligations there under.

11 **ELEVENTH AFFIRMATIVE DEFENSE**

12 The damages, if any, which Counterclaimant has suffered were caused, in whole or in
13 part, by the acts or omissions of Counterclaimant or its agents and representatives, or were
14 caused by the acts or omissions of a third party over whom this answering Counterdefendant has
15 no control.

16 **TWELFTH AFFIRMATIVE DEFENSE**

17 Counterclaimant has failed to mitigate its damages.

18 **THIRTEENTH AFFIRMATIVE DEFENSE**

19 Counterclaimant's claims are barred, in whole or in part, by Counterclaimant's own bad
20 faith, fraudulent acts, omissions and misrepresentations, whether intentional, negligent, or
21 constructive.

22 **FOURTEENTH AFFIRMATIVE DEFENSE**

23 Counterclaimant's claims are barred, in whole or in part, as a result of its own conduct.
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FIFTEENTH AFFIRMATIVE DEFENSE

Counterclaimant is involved in conduct which, if carried to its fruition, would materially alter the parties understanding, thereby releasing this answering Counterdefendant from any obligation under any alleged agreement.

SIXTEENTH AFFIRMATIVE DEFENSE

Counterclaimant's claims, to the extent they are asserted against this answering Counterdefnedant, are barred, in whole or in part, by the fiduciary shield doctrine and, as a consequence thereof, this Court lacks jurisdiction over these individuals and any and all claims asserted in this action against them should be dismissed with prejudice.

SEVENTEENTH AFFIRMATIVE DEFENSE

Counterclaimant, with full knowledge of all the facts connected with or relating to the transaction alleged in the Counterclaim, ratified and confirmed in all respects the acts of this answering Counterdefendant.

EIGHTEENTH AFFIRMATIVE DEFENSE

The claims, and each of them, are barred, in whole or in part, by the failure of the Counterclaimant to plead those claims with particularity.

NINETEENTH AFFIRMATIVE DEFENSE

This answering Counterdefendant is not the alter-ego of the other or that of the Counterdefendants to this action and, as a consequence thereof, this Court lacks jurisdiction over said Counterdefendants. Consequently, to the extent any claim asserted in the Counterclaim is based upon Counterclaimant's alter-ego claim, any and all such claims should be dismissed with prejudice as to all, or any one, of this answering Counterdefendant.

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TWENTIETH AFFIRMATIVE DEFENSE

Counterclaimant has failed to mitigate damages and is therefore barred from recovering alleged damages.

TWENTY-FIRST AFFIRMATIVE DEFENSE

The damages, if any, suffered by Counterclaimant were proximately caused or contributed to by Counterclaimant’s own negligence, and such negligence was greater than the negligence, if any, of this answering Counterdefendant.

TWENTY-SECOND AFFIRMATIVE DEFENSE

This answering Counterdefendant alleges that it has performed each and every one of its obligations, if any, under the written agreement. Nevertheless, to the extent that this answering Counterdefendant is found to have failed to perform any of its obligations under its agreement with Counterclaimant, this answering Counterdefendant is informed and believes that it has done so only because Counterclaimant prevented this answering Counterdefendant’s performance by, among other things, making material misstatements and material omissions to this answering Counterdefendant, in violation of Counterclaimant’s contractual agreement with this answering Counterdefendant.

TWENTY-THIRD AFFIRMATIVE DEFENSE

This answering Counterdefendant did not commit any acts of oppression, fraud or malice, express or implied.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

This answering Counterdefendant alleges on information and belief that it has performed each and every one of its obligations, if any, under its written agreement with Counterclaimant. Nevertheless, to the extent that this answering Counterdefendant is found to have failed to fulfill

1 any of its obligations under the written agreement with Counterclaimant, this answering
2 Counterdefendant is informed and believes that such obligations were impossible to perform at
3 the time it was to have performed them because Counterclaimant made material misstatements
4 and material omissions to this answering Counterdefendant that prevented it from performing its
5 obligations under the written agreement.

6 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

7 This answering Counterdefendant alleges on information and belief that it has performed
8 each and every one of its obligations, if any, under its written agreement with Counterclaimant.
9 Nevertheless, to the extent that this answering Counterdefendant is found to have failed to fulfill
10 its obligations under the written agreement, this answering Counterdefendant is informed and
11 believes that Counterclaimant's material misstatements and material omissions have operated to
12 excuse this answering Counterdefendant's performance under the Doctrine of Frustration of
13 Purpose.

14 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

15 Counterclaimant failed to perform its obligations under the agreement at issue and
16 breached his obligations thereunder, thereby discharging this answering Counterdefendant's
17 obligations to perform.

18 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

19 It has been necessary for this answering Counterdefendant to retain the services of an
20 attorney to defend this action and it is entitled to a reasonable sum as and for attorneys' fees.

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TWENTY-EIGHTH AFFIRMATIVE DEFENSE

Counterclaimant’s claims are barred by Counterclaimant’s own fraudulent acts, fraud, fraudulent inducements, constructive fraud, omissions and misrepresentations whether intentional, negligent, or constructive.

TWENTY-NINTH AFFIRMATIVE DEFENSE

Counterclaimant’s alter-ego claim is barred as the requisite unity of interest and ownership required by Nevada law is lacking.

THIRTIETH AFFIRMATIVE DEFENSE

Counterclaimant’s civil conspiracy claim is barred as Nevada does not recognize conspiracy between a corporation and its agents since agents and employees of a corporation cannot conspire with the corporate principal where they act in their official capacities on behalf of the corporation.

THIRTY-FIRST AFFIRMATIVE DEFENSE

Counterclaimant’s civil conspiracy claim is barred since there is no combination of two or more persons who, by some concerted action, intended to accomplish some unlawful objective for the purpose of harming another which resulted in damages to Counterclaimant.

THIRTY-SECOND AFFIRMATIVE DEFENSE

Counterclaimant’s concert of action is barred as Nevada does not recognize such a cause of action and, thus, this claim is not cognizable under any set of circumstances.

THIRTY-THIRD AFFIRMATIVE DEFENSE

This answering Counterdefendant is informed, believes, and thereon alleges that if any contract, obligations, or amendments, as alleged in Counterclaimant’s Counterclaim on file herein, have been entered into, any duty or performance of this answering Counterdefendant is

1 excused by reason of failure of consideration, waiver, breach of condition precedent, breach by
2 the Counterclaimant, impossibility of performance, material breach by the Counterclaimant,
3 prevention by Counterclaimant, frustration of purpose, and/or acceptance by Counterclaimant.

4 **THIRTY-FOURTH AFFIRMATIVE DEFENSE**

5 The contract and/or contracts existing between the Counterclaimant and this answering
6 Counterdefendant are unconscionable.

7 **THIRTY-FIFTH AFFIRMATIVE DEFENSE**

8 Counterclaimant's material misstatements and material omissions require rescission of
9 the contract(s), if any, between this answering Counterdefendant and Counterclaimant.

10 **THIRTY-SIXTH AFFIRMATIVE DEFENSE**

11 At all times relevant to this action, this answering Counterdefendant has acted in good
12 faith under the terms of any written agreement that may exist or have existed between either of
13 this answering Counterdefendant and Counterclaimant.

14 **THIRTY-SEVENTH AFFIRMATIVE DEFENSE**

15 Pursuant to Nevada Rules of Civil Procedure, all possible affirmative defenses may not
16 have been alleged herein insofar as sufficient facts were not available after reasonable inquiry
17 upon the filing of this Answer and, therefore, this answering Counterdefendant reserves the right
18 to amend this Answer to allege additional Affirmative Defenses if subsequent investigation
19 warrants.

20 **THIRTY-EIGHTH AFFIRMATIVE DEFENSE**

21 As applicable, this answering Counterdefendant asserts the affirmative defenses
22 referenced in NRCP 8(c).

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PRAYER FOR RELIEF

WHEREFORE, as to Defendant’s Counterclaim, this answering Counterdefendant prays for judgment as follows:

1. That Defendant takes nothing by way of its Counterclaim;
2. For costs of suit incurred herein;
3. For reasonable attorneys’ fees incurred herein; and
4. For such other and further relief as the Court may deem just and proper.

Dated this 30th day of September, 2019.

ALDRICH LAW FIRM, LTD.

/s/ John P. Aldrich
John P. Aldrich, Esq.
Nevada Bar No. 6877
Catherine Hernandez, Esq.
Nevada Bar No. 8410
Matthew B. Beckstead, Esq.
Nevada Bar No. 14168
7866 West Sahara Avenue
Las Vegas, Nevada 89117
Telephone: (702) 853-5490
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Attorneys for Plaintiff/Counterdefendants

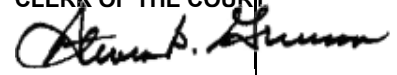
1 **CERTIFICATE OF SERVICE**

2 I HEREBY CERTIFY that on the 30th day of September, 2019, I caused the foregoing
3 **COUNTERDEFENDANT DR. IGNATIUS PIAZZA’S ANSWER TO COUNTERCLAIM**
4 to be electronically filed and served with the Clerk of the Court using Wiznet which will send
5 notification of such filing to the email addresses denoted on the Electronic Mail Notice List, or
6 by U.S. mail, postage prepaid, if not included on the Electronic Mail Notice List, to the
7 following parties:

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

13 C. Keith Greer, Esq.
16855 West Bernardo Drive, Suite 255
14 San Diego, CA 92127
Attorneys for Defendants LAS VEGAS DEVELOPMENT FUND
15 *LLC, EB5IMPACT CAPITAL REGIONAL CENTER LLC,*
EB5 IMPACT ADVISORS LLC, ROBERT W. DZIUBLA,
16 *JON FLEMING and LINDA STANWOOD*

17
18 /s/ T. Bixenmann
19 An employee of ALDRICH LAW FIRM, LTD.
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ANS
John P. Aldrich, Esq.
Nevada Bar No. 6877
Catherine Hernandez, Esq.
Nevada Bar No. 8410
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Facsimile: (702) 227-1975
Attorneys for Plaintiff/Counterdefendants

**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; et al.,

Defendants.

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

**COUNTERDEFENDANT FRONT
SIGHT MANAGEMENT LLC'S
ANSWER TO COUNTERCLAIM**

AND ALL RELATED COUNTERCLAIMS.

COMES NOW Plaintiff/Counterdefendant FRONT SIGHT MANAGEMENT LLC
(hereinafter "answering Counterdefendant"), by and through its attorneys of record, John P.
Aldrich, Esq., Catherine Hernandez, Esq., and Matthew B. Beckstead, Esq., of the Aldrich Law
Firm, Ltd., and for its Answer to Counterclaim on file herein, denies, admits, and alleges as
follows:

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1 **GENERAL DENIAL**

2 This answering Counterdefendant has made an effort to respond to each and every
3 allegation. However, to the extent any allegation was overlooked or not responded to, this
4 answering Counterdefendant denies said allegations.

5 **ANSWER TO COUNTERCLAIM**

6 1. Answering Paragraph 1 of the Counterclaim, this answering Counterdefendant
7 denies each and every allegation contained therein.

8 **I.**

9 **PARTIES**

10 2. Answering Paragraph 2 of the Counterclaim, this answering Counterdefendant
11 admits that Las Vegas Development Fund LLC is a Nevada limited liability company. As to the
12 remaining allegations set forth in Paragraph 2, this answering Counterdefendant states that the
13 allegations contained therein constitute conclusions of law and thus require no answer; however,
14 to the extent they contain allegations of fact, this answering Counterdefendant denies each and
15 every allegation contained therein.

16 3. Answering Paragraph 3 of the Counterclaim, this answering Counterdefendant
17 admits that Front Sight Management LLC is a Nevada limited liability company. As to the
18 remaining allegations set forth in Paragraph 3, this answering Counterdefendant denies each and
19 every allegation contained therein.

20 4. Answering Paragraph 4 of the Counterclaim, this answering Counterdefendant
21 admits that VNV Dynasty Trust I was organized and exists under the laws of Nevada. As to the
22 remaining allegations set forth in Paragraph 4, this answering Counterdefendant denies each and
23 every allegation contained therein.

1 5. Answering Paragraph 5 of the Counterclaim, this answering Counterdefendant
2 admits that VNV Dynasty Trust II was organized and exists under the laws of Nevada. As to the
3 remaining allegations set forth in Paragraph 5, this answering Counterdefendant denies each and
4 every allegation contained therein.

5 6. Answering Paragraph 6 of the Counterclaim, this answering Counterdefendant
6 admits that Ignatius A. Piazza, II is the owner of Front Sight Management LLC. As to the
7 remaining allegations set forth in Paragraph 6, this answering Counterdefendant denies each and
8 every allegation contained therein.

9 7. Answering Paragraph 7 of the Counterclaim, this answering Counterdefendant
10 denies each and every allegation contained therein.

11 8. Answering Paragraph 8 of the Counterclaim, this answering Counterdefendant
12 states that the allegations contained therein constitute conclusions of law and thus require no
13 answer; however, to the extent they contain allegations of fact, this answering Counterdefendant
14 denies each and every allegation contained therein.

15 9. Answering Paragraph 9 of the Counterclaim, this answering Counterdefendant
16 states that the allegations contained therein constitute conclusions of law and thus require no
17 answer; however, to the extent they contain allegations of fact, this answering Counterdefendant
18 denies each and every allegation contained therein.

19 10. Answering Paragraph 10 of the Counterclaim, this answering Counterdefendant
20 denies each and every allegation contained therein.

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II.

GENERAL ALLEGATIONS

11. Answering Paragraph 11 of the Counterclaim, this answering Counterdefendant states that the allegations contained therein constitute conclusions of law and thus require no answer; however, to the extent they contain allegations of fact, this answering Counterdefendant denies each and every allegation contained therein.

12. Answering Paragraph 12 of the Counterclaim, this answering Counterdefendant asserts that the Counterclaim does not indicate whom Counterclaimant claims described the “Project” as described in Paragraph 12 of the Counterclaim. Consequently, this answering Counterdefendant is without knowledge sufficient for form a belief as to the truth or falsity of the allegations contained in Paragraph 12, and therefore denies the facts asserted therein.

13. Answering Paragraph 13 of the Counterclaim, this answering Counterdefendant states that it is without knowledge sufficient to form a belief as to the truth or falsity of the allegations contained therein and, therefore, denies the same.

14. Answering Paragraph 14 of the Counterclaim, this answering Counterdefendant states that the allegations contained therein constitute conclusions of law and thus require no answer; however, to the extent they contain allegations of fact, this answering Counterdefendant states that it is without knowledge sufficient to form a belief as to the truth or falsity of the allegations contained therein and, therefore, denies the same.

15. Answering Paragraph 15 of the Counterclaim, this answering Counterdefendant states that the allegations contained therein constitute conclusions of law and thus require no answer; however, to the extent they contain allegations of fact, this answering Counterdefendant denies each and every allegation contained therein.

1 16. Answering Paragraph 16 of the Counterclaim, this answering Counterdefendant
2 asserts that the document speaks for itself and denies facts inconsistent with the document.

3 17. Answering Paragraph 17 of the Counterclaim, this answering Counterdefendant
4 asserts that the document speaks for itself and denies facts inconsistent with the document.

5 18. Answering Paragraph 18 of the Counterclaim, this answering Counterdefendant
6 asserts that the document speaks for itself and denies facts inconsistent with the document.

7 **BORROWER’S BREACHES AND DEFAULT UNDER THE CLA**

8 **A. Breach Number 1: Improper Use of Loan Proceeds – CLA § 1.7(e)**

9 19. Answering Paragraph 19 of the Counterclaim, this answering Counterdefendant
10 denies each and every allegation contained therein.

11 20. Answering Paragraph 20 of the Counterclaim, this answering Counterdefendant
12 denies each and every allegation contained therein.

13 21. Answering Paragraph 21 of the Counterclaim, this answering Counterdefendant
14 denies each and every allegation contained therein.

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

16 22. Answering Paragraph 22 of the Counterclaim, this answering Counterdefendant
17 asserts that the document speaks for itself and denies facts inconsistent with the document.
18 Additionally, this answering Counterdefendant states that the allegations contained therein
19 constitute conclusions of law and thus require no answer; however, to the extent they contain
20 allegations of fact, this answering Counterdefendant denies each and every allegation contained
21 therein.

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1 **C. Breach Number 3: Failure to Timely Complete Construction – CLA § 5.1**

2 23. Answering Paragraph 23 of the Counterclaim, this answering Counterdefendant
3 asserts that the document speaks for itself and denies facts inconsistent with the document.
4 Additionally, this answering Counterdefendant states that the allegations contained therein
5 constitute conclusions of law and thus require no answer; however, to the extent they contain
6 allegations of fact, this answering Counterdefendant denies each and every allegation contained
7 therein.

8 24. Answering Paragraph 24 of the Counterclaim, this answering Counterdefendant
9 denies each and every allegation contained therein.

10 25. Answering Paragraph 25 of the Counterclaim, this answering Counterdefendant
11 denies each and every allegation contained therein.

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

13 26. Answering Paragraph 26 of the Counterclaim, this answering Counterdefendant
14 asserts that the document speaks for itself and denies facts inconsistent with the document.

15 27. Answering Paragraph 27 of the Counterclaim, this answering Counterdefendant
16 denies each and every allegation contained therein.

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

18 28. Answering Paragraph 28 of the Counterclaim, this answering Counterdefendant
19 asserts that the document speaks for itself and denies facts inconsistent with the document.

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

21 29. Answering Paragraph 29 of the Counterclaim, this answering Counterdefendant
22 denies each and every allegation contained therein.

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

2 30. Answering Paragraph 30 of the Counterclaim, this answering Counterdefendant
3 asserts that the document speaks for itself and denies facts inconsistent with the document.

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

5 31. Answering Paragraph 31 of the Counterclaim, this answering Counterdefendant
6 asserts that the document speaks for itself and denies facts inconsistent with the document.

7 32. Answering Paragraph 32 of the Counterclaim, this answering Counterdefendant
8 states that the allegations contained therein constitute conclusions of law and thus require no
9 answer; however, to the extent they contain allegations of fact, this answering Counterdefendant
10 denies each and every allegation contained therein.

11 33. Answering Paragraph 33 of the Counterclaim, this answering Counterdefendant
12 asserts that the document speaks for itself and denies facts inconsistent with the document.
13 Additionally, this answering Counterdefendant states that the allegations contained therein
14 constitute conclusions of law and thus require no answer; however, to the extent they contain
15 allegations of fact, this answering Counterdefendant denies each and every allegation contained
16 therein.

17 34. Answering Paragraph 34 of the Counterclaim, this answering Counterdefendant
18 states that the allegations contained therein constitute conclusions of law and thus require no
19 answer; however, to the extent they contain allegations of fact, this answering Counterdefendant
20 denies each and every allegation contained therein.

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

22 35. Answering Paragraph 35 of the Counterclaim, this answering Counterdefendant
23 asserts that the document speaks for itself and denies facts inconsistent with the document.
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1 36. Answering Paragraph 36 of the Counterclaim, this answering Counterdefendant
2 states that the allegations contained therein constitute conclusions of law and thus require no
3 answer; however, to the extent they contain allegations of fact, this answering Counterdefendant
4 denies each and every allegation contained therein.

5 37. Answering Paragraph 37 of the Counterclaim, this answering Counterdefendant
6 states that the allegations contained therein constitute conclusions of law and thus require no
7 answer; however, to the extent they contain allegations of fact, this answering Counterdefendant
8 denies each and every allegation contained therein.

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

10 38. Answering Paragraph 38 of the Counterclaim, this answering Counterdefendant
11 asserts that the document speaks for itself and denies facts inconsistent with the document.
12 Additionally, this answering Counterdefendant states that the allegations contained therein
13 constitute conclusions of law and thus require no answer; however, to the extent they contain
14 allegations of fact, this answering Counterdefendant denies each and every allegation contained
15 therein.

16 39. Answering Paragraph 39 of the Counterclaim, this answering Counterdefendant
17 states that the allegations contained therein constitute conclusions of law and thus require no
18 answer; however, to the extent they contain allegations of fact, this answering Counterdefendant
19 denies each and every allegation contained therein.

20 **K. Breach Number 12[sic]: Transferring Assets to Related Parties – CLA § 5.18**

21 40. Answering Paragraph 40 of the Counterclaim, this answering Counterdefendant
22 asserts that the document speaks for itself and denies facts inconsistent with the document.
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1 41. Answering Paragraph 41 of the Counterclaim, this answering Counterdefendant
2 denies each and every allegation contained therein.

3 42. Answering Paragraph 42 of the Counterclaim, this answering Counterdefendant
4 denies each and every allegation contained therein.

5 43. Answering Paragraph 43 of the Counterclaim, this answering Counterdefendant
6 denies each and every allegation contained therein.

7 44. Answering Paragraph 44 of the Counterclaim, this answering Counterdefendant
8 denies each and every allegation contained therein.

9 **L. Breach Number 11: Non Payment of Default Interest – CLA § 1.2**

10 45. Answering Paragraph 45 of the Counterclaim, this answering Counterdefendant
11 asserts that the document speaks for itself and denies facts inconsistent with the document.
12 Additionally, this answering Counterdefendant states that the allegations contained therein
13 constitute conclusions of law and thus require no answer; however, to the extent they contain
14 allegations of fact, this answering Counterdefendant denies each and every allegation contained
15 therein.

16 46. Answering Paragraph 46 of the Counterclaim, this answering Counterdefendant
17 states that the allegations contained therein constitute conclusions of law and thus require no
18 answer; however, to the extent they contain allegations of fact, this answering Counterdefendant
19 denies each and every allegation contained therein.

20 **M. Breach Number 12: Non Payment of Legal Fees – CLA § 8.2**

21 47. Answering Paragraph 47 of the Counterclaim, this answering Counterdefendant
22 asserts that the document speaks for itself and denies facts inconsistent with the document.
23 Additionally, this answering Counterdefendant states that the allegations contained therein
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1 constitute conclusions of law and thus require no answer; however, to the extent they contain
2 allegations of fact, this answering Counterdefendant denies each and every allegation contained
3 therein.

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

5 48. Answering Paragraph 48 of the Counterclaim, this answering Counterdefendant
6 asserts that the document speaks for itself and denies facts inconsistent with the document.

7 49. Answering Paragraph 49 of the Counterclaim, this answering Counterdefendant
8 denies each and every allegation contained therein.

9 50. Answering Paragraph 50 of the Counterclaim, this answering Counterdefendant
10 denies each and every allegation contained therein.

11 51. Answering Paragraph 51 of the Counterclaim, this answering Counterdefendant
12 denies each and every allegation contained therein.

13 **FIRST CAUSE OF ACTION**
14 **(Breach of Contract Against Front Sight)**

15 52-59. Counterclaimant's First Cause of Action has been dismissed as against all
16 Counterdefendants pursuant to this Court's Order filed September 13, 2019.

17 **SECOND CAUSE OF ACTION**
18 **(Contractual Breach of the Implied Covenant of Good Faith and Fair Dealing Against
19 Front Sight)**

20 60-66. Counterclaimant's Second Cause of Action has been dismissed as against all
21 Counterdefendants pursuant to this Court's Order filed September 13, 2019.

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1 **THIRD CAUSE OF ACTION**
2 **(Intentional Interference with Contractual Relationships Against Ignatius Piazza, Jennifer**
3 **Piazza, and VNV Trust Defendants)**

4 67. Answering Paragraph 67 of the Counterclaim, this answering Counterdefendant
5 repeats and realleges, and incorporates herein by reference, each and every allegation contained
6 in Paragraphs 1 through 66 of the Counterclaim as though fully set forth herein.

7 68. Answering Paragraph 68 of the Counterclaim, this answering Counterdefendant
8 states that there are no allegations against them in this paragraph, and thus they need not answer
9 these allegations, but nevertheless, they are without knowledge sufficient to form a belief as to
10 the truth or falsity of the allegations contained therein and, therefore, deny the same.

11 69. Answering Paragraph 69 of the Counterclaim, this answering Counterdefendant
12 states that there are no allegations against them in this paragraph, and thus they need not answer
13 these allegations, but nevertheless, they are without knowledge sufficient to form a belief as to
14 the truth or falsity of the allegations contained therein and, therefore, deny the same.

15 70. Answering Paragraph 70 of the Counterclaim, this answering Counterdefendant
16 states that there are no allegations against them in this paragraph, and thus they need not answer
17 these allegations, but nevertheless, they are without knowledge sufficient to form a belief as to
18 the truth or falsity of the allegations contained therein and, therefore, deny the same.

19 71. Answering Paragraph 71 of the Counterclaim, this answering Counterdefendant
20 states that there are no allegations against them in this paragraph, and thus they need not answer
21 these allegations, but nevertheless, they are without knowledge sufficient to form a belief as to
22 the truth or falsity of the allegations contained therein and, therefore, deny the same.

23 72. Answering Paragraph 72 of the Counterclaim, this answering Counterdefendant
24 states that there are no allegations against them in this paragraph, and thus they need not answer

1 these allegations, but nevertheless, they are without knowledge sufficient to form a belief as to
2 the truth or falsity of the allegations contained therein and, therefore, deny the same.

3 73. Answering Paragraph 73 of the Counterclaim, this answering Counterdefendant
4 states that there are no allegations against them in this paragraph, and thus they need not answer
5 these allegations, but nevertheless, they are without knowledge sufficient to form a belief as to
6 the truth or falsity of the allegations contained therein and, therefore, deny the same.

7 74. Answering Paragraph 74 of the Counterclaim, this answering Counterdefendant
8 states that there are no allegations against them in this paragraph, and thus they need not answer
9 these allegations, but nevertheless, they are without knowledge sufficient to form a belief as to
10 the truth or falsity of the allegations contained therein and, therefore, deny the same.

11 **FOURTH CAUSE OF ACTION**
12 **(Conversion Against Front Sight, Ignatius Piazza and Jennifer Piazza)**

13 75. Answering Paragraph 75 of the Counterclaim, this answering Counterdefendant
14 repeats and realleges, and incorporates herein by reference, each and every allegation contained
15 in Paragraphs 1 through 74 of the Counterclaim as though fully set forth herein.

16 76. Answering Paragraph 76 of the Counterclaim, this answering Counterdefendant
17 denies each and every allegation contained therein.

18 77. Answering Paragraph 77 of the Counterclaim, this answering Counterdefendant
19 denies each and every allegation contained therein.

20 78. Answering Paragraph 78 of the Counterclaim, this answering Counterdefendant
21 denies each and every allegation contained therein.

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FIFTH CAUSE OF ACTION
(Civil Conspiracy Against all Counterdefendants)

79. Answering Paragraph 79 of the Counterclaim, this answering Counterdefendant repeats and realleges, and incorporates herein by reference, each and every allegation contained in Paragraphs 1 through 78 of the Counterclaim as though fully set forth herein.

80. Answering Paragraph 80 of the Counterclaim, this answering Counterdefendant denies each and every allegation contained therein.

81. Answering Paragraph 81 of the Counterclaim, this answering Counterdefendant denies each and every allegation contained therein.

82. Answering Paragraph 82 of the Counterclaim, this answering Counterdefendant denies each and every allegation contained therein.

83. Answering Paragraph 83 of the Counterclaim, this answering Counterdefendant denies each and every allegation contained therein.

84. Answering Paragraph 84 of the Counterclaim, this answering Counterdefendant denies each and every allegation contained therein.

85. Answering Paragraph 85 of the Counterclaim, this answering Counterdefendant denies each and every allegation contained therein.

SIXTH CAUSE OF ACTION
(Judicial Foreclosure Against Front Sight)

86. Answering Paragraph 86 of the Counterclaim, this answering Counterdefendant repeats and realleges, and incorporates herein by reference, each and every allegation contained in Paragraphs 1 through 85 of the Counterclaim as though fully set forth herein.

87. Answering Paragraph 87 of the Counterclaim, this answering Counterdefendant states that the allegations contained therein constitute conclusions of law and thus require no

1 answer; however, to the extent they contain allegations of fact, this answering Counterdefendant
2 denies each and every allegation contained therein.

3 88. Answering Paragraph 88 of the Counterclaim, this answering Counterdefendant
4 states that the allegations contained therein constitute conclusions of law and thus require no
5 answer; however, to the extent they contain allegations of fact, this answering Counterdefendant
6 denies each and every allegation contained therein.

7 89. Answering Paragraph 89 of the Counterclaim, this answering Counterdefendant
8 states that the allegations contained therein constitute conclusions of law and thus require no
9 answer; however, to the extent they contain allegations of fact, this answering Counterdefendant
10 denies each and every allegation contained therein.

11 90. Answering Paragraph 90 of the Counterclaim, this answering Counterdefendant
12 states that the allegations contained therein constitute conclusions of law and thus require no
13 answer; however, to the extent they contain allegations of fact, this answering Counterdefendant
14 denies each and every allegation contained therein.

15 91. Answering Paragraph 91 of the Counterclaim, this answering Counterdefendant
16 states that the allegations contained therein constitute conclusions of law and thus require no
17 answer; however, to the extent they contain allegations of fact, this answering Counterdefendant
18 denies each and every allegation contained therein.

19 92. Answering Paragraph 92 of the Counterclaim, this answering Counterdefendant
20 denies each and every allegation contained therein.

21 93. Answering Paragraph 93 of the Counterclaim, this answering Counterdefendant
22 denies each and every allegation contained therein.
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1 **AFFIRMATIVE DEFENSES**

2 This answering Counterdefendant asserts the following Affirmative Defenses to the
3 Counterclaim, and the claims asserted therein, and this answering Counterdefendant specifically
4 incorporates into its Affirmative Defenses its answers to the preceding paragraphs of the
5 Counterclaim as if fully set forth herein.

6 **FIRST AFFIRMATIVE DEFENSE**

7 Counterclaimant's Counterclaim, and all of the claims for relief alleged therein, fails to
8 state a claim against this answering Counterdefendant upon which relief can be granted.

9 **SECOND AFFIRMATIVE DEFENSE**

10 Counterclaimant's claims are barred, in whole or in part, by the doctrine of unclean
11 hands.

12 **THIRD AFFIRMATIVE DEFENSE**

13 Counterclaimant's claims are barred, in whole or in part, by Counterclaimant's bad faith
14 in bringing this action including, but not limited to, its wrongful conduct as set forth more fully
15 in the Complaint on file in this action.

16 **FOURTH AFFIRMATIVE DEFENSE**

17 Counterclaimant has not been damaged directly, indirectly, proximately or in any manner
18 whatsoever by any conduct of this answering Counterdefendant.

19 **FIFTH AFFIRMATIVE DEFENSE**

20 This answering Counterdefendant is not in breach of any agreement with
21 Counterclaimant, and, thus, is not in default under the terms of any agreement with
22 Counterclaimant. If any party is in breach of any agreement, it is Counterclaimant for the
23 reasons set forth more fully in the Complaint on file in this action.
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SIXTH AFFIRMATIVE DEFENSE

Counterclaimant’s claims are barred, in whole or in part, by doctrine of waiver.

SEVENTH AFFIRMATIVE DEFENSE

Counterclaimant’s claims are barred, in whole or in part, by doctrines of promissory, equitable, and/or contractual estoppel.

EIGHTH AFFIRMATIVE DEFENSE

Counterclaimant’s claims are barred, in whole or in part, on the ground that this answering Counterdefendant has fully complied with any and all agreements between the parties.

NINTH AFFIRMATIVE DEFENSE

Counterclaimant’s claims are barred, in whole or in part, by the doctrine of laches and/or the applicable statute of limitations.

TENTH AFFIRMATIVE DEFENSE

To the extent any agreement exists between Counterclaimant and this answering Counterdefendant, Counterclaimant failed to perform its obligations under said agreements and breached its obligations there under.

ELEVENTH AFFIRMATIVE DEFENSE

The damages, if any, which Counterclaimant has suffered were caused, in whole or in part, by the acts or omissions of Counterclaimant or its agents and representatives, or were caused by the acts or omissions of a third party over whom this answering Counterdefendant has no control.

TWELFTH AFFIRMATIVE DEFENSE

Counterclaimant has failed to mitigate its damages.

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THIRTEENTH AFFIRMATIVE DEFENSE

Counterclaimant’s claims are barred, in whole or in part, by Counterclaimant’s own bad faith, fraudulent acts, omissions and misrepresentations, whether intentional, negligent, or constructive.

FOURTEENTH AFFIRMATIVE DEFENSE

Counterclaimant’s claims are barred, in whole or in part, as a result of its own conduct.

FIFTEENTH AFFIRMATIVE DEFENSE

Counterclaimant is involved in conduct which, if carried to its fruition, would materially alter the parties understanding, thereby releasing this answering Counterdefendant from any obligation under any alleged agreement.

SIXTEENTH AFFIRMATIVE DEFENSE

Counterclaimant’s claims, to the extent they are asserted against this answering Counterdefnedant, are barred, in whole or in part, by the fiduciary shield doctrine and, as a consequence thereof, this Court lacks jurisdiction over these individuals and any and all claims asserted in this action against them should be dismissed with prejudice.

SEVENTEENTH AFFIRMATIVE DEFENSE

Counterclaimant, with full knowledge of all the facts connected with or relating to the transaction alleged in the Counterclaim, ratified and confirmed in all respects the acts of this answering Counterdefendant.

EIGHTEENTH AFFIRMATIVE DEFENSE

The claims, and each of them, are barred, in whole or in part, by the failure of the Counterclaimant to plead those claims with particularity.

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NINETEENTH AFFIRMATIVE DEFENSE

This answering Counterdefendant is not the alter-ego of the other or that of the Counterdefendants to this action and, as a consequence thereof, this Court lacks jurisdiction over said Counterdefendants. Consequently, to the extent any claim asserted in the Counterclaim is based upon Counterclaimant’s alter-ego claim, any and all such claims should be dismissed with prejudice as to all, or any one, of this answering Counterdefendant.

TWENTIETH AFFIRMATIVE DEFENSE

Counterclaimant has failed to mitigate damages and is therefore barred from recovering alleged damages.

TWENTY-FIRST AFFIRMATIVE DEFENSE

The damages, if any, suffered by Counterclaimant were proximately caused or contributed to by Counterclaimant’s own negligence, and such negligence was greater than the negligence, if any, of this answering Counterdefendant.

TWENTY-SECOND AFFIRMATIVE DEFENSE

This answering Counterdefendant alleges that it has performed each and every one of its obligations, if any, under the written agreement. Nevertheless, to the extent that this answering Counterdefendant is found to have failed to perform any of its obligations under its agreement with Counterclaimant, this answering Counterdefendant is informed and believes that it has done so only because Counterclaimant prevented this answering Counterdefendant’s performance by, among other things, making material misstatements and material omissions to this answering Counterdefendant, in violation of Counterclaimant’s contractual agreement with this answering Counterdefendant.

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TWENTY-THIRD AFFIRMATIVE DEFENSE

This answering Counterdefendant did not commit any acts of oppression, fraud or malice, express or implied.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

This answering Counterdefendant alleges on information and belief that it has performed each and every one of its obligations, if any, under its written agreement with Counterclaimant. Nevertheless, to the extent that this answering Counterdefendant is found to have failed to fulfill any of its obligations under the written agreement with Counterclaimant, this answering Counterdefendant is informed and believes that such obligations were impossible to perform at the time it was to have performed them because Counterclaimant made material misstatements and material omissions to this answering Counterdefendant that prevented it from performing its obligations under the written agreement.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

This answering Counterdefendant alleges on information and belief that it has performed each and every one of its obligations, if any, under its written agreement with Counterclaimant. Nevertheless, to the extent that this answering Counterdefendant is found to have failed to fulfill its obligations under the written agreement, this answering Counterdefendant is informed and believes that Counterclaimant’s material misstatements and material omissions have operated to excuse this answering Counterdefendant’s performance under the Doctrine of Frustration of Purpose.

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TWENTY-SIXTH AFFIRMATIVE DEFENSE

Counterclaimant failed to perform its obligations under the agreement at issue and breached his obligations thereunder, thereby discharging this answering Counterdefendant’s obligations to perform.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

It has been necessary for this answering Counterdefendant to retain the services of an attorney to defend this action and it is entitled to a reasonable sum as and for attorneys’ fees.

TWENTY-EIGHTH AFFIRMATIVE DEFENSE

Counterclaimant’s claims are barred by Counterclaimant’s own fraudulent acts, fraud, fraudulent inducements, constructive fraud, omissions and misrepresentations whether intentional, negligent, or constructive.

TWENTY-NINTH AFFIRMATIVE DEFENSE

Counterclaimant’s alter-ego claim is barred as the requisite unity of interest and ownership required by Nevada law is lacking.

THIRTIETH AFFIRMATIVE DEFENSE

Counterclaimant’s civil conspiracy claim is barred as Nevada does not recognize conspiracy between a corporation and its agents since agents and employees of a corporation cannot conspire with the corporate principal where they act in their official capacities on behalf of the corporation.

THIRTY-FIRST AFFIRMATIVE DEFENSE

Counterclaimant’s civil conspiracy claim is barred since there is no combination of two or more persons who, by some concerted action, intended to accomplish some unlawful objective for the purpose of harming another which resulted in damages to Counterclaimant.

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THIRTY-SECOND AFFIRMATIVE DEFENSE

Counterclaimant’s concert of action is barred as Nevada does not recognize such a cause of action and, thus, this claim is not cognizable under any set of circumstances.

THIRTY-THIRD AFFIRMATIVE DEFENSE

This answering Counterdefendant is informed, believes, and thereon alleges that if any contract, obligations, or amendments, as alleged in Counterclaimant’s Counterclaim on file herein, have been entered into, any duty or performance of this answering Counterdefendant is excused by reason of failure of consideration, waiver, breach of condition precedent, breach by the Counterclaimant, impossibility of performance, material breach by the Counterclaimant, prevention by Counterclaimant, frustration of purpose, and/or acceptance by Counterclaimant.

THIRTY-FOURTH AFFIRMATIVE DEFENSE

The contract and/or contracts existing between the Counterclaimant and this answering Counterdefendant are unconscionable.

THIRTY-FIFTH AFFIRMATIVE DEFENSE

Counterclaimant’s material misstatements and material omissions require rescission of the contract(s), if any, between this answering Counterdefendant and Counterclaimant.

THIRTY-SIXTH AFFIRMATIVE DEFENSE

At all times relevant to this action, this answering Counterdefendant has acted in good faith under the terms of any written agreement that may exist or have existed between either of this answering Counterdefendant and Counterclaimant.

THIRTY-SEVENTH AFFIRMATIVE DEFENSE

Pursuant to Nevada Rules of Civil Procedure, all possible affirmative defenses may not have been alleged herein insofar as sufficient facts were not available after reasonable inquiry

1 upon the filing of this Answer and, therefore, this answering Counterdefendant reserves the right
2 to amend this Answer to allege additional Affirmative Defenses if subsequent investigation
3 warrants.

4 **THIRTY-EIGHTH AFFIRMATIVE DEFENSE**

5 As applicable, this answering Counterdefendant asserts the affirmative defenses
6 referenced in NRCP 8(c).

7 **PRAYER FOR RELIEF**

8 WHEREFORE, as to Defendant's Counterclaim, this answering Counterdefendant prays
9 for judgment as follows:

- 10 1. That Defendant takes nothing by way of its Counterclaim;
11 2. For costs of suit incurred herein;
12 3. For reasonable attorneys' fees incurred herein; and
13 4. For such other and further relief as the Court may deem just and proper.

14 Dated this 30th day of September, 2019.

15 **ALDRICH LAW FIRM, LTD.**

16 /s/ John P. Aldrich
17 John P. Aldrich, Esq.
Nevada Bar No. 6877
18 Catherine Hernandez, Esq.
Nevada Bar No. 8410
19 Matthew B. Beckstead, Esq.
Nevada Bar No. 14168
20 7866 West Sahara Avenue
Las Vegas, Nevada 89117
21 Telephone: (702) 853-5490
Facsimile: (702) 227-1975
22 *Attorneys for Plaintiff/Counterdefendants*

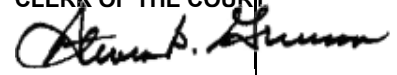
1 **CERTIFICATE OF SERVICE**

2 I HEREBY CERTIFY that on the 30th day of September, 2019, I caused the foregoing
3 **COUNTERDEFENDANT FRONT SIGHT MANAGEMENT LLC'S ANSWER TO**
4 **COUNTERCLAIM** to be electronically filed and served with the Clerk of the Court using
5 Wiznet which will send notification of such filing to the email addresses denoted on the
6 Electronic Mail Notice List, or by U.S. mail, postage prepaid, if not included on the Electronic
7 Mail Notice List, to the following parties:

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

13 C. Keith Greer, Esq.
14 16855 West Bernardo Drive, Suite 255
15 San Diego, CA 92127
*Attorneys for Defendants LAS VEGAS DEVELOPMENT FUND
LLC, EB5IMPACT CAPITAL REGIONAL CENTER LLC,
EB5 IMPACT ADVISORS LLC, ROBERT W. DZIUBLA,
JON FLEMING and LINDA STANWOOD*

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19 /s/ T. Bixenmann
20 An employee of ALDRICH LAW FIRM, LTD.
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ANS
John P. Aldrich, Esq.
Nevada Bar No. 6877
Catherine Hernandez, Esq.
Nevada Bar No. 8410
Matthew B. Beckstead, Esq.
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Telephone: (702) 853-5490
Facsimile: (702) 227-1975
Attorneys for Plaintiff/Counterdefendants

**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; et al.,

Defendants.

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

COUNTERDEFENDANT
JENNIFER PIAZZA'S ANSWER TO
COUNTERCLAIM

AND ALL RELATED COUNTERCLAIMS.

COMES NOW Counterdefendant JENNIFER PIAZZA (hereinafter "answering Counterdefendant"), by and through her attorneys of record, John P. Aldrich, Esq., Catherine Hernandez, Esq., and Matthew B. Beckstead, Esq., of the Aldrich Law Firm, Ltd., and for her Answer to Counterclaim on file herein, denies, admits, and alleges as follows:

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1 **GENERAL DENIAL**

2 This answering Counterdefendant has made an effort to respond to each and every
3 allegation. However, to the extent any allegation was overlooked or not responded to, this
4 answering Counterdefendant denies said allegations.

5 **ANSWER TO COUNTERCLAIM**

6 1. Answering Paragraph 1 of the Counterclaim, this answering Counterdefendant
7 denies each and every allegation contained therein.

8 **I.**

9 **PARTIES**

10 2. Answering Paragraph 2 of the Counterclaim, this answering Counterdefendant
11 states that she is without knowledge sufficient to form a belief as to the truth or falsity of the
12 allegations contained therein and, therefore, denies the same.

13 3. Answering Paragraph 3 of the Counterclaim, this answering Counterdefendant
14 states that she is without knowledge sufficient to form a belief as to the truth or falsity of the
15 allegations contained therein and, therefore, denies the same.

16 4. Answering Paragraph 4 of the Counterclaim, this answering Counterdefendant
17 states that she is without knowledge sufficient to form a belief as to the truth or falsity of the
18 allegations contained therein and, therefore, denies the same.

19 5. Answering Paragraph 5 of the Counterclaim, this answering Counterdefendant
20 states that she is without knowledge sufficient to form a belief as to the truth or falsity of the
21 allegations contained therein and, therefore, denies the same.

1 these allegations, but nevertheless, she is without knowledge sufficient to form a belief as to the
2 truth or falsity of the allegations contained therein and, therefore, denies the same.

3 13. Answering Paragraph 13 of the Counterclaim, this answering Counterdefendant
4 states that there are no allegations against her in this paragraph, and thus she need not answer
5 these allegations, but nevertheless, she is without knowledge sufficient to form a belief as to the
6 truth or falsity of the allegations contained therein and, therefore, denies the same.

7 14. Answering Paragraph 14 of the Counterclaim, this answering Counterdefendant
8 states that there are no allegations against her in this paragraph, and thus she need not answer
9 these allegations, but nevertheless, she is without knowledge sufficient to form a belief as to the
10 truth or falsity of the allegations contained therein and, therefore, denies the same.

11 15. Answering Paragraph 15 of the Counterclaim, this answering Counterdefendant
12 states that there are no allegations against her in this paragraph, and thus she need not answer
13 these allegations, but nevertheless, she is without knowledge sufficient to form a belief as to the
14 truth or falsity of the allegations contained therein and, therefore, denies the same.

15 16. Answering Paragraph 16 of the Counterclaim, this answering Counterdefendant
16 states that there are no allegations against her in this paragraph, and thus she need not answer
17 these allegations, but nevertheless, she is without knowledge sufficient to form a belief as to the
18 truth or falsity of the allegations contained therein and, therefore, denies the same.

19 17. Answering Paragraph 17 of the Counterclaim, this answering Counterdefendant
20 states that there are no allegations against her in this paragraph, and thus she need not answer
21 these allegations, but nevertheless, she is without knowledge sufficient to form a belief as to the
22 truth or falsity of the allegations contained therein and, therefore, denies the same.

1 18. Answering Paragraph 18 of the Counterclaim, this answering Counterdefendant
2 states that there are no allegations against her in this paragraph, and thus she need not answer
3 these allegations, but nevertheless, she is without knowledge sufficient to form a belief as to the
4 truth or falsity of the allegations contained therein and, therefore, denies the same.

5 **BORROWER’S BREACHES AND DEFAULT UNDER THE CLA**

6 **A. Breach Number 1: Improper Use of Loan Proceeds – CLA § 1.7(e)**

7 19. Answering Paragraph 19 of the Counterclaim, this answering Counterdefendant
8 states that there are no allegations against her in this paragraph, and thus she need not answer
9 these allegations, but nevertheless, she is without knowledge sufficient to form a belief as to the
10 truth or falsity of the allegations contained therein and, therefore, denies the same.

11 20. Answering Paragraph 20 of the Counterclaim, this answering Counterdefendant
12 states that there are no allegations against her in this paragraph, and thus she need not answer
13 these allegations, but nevertheless, she is without knowledge sufficient to form a belief as to the
14 truth or falsity of the allegations contained therein and, therefore, denies the same.

15 21. Answering Paragraph 21 of the Counterclaim, this answering Counterdefendant
16 denies each and every allegation contained therein.

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

18 22. Answering Paragraph 22 of the Counterclaim, this answering Counterdefendant
19 states that there are no allegations against her in this paragraph, and thus she need not answer
20 these allegations, but nevertheless, she is without knowledge sufficient to form a belief as to the
21 truth or falsity of the allegations contained therein and, therefore, denies the same.

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1 **C. Breach Number 3: Failure to Timely Complete Construction – CLA § 5.1**

2 23. Answering Paragraph 23 of the Counterclaim, this answering Counterdefendant
3 states that there are no allegations against her in this paragraph, and thus she need not answer
4 these allegations, but nevertheless, she is without knowledge sufficient to form a belief as to the
5 truth or falsity of the allegations contained therein and, therefore, denies the same.

6 24. Answering Paragraph 24 of the Counterclaim, this answering Counterdefendant
7 states that there are no allegations against her in this paragraph, and thus she need not answer
8 these allegations, but nevertheless, she is without knowledge sufficient to form a belief as to the
9 truth or falsity of the allegations contained therein and, therefore, denies the same.

10 25. Answering Paragraph 25 of the Counterclaim, this answering Counterdefendant
11 states that there are no allegations against her in this paragraph, and thus she need not answer
12 these allegations, but nevertheless, she is without knowledge sufficient to form a belief as to the
13 truth or falsity of the allegations contained therein and, therefore, denies the same.

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

15 26. Answering Paragraph 26 of the Counterclaim, this answering Counterdefendant
16 states that there are no allegations against her in this paragraph, and thus she need not answer
17 these allegations, but nevertheless, she is without knowledge sufficient to form a belief as to the
18 truth or falsity of the allegations contained therein and, therefore, denies the same.

19 27. Answering Paragraph 27 of the Counterclaim, this answering Counterdefendant
20 states that there are no allegations against her in this paragraph, and thus she need not answer
21 these allegations, but nevertheless, she is without knowledge sufficient to form a belief as to the
22 truth or falsity of the allegations contained therein and, therefore, denies the same.

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

2 28. Answering Paragraph 28 of the Counterclaim, this answering Counterdefendant
3 states that there are no allegations against her in this paragraph, and thus she need not answer
4 these allegations, but nevertheless, she is without knowledge sufficient to form a belief as to the
5 truth or falsity of the allegations contained therein and, therefore, denies the same.

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

7 29. Answering Paragraph 29 of the Counterclaim, this answering Counterdefendant
8 states that there are no allegations against her in this paragraph, and thus she need not answer
9 these allegations, but nevertheless, she is without knowledge sufficient to form a belief as to the
10 truth or falsity of the allegations contained therein and, therefore, denies the same.

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

12 30. Answering Paragraph 30 of the Counterclaim, this answering Counterdefendant
13 states that there are no allegations against her in this paragraph, and thus she need not answer
14 these allegations, but nevertheless, she is without knowledge sufficient to form a belief as to the
15 truth or falsity of the allegations contained therein and, therefore, denies the same.

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

17 31. Answering Paragraph 31 of the Counterclaim, this answering Counterdefendant
18 states that there are no allegations against her in this paragraph, and thus she need not answer
19 these allegations, but nevertheless, she is without knowledge sufficient to form a belief as to the
20 truth or falsity of the allegations contained therein and, therefore, denies the same.

21 32. Answering Paragraph 32 of the Counterclaim, this answering Counterdefendant
22 states that there are no allegations against her in this paragraph, and thus she need not answer
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1 these allegations, but nevertheless, she is without knowledge sufficient to form a belief as to the
2 truth or falsity of the allegations contained therein and, therefore, denies the same.

3 33. Answering Paragraph 33 of the Counterclaim, this answering Counterdefendant
4 states that there are no allegations against her in this paragraph, and thus she need not answer
5 these allegations, but nevertheless, she is without knowledge sufficient to form a belief as to the
6 truth or falsity of the allegations contained therein and, therefore, denies the same.

7 34. Answering Paragraph 34 of the Counterclaim, this answering Counterdefendant
8 states that there are no allegations against her in this paragraph, and thus she need not answer
9 these allegations, but nevertheless, she is without knowledge sufficient to form a belief as to the
10 truth or falsity of the allegations contained therein and, therefore, denies the same.

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

12 35. Answering Paragraph 35 of the Counterclaim, this answering Counterdefendant
13 states that there are no allegations against her in this paragraph, and thus she need not answer
14 these allegations, but nevertheless, she is without knowledge sufficient to form a belief as to the
15 truth or falsity of the allegations contained therein and, therefore, denies the same.

16 36. Answering Paragraph 36 of the Counterclaim, this answering Counterdefendant
17 states that there are no allegations against her in this paragraph, and thus she need not answer
18 these allegations, but nevertheless, she is without knowledge sufficient to form a belief as to the
19 truth or falsity of the allegations contained therein and, therefore, denies the same.

20 37. Answering Paragraph 37 of the Counterclaim, this answering Counterdefendant
21 states that there are no allegations against her in this paragraph, and thus she need not answer
22 these allegations, but nevertheless, she is without knowledge sufficient to form a belief as to the
23 truth or falsity of the allegations contained therein and, therefore, denies the same.
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1 **J. Breach Number 10: Failure to Provide EB-5 Information – CLA § 1.7(f)**

2 38. Answering Paragraph 38 of the Counterclaim, this answering Counterdefendant
3 states that there are no allegations against her in this paragraph, and thus she need not answer
4 these allegations, but nevertheless, she is without knowledge sufficient to form a belief as to the
5 truth or falsity of the allegations contained therein and, therefore, denies the same.

6 39. Answering Paragraph 39 of the Counterclaim, this answering Counterdefendant
7 states that there are no allegations against her in this paragraph, and thus she need not answer
8 these allegations, but nevertheless, she is without knowledge sufficient to form a belief as to the
9 truth or falsity of the allegations contained therein and, therefore, denies the same.

10 **K. Breach Number 12[sic]: Transferring Assets to Related Parties – CLA § 5.18**

11 40. Answering Paragraph 40 of the Counterclaim, this answering Counterdefendant
12 states that there are no allegations against her in this paragraph, and thus she need not answer
13 these allegations, but nevertheless, she is without knowledge sufficient to form a belief as to the
14 truth or falsity of the allegations contained therein and, therefore, denies the same.

15 41. Answering Paragraph 41 of the Counterclaim, this answering Counterdefendant
16 states that there are no allegations against her in this paragraph, and thus she need not answer
17 these allegations, but nevertheless, she is without knowledge sufficient to form a belief as to the
18 truth or falsity of the allegations contained therein and, therefore, denies the same.

19 42. Answering Paragraph 42 of the Counterclaim, this answering Counterdefendant
20 denies each and every allegation contained therein.

21 43. Answering Paragraph 43 of the Counterclaim, this answering Counterdefendant
22 denies each and every allegation contained therein.

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1 44. Answering Paragraph 44 of the Counterclaim, this answering Counterdefendant
2 denies each and every allegation contained therein.

3 **L. Breach Number 11: Non Payment of Default Interest – CLA § 1.2**

4 45. Answering Paragraph 45 of the Counterclaim, this answering Counterdefendant
5 states that there are no allegations against her in this paragraph, and thus she need not answer
6 these allegations, but nevertheless, she is without knowledge sufficient to form a belief as to the
7 truth or falsity of the allegations contained therein and, therefore, denies the same.

8 46. Answering Paragraph 46 of the Counterclaim, this answering Counterdefendant
9 states that there are no allegations against her in this paragraph, and thus she need not answer
10 these allegations, but nevertheless, she is without knowledge sufficient to form a belief as to the
11 truth or falsity of the allegations contained therein and, therefore, denies the same.

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

13 47. Answering Paragraph 47 of the Counterclaim, this answering Counterdefendant
14 states that there are no allegations against her in this paragraph, and thus she need not answer
15 these allegations, but nevertheless, she is without knowledge sufficient to form a belief as to the
16 truth or falsity of the allegations contained therein and, therefore, denies the same.

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

18 48. Answering Paragraph 48 of the Counterclaim, this answering Counterdefendant
19 states that there are no allegations against her in this paragraph, and thus she need not answer
20 these allegations, but nevertheless, she is without knowledge sufficient to form a belief as to the
21 truth or falsity of the allegations contained therein and, therefore, denies the same.

22 49. Answering Paragraph 49 of the Counterclaim, this answering Counterdefendant
23 states that there are no allegations against her in this paragraph, and thus she need not answer
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1 these allegations, but nevertheless, she is without knowledge sufficient to form a belief as to the
2 truth or falsity of the allegations contained therein and, therefore, denies the same.

3 50. Answering Paragraph 50 of the Counterclaim, this answering Counterdefendant
4 states that there are no allegations against her in this paragraph, and thus she need not answer
5 these allegations, but nevertheless, she is without knowledge sufficient to form a belief as to the
6 truth or falsity of the allegations contained therein and, therefore, denies the same.

7 51. Answering Paragraph 51 of the Counterclaim, this answering Counterdefendant
8 states that there are no allegations against her in this paragraph, and thus she need not answer
9 these allegations, but nevertheless, she is without knowledge sufficient to form a belief as to the
10 truth or falsity of the allegations contained therein and, therefore, denies the same.

11 **FIRST CAUSE OF ACTION**
12 **(Breach of Contract Against Front Sight)**

13 52-59. Counterclaimant's First Cause of Action has been dismissed as against all
14 Counterdefendants pursuant to this Court's Order filed September 13, 2019.

15 **SECOND CAUSE OF ACTION**
16 **(Contractual Breach of the Implied Covenant of Good Faith and Fair Dealing Against**
17 **Front Sight)**

18 60-66. Counterclaimant's Second Cause of Action has been dismissed as against all
19 Counterdefendants pursuant to this Court's Order filed September 13, 2019.

20 **THIRD CAUSE OF ACTION**
21 **(Intentional Interference with Contractual Relationships Against Ignatius Piazza, Jennifer**
22 **Piazza, and VNV Trust Defendants)**

23 67. Answering Paragraph 67 of the Counterclaim, this answering Counterdefendant
24 repeats and realleges, and incorporates herein by reference, each and every allegation contained
in Paragraphs 1 through 66 of the Counterclaim as though fully set forth herein.

1 68. Answering Paragraph 68 of the Counterclaim, this answering Counterdefendant
2 states that there are no allegations against her in this paragraph, and thus she need not answer
3 these allegations, but nevertheless, she is without knowledge sufficient to form a belief as to the
4 truth or falsity of the allegations contained therein and, therefore, denies the same.

5 69. Answering Paragraph 69 of the Counterclaim, this answering Counterdefendant
6 denies each and every allegation contained therein.

7 70. Answering Paragraph 70 of the Counterclaim, this answering Counterdefendant
8 denies each and every allegation contained therein.

9 71. Answering Paragraph 71 of the Counterclaim, this answering Counterdefendant
10 states that there are no allegations against her in this paragraph, and thus she need not answer
11 these allegations, but nevertheless, she is without knowledge sufficient to form a belief as to the
12 truth or falsity of the allegations contained therein and, therefore, denies the same.

13 72. Answering Paragraph 72 of the Counterclaim, this answering Counterdefendant
14 states that there are no allegations against her in this paragraph, and thus she need not answer
15 these allegations, but nevertheless, she is without knowledge sufficient to form a belief as to the
16 truth or falsity of the allegations contained therein and, therefore, denies the same.

17 73. Answering Paragraph 73 of the Counterclaim, this answering Counterdefendant
18 denies each and every allegation contained therein.

19 74. Answering Paragraph 74 of the Counterclaim, this answering Counterdefendant
20 denies each and every allegation contained therein.

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1 these allegations, but nevertheless, she is without knowledge sufficient to form a belief as to the
2 truth or falsity of the allegations contained therein and, therefore, denies the same.

3 91. Answering Paragraph 91 of the Counterclaim, this answering Counterdefendant
4 states that there are no allegations against her in this paragraph, and thus she need not answer
5 these allegations, but nevertheless, she is without knowledge sufficient to form a belief as to the
6 truth or falsity of the allegations contained therein and, therefore, denies the same.

7 92. Answering Paragraph 92 of the Counterclaim, this answering Counterdefendant
8 states that there are no allegations against her in this paragraph, and thus she need not answer
9 these allegations, but nevertheless, she is without knowledge sufficient to form a belief as to the
10 truth or falsity of the allegations contained therein and, therefore, denies the same.

11 93. Answering Paragraph 93 of the Counterclaim, this answering Counterdefendant
12 states that there are no allegations against her in this paragraph, and thus she need not answer
13 these allegations, but nevertheless, she is without knowledge sufficient to form a belief as to the
14 truth or falsity of the allegations contained therein and, therefore, denies the same.

15 94. Answering Paragraph 94 of the Counterclaim, this answering Counterdefendant
16 states that there are no allegations against her in this paragraph, and thus she need not answer
17 these allegations, but nevertheless, she is without knowledge sufficient to form a belief as to the
18 truth or falsity of the allegations contained therein and, therefore, denies the same.

19 **SEVENTH CAUSE OF ACTION**
20 **(Waste Against All Counterdefendants)**

21 95-102. Counterclaimant's Seventh Cause of Action has been dismissed against
22 this answering Counterdefendant pursuant to this Court's Order filed September 13, 2019.

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1 **AFFIRMATIVE DEFENSES**

2 This answering Counterdefendant asserts the following Affirmative Defenses to the
3 Counterclaim, and the claims asserted therein, and this answering Counterdefendant specifically
4 incorporates into her Affirmative Defenses her answers to the preceding paragraphs of the
5 Counterclaim as if fully set forth herein.

6 **FIRST AFFIRMATIVE DEFENSE**

7 Counterclaimant's Counterclaim, and all of the claims for relief alleged therein, fails to
8 state a claim against this answering Counterdefendant upon which relief can be granted.

9 **SECOND AFFIRMATIVE DEFENSE**

10 Counterclaimant's claims are barred, in whole or in part, by the doctrine of unclean
11 hands.

12 **THIRD AFFIRMATIVE DEFENSE**

13 Counterclaimant's claims are barred, in whole or in part, by Counterclaimant's bad faith
14 in bringing this action including, but not limited to, its wrongful conduct as set forth more fully
15 in the Complaint on file in this action.

16 **FOURTH AFFIRMATIVE DEFENSE**

17 Counterclaimant has not been damaged directly, indirectly, proximately or in any manner
18 whatsoever by any conduct of this answering Counterdefendant.

19 **FIFTH AFFIRMATIVE DEFENSE**

20 This answering Counterdefendant is not in breach of any agreement with
21 Counterclaimant, and, thus, is not in default under the terms of any agreement with
22 Counterclaimant. If any party is in breach of any agreement, it is Counterclaimant for the
23 reasons set forth more fully in the Complaint on file in this action.

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SIXTH AFFIRMATIVE DEFENSE

Counterclaimant’s claims are barred, in whole or in part, by doctrine of waiver.

SEVENTH AFFIRMATIVE DEFENSE

Counterclaimant’s claims are barred, in whole or in part, by doctrines of promissory, equitable, and/or contractual estoppel.

EIGHTH AFFIRMATIVE DEFENSE

Counterclaimant’s claims are barred, in whole or in part, on the ground that this answering Counterdefendant has fully complied with any and all agreements between the parties.

NINTH AFFIRMATIVE DEFENSE

Counterclaimant’s claims are barred, in whole or in part, by the doctrine of laches and/or the applicable statute of limitations.

TENTH AFFIRMATIVE DEFENSE

To the extent any agreement exists between Counterclaimant and this answering Counterdefendant, Counterclaimant failed to perform its obligations under said agreements and breached its obligations there under.

ELEVENTH AFFIRMATIVE DEFENSE

The damages, if any, which Counterclaimant has suffered were caused, in whole or in part, by the acts or omissions of Counterclaimant or its agents and representatives, or were caused by the acts or omissions of a third party over whom this answering Counterdefendant has no control.

TWELFTH AFFIRMATIVE DEFENSE

Counterclaimant has failed to mitigate its damages.

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THIRTEENTH AFFIRMATIVE DEFENSE

Counterclaimant’s claims are barred, in whole or in part, by Counterclaimant’s own bad faith, fraudulent acts, omissions and misrepresentations, whether intentional, negligent, or constructive.

FOURTEENTH AFFIRMATIVE DEFENSE

Counterclaimant’s claims are barred, in whole or in part, as a result of its own conduct.

FIFTEENTH AFFIRMATIVE DEFENSE

Counterclaimant is involved in conduct which, if carried to its fruition, would materially alter the parties understanding, thereby releasing this answering Counterdefendant from any obligation under any alleged agreement.

SIXTEENTH AFFIRMATIVE DEFENSE

Counterclaimant’s claims, to the extent they are asserted against this answering Counterdefnedant, are barred, in whole or in part, by the fiduciary shield doctrine and, as a consequence thereof, this Court lacks jurisdiction over these individuals and any and all claims asserted in this action against them should be dismissed with prejudice.

SEVENTEENTH AFFIRMATIVE DEFENSE

Counterclaimant, with full knowledge of all the facts connected with or relating to the transaction alleged in the Counterclaim, ratified and confirmed in all respects the acts of this answering Counterdefendant.

EIGHTEENTH AFFIRMATIVE DEFENSE

The claims, and each of them, are barred, in whole or in part, by the failure of the Counterclaimant to plead those claims with particularity.

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NINETEENTH AFFIRMATIVE DEFENSE

This answering Counterdefendant is not the alter-ego of the other or that of the Counterdefendants to this action and, as a consequence thereof, this Court lacks jurisdiction over said Counterdefendants. Consequently, to the extent any claim asserted in the Counterclaim is based upon Counterclaimant’s alter-ego claim, any and all such claims should be dismissed with prejudice as to all, or any one, of this answering Counterdefendant.

TWENTIETH AFFIRMATIVE DEFENSE

Counterclaimant has failed to mitigate damages and is therefore barred from recovering alleged damages.

TWENTY-FIRST AFFIRMATIVE DEFENSE

The damages, if any, suffered by Counterclaimant were proximately caused or contributed to by Counterclaimant’s own negligence, and such negligence was greater than the negligence, if any, of this answering Counterdefendant.

TWENTY-SECOND AFFIRMATIVE DEFENSE

This answering Counterdefendant alleges that it has performed each and every one of its obligations, if any, under the written agreement. Nevertheless, to the extent that this answering Counterdefendant is found to have failed to perform any of its obligations under its agreement with Counterclaimant, this answering Counterdefendant is informed and believes that it has done so only because Counterclaimant prevented this answering Counterdefendant’s performance by, among other things, making material misstatements and material omissions to this answering Counterdefendant, in violation of Counterclaimant’s contractual agreement with this answering Counterdefendant.

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TWENTY-THIRD AFFIRMATIVE DEFENSE

This answering Counterdefendant did not commit any acts of oppression, fraud or malice, express or implied.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

This answering Counterdefendant alleges on information and belief that it has performed each and every one of its obligations, if any, under its written agreement with Counterclaimant. Nevertheless, to the extent that this answering Counterdefendant is found to have failed to fulfill any of its obligations under the written agreement with Counterclaimant, this answering Counterdefendant is informed and believes that such obligations were impossible to perform at the time it was to have performed them because Counterclaimant made material misstatements and material omissions to this answering Counterdefendant that prevented it from performing its obligations under the written agreement.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

This answering Counterdefendant alleges on information and belief that it has performed each and every one of its obligations, if any, under its written agreement with Counterclaimant. Nevertheless, to the extent that this answering Counterdefendant is found to have failed to fulfill its obligations under the written agreement, this answering Counterdefendant is informed and believes that Counterclaimant’s material misstatements and material omissions have operated to excuse this answering Counterdefendant’s performance under the Doctrine of Frustration of Purpose.

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TWENTY-SIXTH AFFIRMATIVE DEFENSE

Counterclaimant failed to perform its obligations under the agreement at issue and breached his obligations thereunder, thereby discharging this answering Counterdefendant’s obligations to perform.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

It has been necessary for this answering Counterdefendant to retain the services of an attorney to defend this action and it is entitled to a reasonable sum as and for attorneys’ fees.

TWENTY-EIGHTH AFFIRMATIVE DEFENSE

Counterclaimant’s claims are barred by Counterclaimant’s own fraudulent acts, fraud, fraudulent inducements, constructive fraud, omissions and misrepresentations whether intentional, negligent, or constructive.

TWENTY-NINTH AFFIRMATIVE DEFENSE

Counterclaimant’s alter-ego claim is barred as the requisite unity of interest and ownership required by Nevada law is lacking.

THIRTIETH AFFIRMATIVE DEFENSE

Counterclaimant’s civil conspiracy claim is barred as Nevada does not recognize conspiracy between a corporation and its agents since agents and employees of a corporation cannot conspire with the corporate principal where they act in their official capacities on behalf of the corporation.

THIRTY-FIRST AFFIRMATIVE DEFENSE

Counterclaimant’s civil conspiracy claim is barred since there is no combination of two or more persons who, by some concerted action, intended to accomplish some unlawful objective for the purpose of harming another which resulted in damages to Counterclaimant.

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THIRTY-SECOND AFFIRMATIVE DEFENSE

Counterclaimant’s concert of action is barred as Nevada does not recognize such a cause of action and, thus, this claim is not cognizable under any set of circumstances.

THIRTY-THIRD AFFIRMATIVE DEFENSE

This answering Counterdefendant is informed, believes, and thereon alleges that if any contract, obligations, or amendments, as alleged in Counterclaimant’s Counterclaim on file herein, have been entered into, any duty or performance of this answering Counterdefendant is excused by reason of failure of consideration, waiver, breach of condition precedent, breach by the Counterclaimant, impossibility of performance, material breach by the Counterclaimant, prevention by Counterclaimant, frustration of purpose, and/or acceptance by Counterclaimant.

THIRTY-FOURTH AFFIRMATIVE DEFENSE

The contract and/or contracts existing between the Counterclaimant and this answering Counterdefendant are unconscionable.

THIRTY-FIFTH AFFIRMATIVE DEFENSE

Counterclaimant’s material misstatements and material omissions require rescission of the contract(s), if any, between this answering Counterdefendant and Counterclaimant.

THIRTY-SIXTH AFFIRMATIVE DEFENSE

At all times relevant to this action, this answering Counterdefendant has acted in good faith under the terms of any written agreement that may exist or have existed between either of this answering Counterdefendant and Counterclaimant.

THIRTY-SEVENTH AFFIRMATIVE DEFENSE

Pursuant to Nevada Rules of Civil Procedure, all possible affirmative defenses may not have been alleged herein insofar as sufficient facts were not available after reasonable inquiry

1 upon the filing of this Answer and, therefore, this answering Counterdefendant reserves the right
2 to amend this Answer to allege additional Affirmative Defenses if subsequent investigation
3 warrants.

4 **THIRTY-EIGHTH AFFIRMATIVE DEFENSE**

5 As applicable, this answering Counterdefendant asserts the affirmative defenses
6 referenced in NRCP 8(c).

7 **PRAYER FOR RELIEF**

8 WHEREFORE, as to Defendant's Counterclaim, this answering Counterdefendant prays
9 for judgment as follows:

- 10 1. That Defendant takes nothing by way of its Counterclaim;
11 2. For costs of suit incurred herein;
12 3. For reasonable attorneys' fees incurred herein; and
13 4. For such other and further relief as the Court may deem just and proper.

14 Dated this 30th day of September, 2019.

15 **ALDRICH LAW FIRM, LTD.**

16 /s/ John P. Aldrich
17 John P. Aldrich, Esq.
18 Nevada Bar No. 6877
19 Catherine Hernandez, Esq.
20 Nevada Bar No. 8410
21 Matthew B. Beckstead, Esq.
22 Nevada Bar No. 14168
23 7866 West Sahara Avenue
24 Las Vegas, Nevada 89117
Telephone: (702) 853-5490
Facsimile: (702) 227-1975
Attorneys for Plaintiff/Counterdefendants

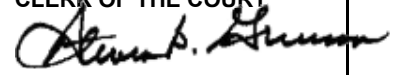
1 **CERTIFICATE OF SERVICE**

2 I HEREBY CERTIFY that on the 30th day of September, 2019, I caused the foregoing
3 **COUNTERDEFENDANT JENNIFER PIAZZA’S ANSWER TO COUNTERCLAIM** to be
4 electronically filed and served with the Clerk of the Court using Wiznet which will send
5 notification of such filing to the email addresses denoted on the Electronic Mail Notice List, or
6 by U.S. mail, postage prepaid, if not included on the Electronic Mail Notice List, to the
7 following parties:

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

13 C. Keith Greer, Esq.
14 16855 West Bernardo Drive, Suite 255
San Diego, CA 92127
*Attorneys for Defendants LAS VEGAS DEVELOPMENT FUND
15 LLC, EB5IMPACT CAPITAL REGIONAL CENTER LLC,
16 EB5 IMPACT ADVISORS LLC, ROBERT W. DZIUBLA,
JON FLEMING and LINDA STANWOOD*

17
18 /s/ T. Bixenmann
19 An employee of ALDRICH LAW FIRM, LTD.
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JON FLEMING and LINDA STANWOOD

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.

LAS VEGAS DEVELOPMENT FUND LLC,
et al.,

Defendants.

) **DEFENDANT'S OPPOSITION TO**
) **PLAINTIFF'S MOTION TO COMPEL**
) **FURTHER RESPONSES TO REQUEST**
) **FOR PRODUCTION OF DOCUMENTS**
) **AND FOR SANCTIONS**

Hearing Date: October 23, 2019
Time: 9:00 m

AND ALL RELATED COUNTERCLAIMS
_____)
_____)

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Defendants 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, an individual, JON FLEMING, an individual, and LINDA STANWOOD, an individual, (hereafter collectively referred to as “Defendants”), by and through their attorneys Keith Greer, Esq. and Catherine Holbert, Esq., hereby file this Opposition to Plaintiff FRONT SIGHT MANAGEMENT, LLC’s (“Front Sight” or “Plaintiff”) Motion to Compel Further Response to Requests for Production of Documents and for Sanctions.

This Opposition is based on the pleadings and papers on file, this Memorandum of Points and Authorities, the Declaration of C. Keith Greer, Esq., filed herewith and incorporated herein by this reference, and such other and further oral or written evidence as may be presented at the time of the hearing of this Motion to Compel.

I. INTRODUCTION

Plaintiff moves to compel supplemental responses to the Request for Production of Documents served on each of six defendants. Plaintiff’s motion asserts - without explanation - that the responses to the Request for Production are inadequate largely without explanation as to the claimed inadequacy. Plaintiff claims “Defendants have failed and refused to provide substantive responses to Plaintiff’s First Sets of Requests for Production of Documents to Defendants, nor have they provided documents as required by the Nevada Rules of Civil Procedure. Defendants must be compelled to properly respond.” (Mot 8:6-9).

Plaintiff, however, acknowledges that Defendants provided a thumb drive with documents on August 20, 2019. Plaintiff does not make any attempt to identify why this actual production of documents in a manner specifically authorized by NRCP 34 is inadequate or what documents it claims were not produced. *See, Taylor v. Aria Resort & Casino, LLC*, No. 2:11-CV-01360-KJD, 2013 WL 2355462, at *4 (D. Nev. May 29, 2013)(failure to provide details regarding deficiencies in the response justified denial of motion to compel).

1 Rather, Plaintiff appears to base its motion on a misguided attempt to apply the NRCP 33
2 requirements for responding to an Interrogatory to a response to an NRCP 34 Response to a
3 Request for Production of Documents. However, NRCP 34(E) expressly permits Defendants to
4 respond by producing a copy of electronically stored documents as they are maintained in the
5 ordinary course of business. This is what Defendants have done. *See Greer Declaration at ¶2*.
6 Defendants have even provided an index of the documents produced on the thumb drive so that
7 the documents are as readily accessible to Plaintiff as they are to Defendants.

8 Plaintiff’s attempt to require Defendants to label the production to correspond to the
9 categories of the requests is a thinly veiled attempt to invade the mental processes of Defense
10 Counsel. As such, it invades the attorney work product protection. *Sporck v. Peil*, 759 F.2d 312
11 (3d Cir. 1985).

12 Accordingly, for the reasons set forth in more detail below, the motion to compel should
13 be denied.

14 **II. ARGUMENT**

15 **A. The Requirements of a Rule 34 Response to a Request for Production**

16 The requirements for a Response to a Request for Production of Documents are set forth
17 in NRCP 34. “Responding to Each Item. For each item or category, the response must either
18 state that inspection and related activities will be permitted as requested or state the ground for
19 objecting to the request, with specificity, including the reasons. The responding party may state
20 that it will produce copies of documents or of electronically stored information instead of
21 permitting inspection.” NRCP 34(B).

22 When producing electronically stored information, the Responding Party has the option to
23 produce those records as they are ordinarily maintained *or* to label the production according to
24 the enumerated requests. “Producing the Documents or Electronically Stored Information.
25 Unless otherwise stipulated or ordered by the court, these procedures apply to producing
26 documents or electronically stored information: (i) **a party must produce documents as they**
27 **are kept in the usual course of business or must organize and label them to correspond to**

1 **the categories in the request.** If producing the documents as they are kept in the usual course of
2 business would make it unreasonably burdensome for the requesting party to correlate the
3 documents being produced with the categories in its request for production, the responding party
4 must (a) specify the records in sufficient detail to permit the requesting party to locate the
5 documents that are responsive to the categories in the request for production, or (b) organize and
6 label the records to correspond to the categories in the request” NRCP 34(E).

7 The option for whether to produce records as they are maintained in the ordinary course
8 of business OR organize and label the records to correspond to the categories in the request
9 belongs to the responding party. *Pass & Seymour, Inc. v. Hubbell Inc.*, 255 F.R.D. 331, 335
10 (N.D.N.Y. 2008)(“a party responding to a document discovery request may, **at its option**, make
11 production of the documents as they are ordinarily maintained.” (Emphasis added)). “[W]hen the
12 burden of deriving information from documents is equal between the parties, the interrogating
13 party should bear the burden of compiling the information.” *Compagnie Francaise d'Assurance*
14 *Pour le Commerce Exterieur v. Phillips Petroleum Co.*, 105 F.R.D. 16, 44 (S.D.N.Y. 1984).

15 **B. Defendants’ Responses to the Request for Production Fully Comply with the**
16 **Requirements of NRCP 34**

17 Plaintiff’s dissatisfaction with Defendant’ responses to the document production requests
18 is somewhat unclear. Plaintiff acknowledges that Defendants produced a USB drive with a copy
19 of electronically stored documents (Aldrich Dec. ¶ 9; Mot. At 8:20-24) but provides no
20 description whatsoever of either the documents produced or the index provided with those
21 documents¹. Plaintiff’s sole complaint appears to be that the documents are not labeled to
22 correspond to the categories identified in the document production requests. Defendants have

23
24 ¹The Aldrich Declaration acknowledges at paragraph 9 that “On or about August 16, 2019,
25 Mr. Greer called my assistant, Traci, and stated he would bring a thumb drive with the documents
26 to the hearing on August 20, 2019. Mr. Greer did in fact provide the thumb drive on August 20,
27 2019”. The Motion further acknowledges that “Defendants provided some documents that may be
responsive” (Mot at 8:20). Plaintiff fails to acknowledge that Defendants also provided an index to
the document production which makes those documents as readily accessible to Plaintiff as they are
to Defendants.

1 properly responded to each Request for Production of Documents by stating that responsive
2 documents will be produced (NRCP 34(B)), and thereafter producing the electronically stored
3 documents as they are kept in the ordinary course of business with an index that makes the
4 document production equally as accessible to Plaintiff as the original records are to Defendants.

5 Plaintiff's failure to provide complete information regarding the Responses and the
6 Documents actually produced is sufficient reason, by itself, to deny the present motion.
7 "Defendants have simply stated the production was insufficient without providing the full
8 substance of the response. The sufficiency of a discovery response is a decision for the Court.
9 Unilaterally declaring the response inadequate and failing to bring the full response, including the
10 documents disclosed and any accompanying explanation, to the Court for consideration makes it
11 difficult for the Court to determine whether the response was adequate and precludes
12 consideration of the motion." *Taylor v. Aria Resort & Casino, LLC*, No. 2:11-CV-01360-KJD,
13 2013 WL 2355462, at *4 (D. Nev. May 29, 2013)

14 **C. Plaintiff Improperly Seeks to Impose a Rule 33 Interrogatory Response**
15 **Requirement Upon a Rule 34 Document Production Response**

16 Plaintiff's substantive argument relies exclusively on *Donell v. Fid. Nat. Title Agency of*
17 *Nevada, Inc.*, No. 2:07-CV-00001-KJD, 2012 WL 1118944 (D. Nev. Apr. 2, 2012). Plaintiff
18 argues that:

19 NRCP 34(b)(E)(i) requires a party to either produce the documents
20 as they are kept in ordinary course of business² or label and
21 organize them to correspond to categories in the request. In *Donell*
22 *v. Fid. Nat'l Title Agency of Nev., Inc.*, 2012 U.S. Dist. LEXIS
23 46598, 2012 WL 1118944, the court found that failure to specify
24 which documents correspond to which request requires the party to

25
26 ² Plaintiff appears to admit by this reference that the production by Defendants of Documents
27 as they are kept in the ordinary course of business with an index is fully compliant with the
28 requirements of NRCP 34.

1 supplement the responses. Defendants’ failure to supplement their
2 responses is in violation of NRC P 34 and requires Plaintiff to sift
3 through documents to guess at Defendants’ response.”
4 Motion to Compel at 9:1-7.

5 This argument is both factually (*See, supra*) and legally incorrect. Factually, Defendants
6 produced several thousand documents *as they are kept in the ordinary course of business* and
7 *provided an index*. Legally the *Donel* case has absolutely nothing to do with a response to an
8 NRC P 34 Request for Production of Documents; it is a Rule 33 Interrogatory case. (“Defendant
9 acknowledged that **Rule 33(d)** permits a party to **answer an interrogatory** by specifying records
10 from which the answers may be obtained and making the records available for inspection in lieu
11 of providing a narrative response.” *Donell v. Fid. Nat. Title Agency of Nevada, Inc.*, No.
12 2:07-CV-00001-KJD, 2012 WL 1118944, at *2 (D. Nev. Apr. 2, 2012)(emphasis added)).

13 Even in the context of a Rule 33 Interrogatory response, however, the *only* case cited by
14 Plaintiff makes clear that “[t]he proper way to use Rule 33(d) is to offer records in a manner that
15 permits the same direct and economical access that is available to the responding party.” *Donell*
16 *v. Fid. Nat. Title Agency of Nevada, Inc.*, No. 2:07-CV-00001-KJD, 2012 WL 1118944, at *6 (D.
17 Nev. Apr. 2, 2012). Responses are adequate unless “the burden of obtaining the answers to the
18 interrogatories is not ‘substantially the same’ for both parties, as required by Rule 33(d). “ *Id.* at
19 3. Here the “burden of obtaining the answers” is “substantially the same” because Defendants
20 exercised the valid option of producing records *as they are kept in the ordinary course of*
21 *business and with an index*.

22 **D. Defendants Properly Exercised their Option to Produce Documents in The**
23 **Manner in Which They Are Kept in the Ordinary Course of Business**

24 “[A] party responding to a document discovery request may, at its option, make
25 production of the documents as they are ordinarily maintained. The present controversy, while
26 recognizing this alternative method, centers upon what is meant by the portion of the rule
27 permitting production of documents ‘as they are ordinarily maintained.’ As its plain language

1 reflects, the rule contemplates that a party selecting this option disclose information to the
2 requesting party regarding how the documents are organized in the party's ordinary course of
3 business.” *Pass & Seymour, Inc. v. Hubbell Inc.*, 255 F.R.D. 331, 335 (N.D.N.Y. 2008).

4 “It logically follows that when production occurs by means other than permitting the
5 demanding party access to the original records as they are organized and maintained by the
6 responding party, such as by instead choosing to copy the documents and produce the duplicates,
7 they must be organized in such a way that the system utilized by the producing party is
8 replicated; in other words, the documents should be produced, organized and labeled and, if
9 appropriate, indexed just as they are maintained by the producing party.” *Pass & Seymour, Inc.*
10 *v. Hubbell Inc.*, 255 F.R.D. 331, 336 (N.D.N.Y. 2008).

11 This is exactly what Defendants did in the present case. They copied the documents as
12 they are normally maintained **and** provided an index to how the documents are organized which
13 corresponds to the way the documents are maintained.

14 “ Because discovery documents have been produced by plaintiffs and co-defendants as
15 they are kept in the normal course of business, there is no violation of their discovery
16 obligations.” *Estate of Townes Van Zandt v. Eggers*, No. 05 CIV. 10661 RJH RL, 2007 WL
17 3145097, at *2 (S.D.N.Y. Oct. 26, 2007). “Under Federal Rules of Civil Procedure Rule 34(b), a
18 party may produce documents as they are kept in the regular course of business or may organize
19 them and label them to correspond with the categories in the request. . . . Given the sheer
20 volume of the document requests, I refuse to require the defendants to do more than they have
21 done to indicate which request each document was submitted in response to.” *Morgan v. City of*
22 *New York*, No. 00 CIV. 9172(LMM)(DF, 2002 WL 1808233, at *4 (S.D.N.Y. Aug. 6,
23 2002)(citations omitted) (upholding production of documents by defendants in the normal course
24 of business organized by Bates Numbers and denying plaintiffs' request to label all documents in
25 correspondence with discovery requests.).

26 Defendants have validly exercised this option AND have further complied by producing
27 an index which demonstrates “how the documents are organized in the ordinary course of

1 business.” Thus, the burden of sorting the documents to correspond to the categories of the
2 requests is “substantially the same” for both Plaintiff and Defendants. Defendants are not
3 required to do Plaintiff’s work for it.

4 E. **The Process of Identifying Documents Responsive to Individual Categories**
5 **Invades Attorney Work Product**

6 What Plaintiff is really seeking by the present motion is the thought process of
7 Defendant’s counsel. Plaintiff is seeking a “free ride” on the work product of defense counsel’s
8 categorization of documents. Such selection and categorization is a well recognized instance of
9 attorney work product.

10 Plaintiff’s current Motion is essentially “a request . . . made for documents already in the
11 possession of the requesting party, with the precise goal of learning what the opposing attorney's
12 thinking or strategy may be.” *In re Grand Jury Subpoenas (Paul Weiss)*, 959 F.2d 1158, 1166–67
13 (2d Cir. 1992). “[T]he selection and compilation of documents by counsel in this case in
14 preparation for pretrial discovery falls within the highly-protected category of opinion work
15 product. As the court succinctly stated in *James Julian, Inc. v. Raytheon Co.*, 93 F.R.D. 138, 144
16 (D.Del.1982): In selecting and ordering a few documents out of thousands counsel could not help
17 but reveal important aspects of his understanding of the case. Indeed, in a case such as this,
18 involving extensive document discovery, the process of selection and distillation is often more
19 critical than pure legal research.” *Sporck v. Peil*, 759 F.2d 312, 316 (3d Cir. 1985); *See also*
20 *Shelton v. Am. Motors Corp.*, 805 F.2d 1323, 1329 (8th Cir. 1986)(“In cases that involve reams
21 of documents and extensive document discovery, the selection and compilation of documents is
22 often more crucial than legal research. We believe Burns' selective review of AMC's numerous
23 documents was based upon her professional judgment of the issues and defenses involved in this
24 case. This mental selective process reflects Burns' legal theories and thought processes, which are
25 protected as work product.”(internal citation omitted)); *Laxalt v. McClatchy*, 116 F.R.D. 438,
26 443–44 (D. Nev. 1987)(“The defendants further object to the Magistrate's orders insofar as they
27 require the deponents to answer questions regarding their knowledge concerning documents

1 which have already appeared in the litigation. The answers to these questions, contend the
2 defendants, would also likely reveal important trial strategy, in that plaintiff would then know
3 which of the thousands of documents in this case the defendants considered important. The
4 defendant’s objections seem well taken.”); *In re Allen*, 106 F.3d 582, 608 (4th Cir. 1997)(counsel
5 “also chose and arranged these records in anticipation of litigation. This choice and arrangement
6 constitutes opinion work product because Allen's selection and compilation of these particular
7 documents reveals her thought processes and theories regarding this litigation.”); *In re W. States*
8 *Wholesale Nat. Gas Antitrust Litig.*, No. 203CV01431RCJPAL, 2017 WL 2991347, at *8 (D.
9 Nev. July 12, 2017) (“The court agrees with those courts that have held that opposing counsel is
10 not entitled to materials as organized by plaintiffs' counsel.”)

11 Here, Plaintiff seeks to have Defense counsel select and organize documents for Plaintiff
12 that have already been properly produced as they are kept in the ordinary course of business and
13 with an index. This is clearly an invasion of attorney work product.

14 **F. The Burden of Identifying Documents Responsive to Each Category is**
15 **Substantially the Same for Both Plaintiff and Defendants**

16 *Donell v. Fid. Nat. Title Agency of Nevada, Inc.*, No. 2:07-CV-00001-KJD, 2012 WL
17 1118944 (D. Nev. Apr. 2, 2012), the case cited by Plaintiff, makes clear that the relevant question
18 is whether the burden is “substantially the same” for both parties. *Donell*, 2012 WL 1118944 at
19 3. Defendants have “offer[ed] records in a manner that permits the same direct and economical
20 access that is available to the responding party. “ *Id.* at 6.

21 “[I]t appears that in order to obtain the answers to Interrogatories Nos. 2–12, one of the
22 parties must undertake the task of compiling the information. The available facts do not provide a
23 reason to conclude that this process would be more burdensome for either party. Therefore, under
24 the rationale of Rule 33(d), where the burden would be the same for either party, the
25 interrogating party should bear the responsibility of compiling the information. *See Compagnie*
26 *Francaise*, 105 F.R.D. at 44.” *Sadofsky v. Fiesta Prod., LLC*, 252 F.R.D. 143, 148–49 (E.D.N.Y.
27 2008).

1 Here, because the documents have been produced as they are kept in the ordinary course
2 of business together with an index, Plaintiff is afforded the “same direct and economical access”
3 that is available to Defendants. This fulfills all requirements for a proper response to a Request
4 for Production of Documents.

5 **G. Sanctions Are Not Appropriate**

6 “Generally, NRC 37 authorizes discovery sanctions only if there has been willful
7 noncompliance with a discovery order of the court.” *Young v. Johnny Ribeiro Bldg., Inc.*, 106
8 Nev. 88, 92 (1990); *Fire Ins. Exch. v. Zenith Radio Corp.*, 103 Nev. 648, 651 (1987). “The
9 general rule in the imposing of sanctions is that they be applied only in extreme circumstances
10 where willful noncompliance of a court's order is shown by the record.” *Finkelman v. Clover*
11 *Jewelers Boulevard, Inc.*, 91 Nev. 146, 147 (1975).

12 Sanctions are not appropriate here because Defendants provided responses in the form
13 authorized by NRC 34 and actually produced the documents requested along with an index to
14 those documents. Thus, the Motion to compel should be denied for the reasons set forth above
15 and accordingly sanctions are not appropriate.

16 However, even if the court finds there is some technical deficiency as to the format of the
17 responses, there is no “willful noncompliance.” There is, at worst, substantial compliance with
18 the requests and such response does not justify imposition of sanctions.

19 At most “[w]e have here (in contrast to *Skeen v. Valley Bank of Nevada*, 89 Nev. 301,
20 511 P.2d 1053 (1973)) an incident where the parties have partially complied with the court's
21 order and have provided an explanation for their failure to fully comply. This, of course, negates
22 willfulness.” *Finkelman v. Clover Jewelers Boulevard, Inc.*, 91 Nev. 146, 148 (1975).

23 Accordingly, even if the Court grants the Motion to compel, sanctions are not
24 appropriate.

25 ///

26 ///

27 ///

1 **III. CONCLUSION**

2 As more fully set forth above, Plaintiff's Motion to Compel should be denied, sanctions
3 should not be imposed, and Defendant should not have to pay Plaintiff's attorney's fees.

4 Dated: September 30, 2019

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

7

/s/Kathryn Holbert

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Kathryn Holbert, Esq.
Attorney for Defendants

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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):

DEFENDANT’S OPPOSITION TO PLAINTIFF’S MOTION TO COMPEL FURTHER RESPONSES TO REQUEST FOR PRODUCTION OF DOCUMENTS AND FOR SANCTIONS

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

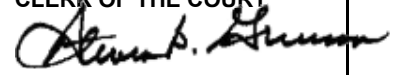
John P. Aldrich, Esq.	Attorneys for Plaintiff
Catherine Hernandez, Esq.	FRONT SIGHT MANAGEMENT, LLC
ALDRICH LAW FIRM, LTD.	
1601 S. Rainbow Blvd., Suite 160	
Las Vegas, Nevada 89146	

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).

Dated: September 30, 2019

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



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

18 **EIGHTH JUDICIAL DISTRICT COURT**
19 **CLARK COUNTY, NEVADA**

20 FRONT SIGHT MANAGEMENT LLC, a) CASE NO.: A-18-781084-B
21 Nevada Limited Liability Company,) DEPT NO.: 16
22)
23 Plaintiff,)
24) **DECLARATION OF ATTORNEY KEITH**
25 vs.) **GREER IN OPPOSITION TO PLAINTIFF'S**
26) **MOTION TO COMPEL FURTHER**
27 LAS VEGAS DEVELOPMENT FUND LLC,) **RESPONSES TO REQUESTS FOR**
28 et al.,) **PRODUCTION OF DOCUMENTS**
29)
30 Defendants.)
31) Hearing Date: October 23, 2019
32) Time: 9:00 a.m.
33)
34 AND ALL RELATED COUNTERCLAIMS)
35)
36)
37)
38)

1 STATE OF CALIFORNIA)

2) ss:

3 COUNTY OF SAN DIEGO)

4

5 Affiant, hereby states and declares as follows:

6 1. I, C. Keith Greer, am one of the attorneys representing the defendants in this action. I
7 make this Declaration of my personal knowledge and the matters stated herein are true and
8 correct. If called as a witness herein, I could, and would, testify competently thereto.

9 2. As part of my responsibilities in this matter, I worked on and supervised the process for
10 producing documents on behalf of my clients in this action. To accomplish this process my firm
11 first gathered documents from my clients as they were kept in their ordinary course of business,
12 and then produced them to Plaintiff's counsel John Aldrich in the same manner, with some
13 additional organization by types of documents (i.e., contracts, accounting and financial materials,
14 email correspondence, etc.). We then served an itemized list of the documents as part of
15 Defendants and Counter Claimant's LVD Funds First Supplemental Early Case Conference List
16 of Witnesses and Documents, a copy of which is attached hereto as Exhibit A.

17 I declare under penalty of perjury under the laws of the State of Nevada and the State of
18 California that the foregoing is true and correct, and that this Declaration was executed on
19 September 30, 2019 at San Diego, California.

20

s/ C. Keith Greer
C. Keith Greer

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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):

DECLARATION OF ATTORNEY KEITH GREER IN OPPOSITION TO PLAINTIFF'S MOTION TO COMPEL FURTHER RESPONSES TO REQUESTS FOR PRODUCTION OF DOCUMENTS

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).

Dated: September 30, 2019

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

EXHIBIT A

EXHIBIT A

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EB5 IMPACT ADVISORS LLC, ROBERT W. DZIUBLA,
14 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
Nevada Limited Liability Company,) DEPT NO.: 16
18)
Plaintiff,) **DEFENDANTS AND COUNTER-**
19) **CLAIMANT'S LVD FUND'S FIRST**
vs.) **SUPPLEMENTAL EARLY CASE**
20) **CONFERENCE LIST OF**
LAS VEGAS DEVELOPMENT FUND) **WITNESSES AND DOCUMENTS**
21 LLC, et al.,) **NRCP RULES 16 AND 16.1**
22)
Defendants.)
23)
AND RELATED COUNTERCLAIMS)
24)

25
26 **COMES NOW** Defendants and Counter-Claimants LAS VEGAS DEVELOPMENT
27 FUND LLC, EB5 IMPACT CAPITAL REGIONAL CENTER, LLC, EB5 IMPACT ADVISORS
28 LLC, ROBERT W. DZIUBLA, JON FLEMING, and LINDA STANWOOD, by and through

1 their counsel of record and hereby provides the following First Supplemental Disclosures
2 pursuant to NRCP Rule 16 and Rule 16.1. **Newly disclosed items are in bold.** These parties are
3 in the initial stages of this litigation and reserve the right to supplement this initial disclosure as
4 appropriate. These parties are currently in the process of reviewing the approximately 11,500+
5 pages identified to date currently in their possession for possible privilege claims. These
6 documents will be produced on a rolling basis as that review is completed and these parties will
7 provide a privilege log of all documents withheld on the basis of privilege.

8 **I. Identity of Witnesses Likely to Have Discoverable Information (NRCP 16(a)(1)(A)(i))**

9 1. Dr. Ignatius Piazza
10 c/o Aldrich Law Firm, Ltd.
11 7866 West Sahara Ave
12 Las Vegas, NV 89177

13 This witness is expected to testify concerning the facts and circumstances surrounding the
14 relationship between Front Sight and EB5IA, LVD Fund, EB5 Impact Capital Resource Center,
15 and the allegations of the operative Complaint and Cross Complaints.

16 2. Mike Meacher
17 c/o Aldrich Law Firm, Ltd.
18 7866 West Sahara Ave
19 Las Vegas, NV 89177

20 This witness is expected to testify concerning the facts and circumstances surrounding the
21 relationship between Front Sight and EB5IA, LVD Fund, EB5 Impact Capital Resource Center,
22 and the allegations of the operative Complaint and Cross Complaints.

23 3. Jennifer Piazza
24 c/o Aldrich Law Firm, Ltd.
25 7866 West Sahara Ave
26 Las Vegas, NV 89177

27 This witness is expected to testify concerning the facts and circumstances surrounding the the
28 allegations of the operative Complaint and Cross Complaints.

4. Robert Dziubla
c/o Greer & Associates, A.P.C.
17150 Via del Campo
San Diego, CA 92127

This witness is expected to testify concerning the facts and circumstances surrounding the
relationship between Front Sight and EB5IA, LVD Fund, EB5 Impact Capital Resource Center,

1 and the allegations of the operative Complaint and Cross Complaints.

2 5. Jon Fleming
3 c/o Greer & Associates, A.P.C.
4 17150 Via del Campo
5 San Diego, CA 92127

6 This witness is expected to testify concerning the facts and circumstances surrounding the
7 relationship between Front Sight and EB5IA, LVD Fund, EB5 Impact Capital Resource Center,
8 and the allegations of the operative Complaint and Cross Complaints.

9 6. Sean Flynn
10 c/o Greer & Associates, A.P.C.
11 17150 Via del Campo
12 San Diego, CA 92127

13 This witness is expected to testify concerning the facts and circumstances surrounding the the
14 allegations of the operative Complaint and Cross Complaints.

15 **II. List of Documents That May Be Used for Support of Claims or Defenses, Including for**
16 **Impeachment or Rebuttal**

Date of Document	Document Title	Bates
9/13/2012	Front Sight EB-5 letter (final)	A 00001-00005
11/15/2017	LVDF - Amended and Restated Promissory Note - \$50M (signed final)	A(1)00006-00012
11/15/2017	LVDF - First Amendment to Loan Agreement - (Fully Executed).11	A(1)00013-00017
8/20/2018	Front Sight Response to Notice of Default	A(1)00018-00165
8/25/2018	Front Sight Response to Second Notice of Default - Aug 25 2018	A(1)00166-00169
8/29/2018	Front Sight Follow Up Response to Notices of Default - Cancelled Checks - Aug 29 2018	A(1)00170-00299
8/30/2018	Front Sight Supplemental Response to Third Notice of Default - Contracts - Aug 30 2018	A(1)00300-00333
9/4/2018	AM response to stay of NOD	A(1)00334-00336
9/7/2018	Front Sight Response to Pre-Negotiation Letter - Sept 07 2018	A(1)00337-00338
10/5/2015	Brochure Side 1 final	A(1)00339
10/5/2015	Brochure Side 2 (final)	A(1)00340
10/31/2017	Construction Line of Credit Loan Agreement (Morales)	A(1)00341-00359
10/7/2016	Construction Loan Agreement (signed final)	A(1)00360-00416

1	7/1/2017	Deed of Trust - First Amendment	A(1)00417-00424
2	10/13/2016	Deed of Trust - Front Sight recorded 10/13/16	A(1)00425-00461
3	5/12/2016	Email to Meacher re deal restructure	A(1)00462-00465
4	7/14/2013	Engagement letter - Front Sight - fully signed 14Feb2013	A(1)00466-00473
5	3/12/2012	Executive Summary Front Sight	A(1)00474-00482
6	2/16/2017	Inspection Notice - Front Sight Books & Records	A(1)00483
7	8/20/2018	Loan Statement Invoice Las Vegas Development Fund LLC July - August 2018 default rate UPDATED (003)	A(1)00484
8	9/20/2018	Loan Statement Invoice Las Vegas Development Fund LLC September 2018 default rate (005)	A(1)00485
9	5/7/2016	Marketing Report - Front Sight	A(1)00486
10	4/9/2016	Marketing Report - Front Sight	A(1)00487
11	4/16/2016	Marketing Report - Front Sight	A(1)00488
12	4/23/2016	Marketing Report - Front Sight	A(1)00489-00490
13	4/30/2016	Marketing Report - Front Sight	A(1)00491-00492
14	2/25/2016	Marketing Report	A(1)00493
15	3/29/2016	Marketing Report	A(1)00494
16	9/13/2018	Meacher email - Sept. 13, 2018 - in response to NOD recording	A(1)00495-00498
17	7/4/2018	Meacher email on July 4, 2018, re senior debt	A(1)00499-00500
18	8/11/2015	Meacher email re marketing costs (Aug. 2015)	A(1)00501-00505
19	11/3/2015	Memo - Front Sight marketing update	A(1)00506-00508
20	10/25/2015	Memo - Front Sight marketing update	A(1)00509-00513
21	3/11/2016	Mike Meacher response	A(1)00514-00519
22	4/27/2018	Notes of calls with Piazza and Meacher	A(1)00520
23	6/14/2018	Notes of calls with Piazza and Meacher	A(1)00521
24	8/24/2018	Notice of Default - additional defaults - response to AM's letter of (8-24-2018)	A(1)00522-00528
25	8/31/2018	Notice of Default - stay - workout agreement (8-31- 2018)	A(1)00529
26	8/28/2018	Notice of Default - third NOD and response to AM's second letter (8-28-2018)	A(1)00530-00533
27	7/30/2018	Notice of Default	A(1)00534-00540
28	7/16/2018	Piazza email 7-16-2018 re spending on whatever	A(1)00541-00548
29	10/7/2014	Picture of Ignatius Piazza with King Liu and Jay Li of Sinowel	A(1)00549
30	12/1/2016	PPT - Front Sight - Chinese (Dec. 2016 final)	A(1)00550-00589
31	12/1/2016	PPT - Front Sight - Vietnamese translation	A(1)00590-00629
32	8/25/2015	PPT - Frontsight Timeshare Presentation 25 August 2015	A(1)00630-00664
33	7/1/2015	PPT Front Sight - Chinese	A(1)00665-00694
34	7/1/2017	Promissory Note - Amended and Restated (July 1, 2017)	A(1)00695-00701
35	Various	Accounting and Fees	A-000702-000856
36	5/31/2015	Independent contractor Agreement	A-000857

1	9/3/2014	Nevada Secretary of State Business License & Application	A-000858-000869
2	10/16/2015	Pre-Marketing Agreement	A-000870-000878
3	5/2/2018	Emails	A-000879-000894
4	9/23/2015	Forensic Accounting & Business Valuation	A-000895-000899
5	5/8/2015	Emails	A-000900-000903
6	Various	Accounting	A-000904-000922
7	11/14/2017	Amendment to Loan Agreement	A-000923-000927
8	7/30/2018	Piazza Response to Notice of Default with Exhibits	A-000928-001075
9	8/25/2018	Piazza Response to Notice of Default	A-001076-001079
10	8/29/2018	Piazza Additional Response to Notice of Default dated July 31, 2018 and August 24, 2018 and Initial Response to Notice of Default dated August 28, 2018.	A-001080-001209
11	8/30/2018	Piazza Additional Response to Notice of Default dated July 31, 2018 and August 24, 2018 and Supplemental Response to Notice of Default dated August 28, 2018.	A-001210-001213
12	8/30/2018	Current Major Contracts	A-001214-001243
13	9/4/2018	Response to Temporary Stay	A-001244-001246
14	9/7/2018	Piazza Construction Loan Agreement	A-001247-001248
15	?	Pictures- Exemplar Approval	A-001249-001250
16	10/31/2017	Loan Agreement	A-001252-001270
17	10/6/2016	Construction Loan Agreement	A-001271-001372
18	Various	Emails	A-001373-001376
19	2/14/2013	EB-5 Impact Advisors-Dziubla	A-001377-001384
20	3/12/2012	Front Sight Management Executive Summary	A-001385-001394
21	2/16/2017	Inspection of Front Sight Books and Records	A-001395-001406
22	Various	Emails	A-001407-001417
23	11/3/2015	Memo-Marketing Update	A-001418-001425
24	Various	Emails	A-001426-001431
25	8/24/2018	Dziubla Notice of Multiple Defaults, Notice of Inspection, Monthly Proof of Project Costs	A-001432-001438
26	8/23/2018	Pictures	A-001447-001459
27		Pro Forma Statements of Income	A-001460-001461
28	2014	Front Sight EB-5 Investments Opportunity Presentation	A-001543-001619
	9/17/2018	Chicago Title Company Foreclosure Department Foreclosing Deed of Trust	A-001620-001635
	1/9/2019	Valuation Source Appraisal Report for Mike Brand	A-001636-001746

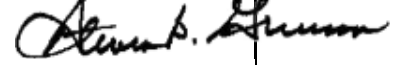
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		A-001747-001751
9/13/2012	Kenworth EB-5 Funding of Front Sight Infrastructure/Resort Development	
7/1/2017	Amended & Restated Promissory Note	A-001752-001763
	Front Sight Documents	A-001766-001917
	John Fleming Email	A-001918-006138
	Robert Dziubla Emails	A-006139-008763

Dated: August 19, 2019

FARMER CASE & FEDOR

/s/ Kathryn Holbert
 KATHRYN HOLBERT, ESQ.
 Attorney for Defendants



1 **MOT**

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13 *Attorneys for Plaintiff/Counterdefendants*

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

16 FRONT SIGHT MANAGEMENT LLC, a
17 Nevada Limited Liability Company,

18 Plaintiff,

19 vs.

20 LAS VEGAS DEVELOPMENT FUND LLC, a
21 Nevada Limited Liability Company; et al.,

22 Defendants.

23 _____
24 AND ALL RELATED COUNTERCLAIMS.
25 _____

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

26 **PLAINTIFF'S MOTION TO**
27 **EXTINGUISH LVDF'S DEED OF**
28 **TRUST, OR ALTERNATIVELY TO**
GRANT SENIOR DEBT LENDER
ROMSPEN A FIRST LIEN
POSITION, AND MOTION TO
DEPOSIT FUNDS PURSUANT TO
NRCP 67

HEARING REQUESTED

29 COMES NOW Plaintiff FRONT SIGHT MANAGEMENT LLC ("Plaintiff"), by and
30 through its attorneys, John P. Aldrich, Esq., Catherine Hernandez, Esq., and Matthew B.
31 Beckstead, Esq., of the Aldrich Law Firm, Ltd., and hereby moves the Court for declaratory
32 relief adjudicating the parties' rights under the Construction Loan Agreement ("CLA") and other
33 Loan Documents and for summary judgment as to LVDF's Counterclaim; to wit: Plaintiff
34 moves to extinguish Defendant LVDF's Deed of Trust, or alternatively, to grant senior debt
35 lender Romspen a first lien position, as Defendant LVDF is required to do under the CLA, and to

1 deposit the Romspen funds with the Court pursuant to NRCP 67.

2 This Motion is made and based on the attached memorandum of points and authorities
3 and supporting documentation, the papers and pleadings on file in this action, and any oral
4 argument this Court may allow.

5 DATED this 4th day of October, 2019.

6 **ALDRICH LAW FIRM, LTD.**

7 /s/ John P. Aldrich

8 John P. Aldrich, Esq.

9 Nevada Bar No. 6877

10 Catherine Hernandez, Esq.

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18 *Attorneys for Plaintiff/Counterdefendants*

19 **MEMORANDUM OF POINTS AND AUTHORITIES**

20 **I.**

21 **INTRODUCTION**

22 After a long history of attempting to secure a construction loan, despite Defendant
23 LVDF's improperly recorded current Notice of Default materially inhibiting Front Sight's
24 attempts to do so, Front Sight has in fact secured a loan totaling \$30 million. The terms of this
25 loan permit Front Sight to tender \$7 million (\$6,375,000 plus \$700,000 in alleged default
26 interest, attorneys' fees and other costs)¹ to LVDF in order to satisfy the Deed of Trust (defined
27 in the CLA to include LVDF's Deed of Trust #1 and LVDF's Deed of Trust #2, both of which are

28 ¹ For many months now, and despite repeated requests from Front Sight, Defendants have failed and refused to provide any documentation whatsoever to substantiate their claims that the default interest, attorneys' fees and other costs total over \$700,000.

1 “Loan Documents” according to the CLA’s own terms (see Evid. Hrg. Exhibit 33, CLA, at p. 9))
2 or deposit that sum to secure Defendants’ claims in the unlikely event that they prevail in this
3 action. This \$30 million loan will be used to facilitate completion of the Project, including, but
4 not limited to, paying for the hard construction costs of the Project and prepay the Loan proceeds
5 to LVDF.

6 There are clear grounds for Chapter 30 declaratory relief in Front Sight’s declaring that
7 (1) Front Sight has the legal authority to prepay the Loan proceeds at any time, and (2)
8 immediately upon Front Sight’s prepaying or tendering to LVDF the full amount of the Loan
9 proceeds totaling \$7 million, LVDF’s Deed of Trust is extinguished as a matter of law, and
10 LVDF must execute and record a binding and effective substitution of trustee naming itself as the
11 trustee under the Deed of Trust (*i.e.*, both LVDF Deed of Trust #1 and LVDF Deed of Trust #2)
12 and reconveying any beneficial interest it may have in Front Sight’s Property (as defined in the
13 Deed of Trust) to Front Sight or otherwise record a lien release.
14

15 Alternatively, if the Court declines to declare that LVDF’s Deed of Trust is extinguished
16 upon Front Sight’s tender of the outstanding Loan proceeds or declines to declare that LVDF
17 must execute a substitution of trustee and reconveyance, Front Sight seeks Chapter 30
18 declaratory relief placing the Romspen security interest in first position, superior to the Deed of
19 Trust filed by Defendant LVDF (*i.e.*, both LVDF Deed of Trust #1 and LVDF Deed of Trust #2)
20 and placing Defendant LVDF’s Deed of Trust in a junior position to Romspen’s security interest
21 in the Property, pursuant to the CLA’s terms.
22

23 Finally, Front Sight respectfully requests an order from the Court pursuant to NRCP 67
24 either authorizing deposit of the \$7 million in Loan proceeds with the Clerk of the Court or,
25 alternatively, authorizing deposit of those Loan proceeds in an interest-bearing account that
26 complies with Rule 67’s requirements.
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II.

RELEVANT PROCEDURAL HISTORY AND FACTS

A. FRAUDULENT FACTS

The Court cannot ignore the monumental amount of facts supporting Front Sight’s fraud claims. Defendant Dziubla, who is the CEO of each entity Defendant, has admitted to so many fraudulent misrepresentations that they cannot all be included in a statement of facts in this brief because the brief would grossly exceed the page limit. But Front Sight has compiled a chart of undisputed lies and misrepresentations made by Defendants – and Defendant Dziubla in particular – in furtherance of their criminal scheme. That chart is attached hereto as **Exhibit 1**.²

Front Sight’s principal, Dr. Ignatius Piazza, also testified at the evidentiary hearing on September 20, 2019 and described even more fraudulent misrepresentations by Defendant Dziubla. The transcript of that testimony is not yet available, so that has not been included here.

B. BREACHES/THWARTING OF CONSTRUCTION LOAN AGREEMENT

In addition to the rampant fraud that induced Front Sight into entering into the CLA, Defendant LVDF, through its CEO Defendant Dziubla, has made every effort to thwart the Front Sight project and make it impossible for Front Sight to complete the project. Defendant Dziubla has admitted the following blatant breaches of the Construction Loan Agreement:

1. Long before Front Sight’s alleged default under the CLA, Defendants stopped marketing the Front Sight Project.
 - a. Between the end of 2017 and when Dziubla dissolved Defendant EB5IA, Defendants Dziubla, Fleming, EB5IA, and LVDF were not marketing the Front Sight project. (See June 3, 2019 Evid. Hrg. Tr., p. 32, ls. 11-15).
 - b. Dziubla testified that Defendant LVDF took over the marketing of the Front

² Plaintiff has begun compiling a chart of undisputed facts and will supplement this chart as more information is received.

1 Sight project when the CLA was signed. (See June 3, 2019 Evid. Hrg. Tr., p.
2 135, ls. 21-25). But again, Defendants were not marketing after 2017, even
3 though they were receiving money from Front Sight specifically for marketing
4 purposes.

5 c. Dziubla claimed that the engagement letter with EB5IA was extended on a
6 “gentlemen’s basis” before Defendant LVDF took over. (See June 3, 2019
7 Evid. Hrg. Tr., p. 136).
8

9 2. LVDF failed to comply with its contractual obligation to give 5-days’ notice as to
10 the \$1 - \$1.5 million it is currently holding in escrow. The CLA requires LVDF to
11 “advise Borrower [Front Sight] within five (5) business days every time Lender
12 [LVDF] has received a new EB-5 Investor’s funds into the Escrow Account,”
13 clearing the way for Front Sight to request an Advance from LVDF. (See CLA §
14 3.1.)
15

16 a. Dziubla testified he held back \$1 million - \$1.5 million a month or longer
17 before he even alleged Front Sight was in default. (See June 3, 2019 Evid.
18 Hrg. Tr., pp. 156-57).
19

20 b. Dziubla claimed he did not provide the money because of lack of information,
21 and because Front Sight had not provided a draw request. Dziubla and LVDF
22 had never required a draw request before. (See June 3, 2019 Evid. Hrg. Tr., p.
23 157).
24

25 c. This failure to notify constituted a material breach of LVDF’s obligations
26 under the CLA that resulted in \$1 – \$1.5 million less being loaned to Front
27 Sight more than a year before the Completion Date pertaining to the Project as
28 set forth in the CLA.

1 3. Dziubla has not facilitated the filing of the I-829 petitions by the immigrant
2 investors. If Dziubla had truly been trying to help the immigrant investors and/or
3 to protect their money, he would have honestly evaluated the Front Sight project,
4 hired an economist who knew what he was doing, and advised the immigrant
5 investors almost immediately that they should submit their I-829 petitions to the
6 USCIS for approval. Front Sight had already created plenty of jobs when the first
7 money came in between October 2016 and June 30, 2017. Each of those investors
8 could have submitted their I-829 petitions long ago, had Dziubla so advised them.
9 If Dziubla had done so, as each I-829 petition was approved, Front Sight would
10 have been able to repay that immigrant investor’s money, reducing the amount of
11 monthly interest payments it was required to make. Instead, Defendants – and
12 particularly Dziubla – failed to do so. They failed to do so in order to allow
13 Defendant LVDF – run by Dziubla – to collect \$36,000 per month in interest
14 payments. And all of this while Dziubla and Defendant EB5IA were accepting
15 marketing payments from Front Sight even though they had stopped marketing
16 the project.

17
18
19 **C. REMEDIES**

20 Plaintiff’s Second Amended Complaint filed on January 4, 2019 (“SAC”), serves as a
21 basis for a menu of different remedies, including, but not limited to, expectation damages, actual
22 damages, specific performance, the benefit of the bargain and rescission. Plaintiff’s SAC also
23 seeks the return of the \$36,000 payment it made to EB5IA pursuant to the February 14, 2013,
24 Engagement Letter (see SAC ¶ 64) and the return of funds (in the form of marketing fees and
25 funds earmarked for an economic study and forming the EB5IC regional center) it paid to
26 Defendants exceeding \$500,000. Defendants obtained these funds from Front Sight by
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28

1 fraudulent means. And Front Sight seeks punitive damages for Defendants' fraudulent conduct.
2 (*See generally* SAC ¶¶ 74-83 (Front Sight's fraud claim).)

3 **D. CURRENT NONJUDICIAL FORECLOSURE PROCEEDINGS UNDER THE**
4 **DEED OF TRUST**

5 On October 6, 2016, Front Sight and LVDF entered into the CLA³ by which LVDF
6 eventually lent Front Sight \$6,375,000 in Loan proceeds pertaining to the Project. The CLA
7 defined the term "Deed of Trust" to mean "the Deed of Trust, Assignment of Leases and Rents,
8 Security Agreement and Fixture Filing of even date herewith, encumber the Project, executed by
9 Borrower in favor of Lender to secure the Loan, including any amendments, modifications
10 and/or supplements thereto." (Evid. Hrg. Exhibit 33, at p. 4).

11 On October 13, 2016, LVDF recorded a document entitled Construction Deed of Trust,
12 Security Agreement, Assignment of Leases and Rents, and Fixture Filing dated October 6, 2016,
13 as Document 860867 ("LVDF Deed of Trust #1") in the Nye County Records. This document
14 named LVDF as the beneficiary and Chicago Title Company as the Trustee. (*See* Evid. Hrg.
15 Exhibit 31.)

16 On January 12, 2018, LVDF recorded a document entitled First Amendment to
17 Construction Deed of Trust, Security Agreement and Fixture Filing dated July 1, 2017, as
18 Document 886510 ("LVDF Deed of Trust #2" or "Amended Deed of Trust") in the Nye County
19 Records. This document named LVDF as the beneficiary and Chicago Title Company as the
20 Trustee. (*See* Evid. Hrg. Exhibit 32.)

21 On September 11, 2018, Chicago Title Company, as the Trustee of record under the
22 LVDF Deed of Trust #2, recorded a document entitled Notice of Breach and Default and of
23 Election to Sell Under Deed of Trust as Document 899115 ("Expunged Notice of Default") in the
24 Nye County Records. (*See* Evid. Hrg. Exhibit 28.)

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28 ³ The attached chart of Defendants' fraudulent conduct (Exhibit 1) and the SAC set forth how Defendants fraudulently induced Front Sight to enter into the CLA.

1 On November 26, 2018, this Court entered its Order Granting Temporary Restraining
2 Order and Expunging Notice of Default (“Expunging Order”) stating “that the Notice of Breach
3 and of Election to Sell Under Deed of Trust recorded with the Nye County Recorder’s Office on
4 September 11, 2018 is hereby **expunged**.” (See Expunging Order, at p. 2, ls. 15-17 (emphasis in
5 original), attached hereto as **Exhibit 2**.)

6 On December 4, 2018, Front Sight recorded a document entitled Notice of Entry of Order
7 Granting Temporary Restraining Order and Expunging Notice of Default, as Document 903466
8 in the Nye County Records.

9 On January 14, 2019, LVDF recorded a document entitled Substitution of Trustee, as
10 Document 905318 (“Substitution of Trustee”) in the Nye County Records. This document, on its
11 face, substitutes LVDF’s counsel of record, Kathryn Holbert, Esq., as the Trustee instead of
12 Chicago Title Company, as to LVDF’s **Deed of Trust #1**. (See Evid. Hrg. Exhibit 38.)

13 On January 18, 2019, LVDF’s counsel of record, Kathryn Holbert, Esq., the Trustee of
14 record for LVDF’s Deed of Trust #1, improperly and without legal authority to act as trustee,
15 recorded a document as to LVDF’s Deed of Trust #2 entitled Notice of Breach, Default and
16 Election to Sell Under Deed of Trust, as Document 905512 (“Current Notice of Default” or
17 “NOD”) in the Nye County Records. The Current Notice of Default alleged breaches of the
18 Amended Deed of Trust and stated an amount due, pertaining to nonmonetary, alleged breaches
19 of the CLA, of \$345,787.24. (See Evid. Hrg. Exhibit 35.) Chicago Title Company, not Ms.
20 Holbert, was still the Trustee of record as to LVDF’s Deed of Trust #2 when LVDF recorded the
21 Current Notice of Default, and Chicago Title Company remains the Trustee of record as to
22 LVDF’s Deed of Trust #2 to this day.

23 On April 9, 2019, this Court entered its Order Granting in Part and Denying in Part
24 Plaintiff’s Second Motion for Temporary Restraining Order and Setting Preliminary Injunction
25
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1 Hearing (“Second TRO”). This order effectively restrains Defendants’ ability, if any actually
2 exists in reality, to proceed with nonjudicial foreclosure under the Current Notice of Default.
3 (See Second TRO, at p. 2, ls. 8-12, 16-17, attached hereto as **Exhibit 3**.) The evidentiary hearing
4 related to the Motion for Preliminary Injunction is ongoing.

5 The Court recently issued an Order for the parties to appear on October 9, 2019 to discuss
6 possible consolidation of the preliminary injunction hearing with trial pursuant to NRC
7 65(a)(2).
8

9 **III.**

10 **LEGAL ARGUMENT**

11 **A. FRONT SIGHT SEEKS DECLARATORY RELIEF PURSUANT TO NRS**
12 **CHAPTER 30 REGARDING THE CLA AND OTHER LOAN DOCUMENTS**

13 This Court is empowered to interpret the CLA and other Loan Documents and issue a
14 declaration enumerating Front Sight’s rights under those documents. Specifically, NRS 30.040
15 states:

16 Any person interested under a . . . written contract or other writings constituting a
17 contract, or whose rights, status or other legal relations are affected by a . . .
18 contract . . . may have determined any question of construction or validity arising
19 under the . . . contract . . . and obtain a declaration of rights, status or other legal
20 relations thereunder.

21 NRS 30.040(1).

22 **1. Pursuant to the CLA, Romspen Must Receive a First Lien Position**

23 Front Sight seeks a declaration from this Court stating that, upon providing the senior
24 debt, Romspen will received a first lien position, ahead of all of Defendant LVDF’s Deeds of
25 Trust. The CLA gives Front Sight the right to seek financing that would ultimately be senior
26 (i.e., in a first position) to the Deed of Trust and declaring that the loan Front Sight has secured
27 from Romspen qualifies as Senior Debt to which the Deed of Trust is subordinate or junior. The
28 CLA’s language contemplates additional, subsequent financing that would be superior to the

1 Amended Deed of Trust. Its terms provide:

2 “additional construction financing as may be secured by Borrower at a date
3 subsequent to the date of this Agreement . . . [will be obtained by Borrower] with
4 the understanding that any and all liens securing such additional construction
financing will be superior to the liens securing the Loan evidenced by this
Agreement.”

5 (Evid. Hrg. Exhibit 33, p. 1, ¶ B.) Additionally, Section 5.7(v) of the CLA provides clear,
6 express grounds for Front Sight to require LVDF to “execute, or cause to be executed, any and
7 all documentation reasonably required by the provider of the Senior Debt, in the form and
8 content provided by the provider of the Senior Debt, in order to cause the aforementioned
9 subordination of the lien of the Deed of Trust . . .” (Evid. Hrg. Exhibit 33, § 5.7(v), p. 32.)
10

11 The CLA’s express language authorizes Front Sight to obtain financing that would be
12 senior to the Deed of Trust, provided certain conditions are met. The CLA’s conditions for
13 subordinating the Amended Deed of Trust to the Romspen Commitment, according to the CLA §
14 5.27 and the definition of “Senior Debt,” are discussed here and have all been met.

15 The conditions for qualifying as a Senior Debt, from the CLA, are as follows, and they
16 have all been met for the reasons stated here:
17

18 **Condition One** is that “[t]he loan shall be evidenced by a promissory note not in excess
19 of Fifty Million and no/100 United States Dollars (US\$50,000,000.00).” (Evid. Hrg. Exhibit 33,
20 p. 11 (defining “Senior Debt”).) The Commitment from Romspen totals \$30,000,000.00, the
21 bulk of which is specifically authorized for the purpose of constructing the Project and repaying
22 LVDF. (See Romspen Commitment Letter dated September 18, 2019, at 1-2, attached hereto as
23 **Exhibit 4.**)
24

25 **Condition Two** is that “[t]he loan proceeds shall be disbursed in payment, or in
26 reimbursement for payment, of the construction and development of the Project.” (Evid. Hrg.
27 Exhibit 33, p. 11 (defining “Senior Debt”).) The Commitment clearly meets this requirement, as
28

1 § 8 expressly states that between \$14,250,000.00 and \$21,800,000.00 will be used for the
2 purpose of constructing the Project, while approximately \$7,000,000.00 of the loan will be
3 authorized to address Defendant LVDF's claims in this litigation. (See **Exhibit 4**, § 8, at p. 3.)

4 **Condition Three** states:

5 The loan shall contain provisions concerning disbursement procedures,
6 mechanisms to protect against mechanics liens and related matters as are
7 customarily found in construction loans made by institutional lenders and Lender
8 shall be provided with copies of such documents showing the progress of
9 construction and the disbursement of funds as are provided to senior lender.

(Evid. Hrg. Exhibit 33, p. 11 (defining "Senior Debt").)

10 The Romspen Commitment has language that clearly protects against encumbrances to
11 the Property such as mechanics liens. At § 13.1.4, the Commitment Letter requires Front Sight
12 to have resolved "[a]ll taxes, assessments, duties, utility charges and other levies, liens and
13 charges affecting the Property . . . prior to the first Advance, failing which they shall be paid
14 from the proceeds of the first Advance." Further, §13.1.20 of the Commitment Letter contains
15 language protecting against "mechanics liens and related matters," requiring Front Sight to,
16 "prior to the first advance being made under the Loan, . . . provide Lender with a list of subtrades
17 working on the Project, and the status of all conditional and unconditional lien waivers from such
18 sub-trades."
19

20 **Condition Four** states, "Borrower shall obtain such Senior debt [sic] no later than
21 December 31, 2016." This deadline was extended twice, by way of the First and Second
22 Amendments to the CLA, to June 30, 2018.

23 Front Sight is aware that Defendants continue to assert Front Sight has breached the
24 provision of the CLA related to senior debt. This assertion is incorrect. The definition of
25 "Senior Debt" provides that an additional loan "will be sought" and that Plaintiff "will use its
26 best efforts" to obtain a senior loan. Plaintiff was not required to obtain senior debt, although it
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28

1 has used its best efforts to do so. Again, Section 5.27 of the CLA indicates Plaintiff will use its
2 “best efforts” to obtain Senior Debt.

3 Defendants have disingenuously refused to acknowledge during this litigation that Front
4 Sight had obtained such financing, and Defendants have indicated such financing was
5 acceptable. Those financing documents were provided to Defendants on October 31, 2017. (See
6 Evid. Hrg. Exhibit 47, p. 6.) Moreover, in Defendant EB5IC’s Q3 2017 project update to its
7 investors, Defendants specifically referenced the construction line of credit and stated: “The
8 terms of this agreement and note are completed and this line of credit will be signed by the end
9 of October.” *Id.* Defendants repeatedly updated investors and referenced the senior construction
10 loan, and those updates indicated that the financing that had been obtained was in compliance
11 with the Construction Loan Agreement. (See Evid. Hrg. Exhibits 39-42.) As evidenced by the
12 Romspen loan, Front Sight has continued to seek alternative financing in light of Defendants’
13 failure to provide loan funds.
14

15 But even if Defendants were correct (they are not), equitable estoppel and LVDF’s
16 multiple preceding breaches of the CLA operate to bar LVDF from enforcing this deadline now.
17

18 Equitable estoppel applies under the following conditions:

19 (1) the party to be estopped must be apprised of the true facts; (2) he must intend
20 that his conduct shall be acted upon, or must so act that the party asserting
21 estoppel has the right to believe it was so intended; (3) the party asserting the
22 estoppel must be ignorant of the true state of facts; (4) he must have relied to his
23 detriment on the conduct of the party to be estopped.

24 *Cheqer, Inc. v. Painters and Decorators*, 98 Nev. 609, 614, 655 P.2d 996, 998-99 (Nev. 1982).

25 Defendants’ fraudulent conduct is set forth in the chart attached hereto as **Exhibit 1**.
26 Defendants’ multiple and continuing breaches of the CLA are set forth in Section II.B. of this
27 brief above. Equitable estoppel applies here because Dziubla, acting as LVDF’s principal, knew
28 all along that he lacked the EB-5 fundraising experience he represented himself as having to

1 Front Sight, he intended that Front Sight act upon his conduct by, *inter alia*, entering into the
2 CLA and other Loan Documents, Front Sight was ignorant to the true lack of his EB-5
3 fundraising experience until the June 3, 2019, evidentiary hearing, and Front Sight relied on
4 Dziubla to its detriment by entering into the CLA that LVDF had no realistic chance of
5 performing.

6 Further, regarding the CLA itself, Front Sight was unaware until Defendant Dziubla's
7 testimony at the June 3, 2019 evidentiary hearing that Dziubla stopped marketing the project as
8 early as December 2017 (*see* June 3, 2019 Evid. Hrg. Tr., p. 32, ls. 11-15), or that, in Dziubla's
9 eyes, Defendant LVDF took over the marketing of the Front Sight project when the CLA was
10 signed (*see* June 3, 2019 Evid. Hrg. Tr., p. 135, ls. 21-25). Front Sight learned around the time
11 this litigation started that Dziubla shut down Defendant EB5IA without notice to Front Sight –
12 and indeed Front Sight continued to pay money to EB5IA for marketing well into 2018; before
13 the litigation, Front Sight believed EB5IA and Dziubla were marketing the project. While
14 Dziubla was aware of these facts, Front Sight was not. The elements of equitable estoppel have
15 been met such that, even if the Morales deal did not meet the definition of Senior Debt, LVDF
16 cannot enforce the purported deadline for Front Sight to obtain the Senior Debt. Defendants'
17 fraud and collective failure to perform their respective obligations, and LVDF's failure to loan,
18 materially inhibited Front Sight's ability to fulfill its obligations under the CLA in a timely
19 fashion. Equitable estoppel and Defendants' breaches of the CLA preclude them from
20 attempting to enforce a July 30, 2018 deadline. "If there is anything well settled, it is that the
21 party who commits the first breach of the contract cannot maintain an action against the other for
22 a subsequent failure to perform." *Bradley v. Nevada C. O. R. Ry.*, 42 Nev. 411, 421 178 P. 906,
23 908 (1919)(citation omitted). *Accord Crockett & Myers, Ltd. v. Napier, Fitzgerald & Kirby, LLP*,
24 440 F. Supp. 2d 1184 (D. Nev. 2006) (a material breach by one party to a contract may excuse
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1 further performance by another party to the contract. The party who commits the first breach of a
2 contract cannot maintain an action against the other for a subsequent failure to perform); *Las*
3 *Vegas Sands Corp. v. ACE Gaming, LLC*, 713 F. Supp. 2d 427 (D. Nev. 2010) (same); *Young*
4 *Elec. Sign Co. v. Fohrman*, 86 Nev. 185, 188, 466 P.2d 846 (1970) (stating that one party's
5 material breach excuses the other party's further performance under the contract).

6 The CLA expressly authorizes Front Sight to seek additional financing for the Project,
7 and the Romspen Commitment meets the standards for such financing as set forth in the CLA.
8 Front Sight seeks a declaration from this Court stating that, upon providing the senior debt,
9 Romspen will received a first lien position, ahead of all of Defendant LVDF's Deeds of Trust.
10 Front Sight further seeks a declaration from the Court that the Romspen Commitment qualifies
11 as Senior Debt.
12

13 **2. Front Sight Should Be Allowed to Prepay the \$6,375,000 Immediately and**
14 **Without Penalty**

15 Front Sight should be allowed to exercise its contractual right, under the CLA, to satisfy
16 the Deed of Trust by tendering the \$6,375,000 to LVDF. Section 1.3 of the CLA, entitled
17 "Prepayment," states:

18 Subject to the following sentence, Borrower may prepay the Loan, in whole or in
19 part, **without any prepayment penalty or premium, at any time during either**
20 **the Initial Term or the Extension Term.** Notwithstanding the foregoing,
21 Borrower shall not repay any portion of the Loan corresponding to that portion of
22 an Advance made by Lender to Borrower with the funds received from a **Class B member of Lender**
23 **[LVDF]** shall have received final adjudication of his or her I-829 petition
removing conditions for permanent residency in the United States.

24 (Evid. Hrg. Exhibit 33, § 1.3, p. 14 (emphases added).)

25 Front Sight is permitted to prepay the loan without any penalty. Front Sight
26 acknowledges that a condition of the prepayment option is that Front Sight cannot repay the
27 Loan while any Class B member of LVDF (in accordance with LVDF's operating agreement) is
28

1 still awaiting final adjudication on his or her I-829 petition. However, once again, LVDF is
2 equitably estopped from enforcing this language due to Defendants' breaches of the CLA and
3 fraudulent conduct.

4 First, as the Court is aware, Front Sight has provided a jobs report from David Evans that
5 shows that the Front Sight project has produced well above the required 130 jobs (10 per
6 immigrant investor) to allow each of the immigrant investors (Front Sight estimates there are 13)
7 to submit their I-829 petitions. Mr. Evans has provided a supplement to his prior reports. That
8 supplement contains new information related to expenses related to the Front Sight project and
9 notes that since 2013 (when the engagement letter between Front Sight and Defendant EB5IA
10 was entered into), the Front Sight project has created 254.5 new jobs. (See Supplemental Report
11 of Dave Evans dated October 4, 2019, attached hereto as **Exhibit 5**.) But even if the effective
12 date were October 2016 (when the CLA was entered), the Front Sight project has still exceeded
13 the required number of jobs.
14

15 Mr. Evans is one of the premier experts on jobs creation under the EB-5 program. (See
16 Declaration of Catherine Holmes, attached hereto as **Exhibit 6**.) At the hearing on September
17 20, 2019, Defendants strongly objected to Mr. Evans' report. This is baffling – at least it would
18 be if Defendants' purposes truly were to help the immigrant investors to obtain permanent
19 residency in the United States rather than to collect interest payments.
20

21 Looking at Mr. Evans' report, the Court can see that between February 2013 and October
22 2016, the Front Sight project created 254.5 new jobs. (See **Exhibit 5**.) It is undisputed that
23 Defendant LVDF provided \$2,625,000 in loan proceeds between October 2016 and June 30,
24 2017 – well over **two years ago** (and actually **three years ago** for some). (See Evid. Hrg.
25 Exhibit 47, p. 7.) Likewise, it is undisputed that between July 1, 2017 and June 30, 2018,
26 Defendant LVDF provided \$3,750,000 in loan proceeds. (See Evid. Hrg. Exhibit 49, p. 2.) All
27
28

1 of those investors tendered their money nearly two years ago, and some **more than two years**
2 **ago.**

3 Some brief background regarding the I-829 approval process, as set forth on the USCIS
4 website: Once USCIS has approved the I-526, the USCIS “will grant conditional permanent
5 residence to the EB-5 investor and derivative family members for a two-year period.” *See* EB5-
6 Investors, USCIS, *available at* [https://www.uscis.gov/working-united-states/permanent-](https://www.uscis.gov/working-united-states/permanent-workers/employment-based-immigration-fifth-preference-eb-5/eb-5-investors)
7 [workers/employment-based-immigration-fifth-preference-eb-5/eb-5-investors](https://www.uscis.gov/working-united-states/permanent-workers/employment-based-immigration-fifth-preference-eb-5/eb-5-investors) (last accessed
8 October 2, 2019). Because the immigrant investor will only have conditional permanent
9 residency, it must file a Form I-829 Petition by Investor to Remove Conditions on Permanent
10 Resident Status. *See id.* The time for filing this Form I-829 is “within the 90-day period
11 immediately before the second anniversary of the EB-5 investor’s admission to the United States
12 as a conditional permanent resident,” and “[i]f USCIS approves this petition, the conditions will
13 be removed from the lawful permanent resident status of the EB-5 investor and any included
14 dependents.” *Id.* Thus, it is evident that **all** of the immigrant investors should have submitted
15 their I-829 petition long ago.
16
17

18 Defendant Dziubla’s special, confidential relationship with the EB-5 investors means that
19 he had a fiduciary duty to act diligently and competently with respect to financing the Project
20 and helping the immigrant investors obtain permanent residency. Instead, Defendants Dziubla
21 and Fleming lied to all involved, had no experience in EB-5 fundraising, and then they stopped
22 marketing the project and raising funds at the end of 2017, all the while continuing to take
23 money from Front Sight that Front Sight believed was being used for marketing purposes.
24

25 If Dziubla had truly been trying to help the immigrant investors and/or to protect their
26 money, he would have honestly evaluated the Front Sight project, hired an economist who knew
27 what he was doing, and advised the immigrant investors almost immediately that they should
28

1 submit their I-829 petitions to the USCIS for approval. Front Sight had already created plenty of
2 jobs when the first money came in between October 2016 and June 30, 2017. Each of those
3 investors could have submitted their I-829 petitions long ago, had Dziubla so advised them.
4 Likewise, long before this litigation started, Dziubla should have advised the immigrant investors
5 who provided money between July 1, 2017 and June 30, 2018 that they too could and should
6 submit their I-829 petitions. If Dziubla had done so, as each I-829 petition was approved, Front
7 Sight would have been able to repay that immigrant investor's money, reducing the amount of
8 monthly interest payments it was required to make. Instead, Defendants – and particularly
9 Dziubla – failed to do so. They failed to do so in order to allow Defendant LVDF – run by
10 Dziubla – to collect \$36,000 per month in interest payments. And all of this while Dziubla and
11 Defendant EB5IA were accepting marketing payments from Front Sight even though they had
12 stopped marketing the project.
13

14 Additionally, Front Sight should be able to prepay without penalty because LVDF has not
15 provided any evidence that a single immigrant investor is actually a bona fide Class B member at
16 this time. Rather, Defendants continue to assert that the identity – and existence – of the
17 immigrant investors is confidential and proprietary. This lack any documentation necessarily
18 precludes LVDF from rejecting Front Sight's tender of the \$6,375,000, because LVDF has not
19 provided a single shred of credible evidence establishing that Exhibit B to the Operating
20 Agreement has actually been updated to name additional Class B members. Dziubla's word
21 means very little at this juncture (see **Exhibit 1**), and the Court should require more than just the
22 anticipated declaration from him suggesting – based on his word – that such Class B members
23 are real. But he has not even provided a redacted copy of such a document that would establish
24 that the Class B members exist. Instead, Defendants just continue to object to every legitimate
25 inquiry and refuse to provide information.
26
27
28

1 The term “Class B Member” of LVDF is defined in Exhibit A to LVDF’s Operating
2 Agreement dated March 26, 2014 (the entire operating agreement shall be herein referred to as
3 “Operating Agreement”), which EB5IC included with its I-924 petition to establish the Regional
4 Center, as follows: “‘Class B Member’ means a Member holding a Class B Unit as reflected on
5 **Exhibit B**, as updated from time to time.” (Emphasis in Operating Agreement.) The Operating
6 Agreement defines “Class B Unit” to mean “a Units [sic] held by a Class B Member, as reflected
7 on **Exhibit B**, as updated from time to time.” (Emphasis in Operating Agreement.) The
8 Operating Agreement defines “Unit” to mean “the system of measurement reflecting each
9 Member’s ownership and underlying rights, duties, and obligations, as stated in this Agreement
10 and reflected on **Exhibit B**, as updated from time to time.” (Emphasis in Operating Agreement.)

12 But Exhibit B to the Operating Agreement only lists EB5IC as a member of LVDF, not
13 any additional persons. Either there *are no* Class B Members of LVDF who are still awaiting
14 adjudication of their I-829 petitions, or Defendants have failed to show that there are.

16 Finally, if there are immigrant investors who are Class B Members of LVDF, Defendants
17 have provided absolutely no evidence whatsoever that the immigrant investors indeed have not
18 had their I-829 petitions adjudicated. Consequently, Front Sight is fully within its rights to
19 prepay the Loan proceeds pursuant to § 1.3 of the CLA, and Front Sight seeks a declaration from
20 this Court declaring that it has the immediate right to do so.

21 **B. RULE 67 EMPOWERS THIS COURT TO ORDER DEPOSIT OF THE LOAN**
22 **PROCEEDS WITH THE CLERK OF THE COURT OR INTO A QUALIFYING**
23 **INTEREST-BEARING BLOCKED ACCOUNT**

24 Front Sight respectfully requests that this Court allow it to deposit approximately \$7
25 million into the Court’s coffers pursuant to Rule 67. The approximately \$7 million constitutes
26 \$6.375 million in principal plus \$700,000.00 to cover what Defendants claim is due for default
27 interest, attorney’s fees, and costs. Although Front Sight disputes that it is in default, and the
28

1 amounts claimed for alleged default interest, attorney's fees, and costs, Front Sight is willing to
2 deposit the full amount of Defendants' claim. By doing so, all parties with competing claims are
3 protected, and the Court ensures the money is available to the prevailing party, or even the
4 immigrant investors if appropriate.

5 NRCP 67 provides as follows:

6 **Rule 67. Deposit in Court**

7 (a) Depositing Property.

8 (1) In an action in which any part of the relief sought is a money
9 judgment, the disposition of a sum of money, or the disposition of any other
10 deliverable thing, a party, upon notice to every other party and by leave of court,
11 may deposit with the court all or any part of the money or thing.

12 (2) When a party admits having possession or control of any
13 money or other deliverable thing, which, being the subject of litigation, is held by
14 the party as trustee for another party, or which belongs or is due to another party,
15 on motion, the court may order all or any part of the money or thing to be
16 deposited with the court.

17 (b) Custodian; Investment of Funds.

18 (1) Unless ordered otherwise, the deposited money or thing must
19 be held by the clerk of the court.

20 (2) The court may order that:

21 (A) money deposited with the court be deposited in an
22 interest-bearing account or invested in a court-approved, interest-bearing
23 instrument, subject to withdrawal, in whole or in part, at any time thereafter upon
24 order of the court; or

25 (B) money or a thing held in trust for a party be delivered to
26 that party, upon such conditions as may be just, subject to the further direction of
27 the court.

28 Front Sight seeks a Rule 67 order that authorizes deposit with the Clerk of the Court or
into an approved account, with the understanding that doing so will stop all interest and qualify
as a tender to LVDF that constitutes a prepayment pursuant to § 1.3 of the CLA. Then, the Court
will be able to protect the party to whom it ultimately awards damages, allowing the prevailing

1 party to then seek the funds deposited pursuant to Rule 67 to be applied to such a damages award
2 as an equitable offset.

3 “It is within the Court’s discretion whether to permit a party to deposit funds with the
4 Court under [FRCP] Rule 67.” *Tegtmeier v. PJ Iowa, L.C.*, 189 F. Supp. 3d 811, 825 (S. D.
5 Iowa)(May 18, 2016) (citing *Zelaya/Capital Int’l Judgment, LLC v. Zelaya*, 769 F.3d 1296, 1300
6 (11th Cir. 2014)). Commentators have called federal Rule 67 “a rather unimportant rule.” *See*
7 12 Charles Alan Wright, Aurthur R. Miller, Mary Kay Kane & Richard L. Marcus, *Federal*
8 *Practice and Procedure* § 2991 at 58 (2d ed. 1997).

9
10 One court stated that “[a]n important reason for a party to make a deposit in court is to
11 avoid paying interest on an amount it concedes it will ultimately have to pay.” *Putz v. Golden*,
12 2012 U.S. Dist. LEXIS 154240 (W. D. Wash. October 26, 2012) (citing J. Gustafson, *Federal*
13 *Procedure, Lawyers Edition* § 24:6 (2012)). Additionally, it is proper to submit money to the
14 court pursuant to Rule 67 where the funds are subject to competing demands. *See Tegtmeier*;
15 *supra* (noting that whether the funds to be deposited are subject to competing claims is one factor
16 to consider); *Pentacles I, LLC v. Pegasus Energy Res. Corp.*, 2012 U.S. Dist. LEXIS 193893 (E.
17 D. Tenn. September 20, 2012)(noting other cases where factor considered was whether money
18 deposited was “directly in dispute”). The Advisory Committee notes to the 1983 amendments to
19 FRCP 67 provide that “in addition to the advantages to the party making the deposit, the
20 procedure gives *other* litigants assurance that any judgment will be collectable.” Fed.R.Civ.P.
21 67, 1983 Advisory Committee Notes (emphasis added).
22

23
24 Nevada case law is scant on how to apply NRCP 67. In *Peke Resources, Inc. v. Fifth Jud.*
25 *Dist. Ct.*, 113 Nev. 1062, 944 P.2d 843 (1997), the Nevada Supreme Court considered whether it
26 was proper for the district court to grant a motion by the plaintiff to *require* the defendant to
27 deposit disputed purchase payments. The Nevada Supreme Court found that the district court
28

1 had abused its discretion by ordering the defendant to deposit the disputed payments. *Id.* at
2 1067.

3 In *Kassabian v. Jones*, 72 Nev. 317, 304 P.2d 962 (1956), a plaintiff/appellant landlord
4 sought to compel a defendant/respondent to deposit rent payments with the court. Because this
5 request was not a “preservation of the status quo,” the Nevada Supreme Court found that the
6 plaintiff/appellant’s requests were improper. *Id.* at 315.

7 These cases are easily distinguishable from this case. Here, it is Plaintiff who is asking
8 the court to allow deposit of the money which is the subject of competing claims of the parties,
9 to maintain the status quo, and to stop interest.

10 Front Sight reserves all rights with respect to any deposit of the \$7,000,000.00 with the
11 Court or into an account, and with respect to any tender to LVDF of the same, including, but not
12 limited to, the right to later assert that any deposit or tender was done as a business necessity
13 and/or in defense of property. While “[t]he voluntary payment doctrine is an affirmative defense
14 that provides that one who makes a payment voluntarily cannot recover it on the ground that he
15 was under no legal obligation to make the payment,” Front Sight is affirmatively asserting that
16 two exceptions apply under the circumstances. *See Nevada Ass’n Svcs. v. Eighth Judicial Dist.*
17 *Court*, 130 Nev., Adv. Rep. 94, 338 P.3d 1250, 1253-55 (Nev. 2014) (internal quotation marks
18 and citation omitted). “These exceptions are (1) coercion or duress caused by a business
19 necessity and (2) payment in defense of property.” *See id.* at 1254. Front Sight expressly
20 reserves the right to unwind any deposit or tender of the \$7,000,000.00 (and some or all of the
21 interest payments it has made along the way pursuant to the CLA) pursuant to these two
22 exceptions to the Voluntary Payment Doctrine.
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1 **C. FRONT SIGHT SEEKS A DECLARATION FROM THIS COURT**
2 **DECLARAING THAT THE CURRENT NONJUDICIAL FORECLOSURE**
3 **PROCEEDINGS UNDER THE AMENDED DEED OF TRUST ARE NULL AND**
4 **VOID FOR BEING PROCEDURALLY DEFECTIVE**

5 There is a material defect in LVDF's currently ongoing nonjudicial foreclosure
6 proceedings that warrants declaratory relief ordering that those proceedings are null and void as a
7 matter of law based on that defect.

8 Kathryn Holbert, LVDF's current counsel of record, is the substitute trustee of record
9 under the Deed of Trust that was recorded on October 13, 2016, as Document #860867 in the
10 Nye County Records, but she is *not* the trustee of record under the Amended Deed of Trust under
11 which LVDF is currently attempting a nonjudicial foreclosure. The Substitution of Trustee
12 recorded as Document #905318 in the Nye County Records, on its face, substitutes Kathryn
13 Holbert instead of Chicago Title Company as to the Deed of Trust, but not as to the Amended
14 Deed of Trust.

15 This means that the existing notice of breach and election to sell recorded January 18,
16 2019 is materially defective because (1) pursuant to the Amended Deed of Trust (recorded on
17 January 12, 2018, as Document No. 886510), Attorney Kathryn Holbert is *not* the duly appointed
18 trustee as to the Amended Deed of Trust, Chicago Title Company is, and without a notice from
19 the duly appointed trustee, Chicago Title Company, LVDF cannot, as a matter of law, foreclose
20 upon the Amended Deed of Trust (*see* Evid. Hrg. Exhibit 32 (Amended Deed of Trust naming
21 Chicago Title Company as the trustee, not Attorney Holbert who recorded the defective NOD));
22 (2) the NOD improperly lists Attorney Holbert as the trustee who is attempting to foreclose
23 pursuant to the Amended Deed of Trust; and (3) Attorney Holbert should be disqualified from
24 acting as the trustee under the Deed of Trust or Amended Deed of Trust, because she is LVDF's
25 attorney of record (withdrawing from this action should not cure the conflict, either, because she
26 will still have ethical duties to her former client that will materially and necessarily preclude her
27
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1 from a trustee's legal duties under NRS 107.028(6) (trustee has a duty to be impartial and act in
2 good faith). Accordingly, Front Sight seeks a declaration from the Court declaring the same.

3 **IV.**

4 **CONCLUSION**

5 Front Sight is entitled to a Rule 67 deposit order authorizing it to deposit \$7,000,000 with
6 the Clerk of the Court or into an appropriate interest-bearing, blocked account. Alternatively,
7 Front Sight is entitled to declaratory relief stating that (1) Front Sight has full legal authority to
8 repay the Loan Proceeds to LVDF under § 1.3; (2) authorizing it to prepay the \$6,375,000 in
9 Loan proceeds to LVDF; and (3) that LVDF must accept tender of the outstanding Loan
10 Proceeds from Front Sight if and when presented in negotiable form (*e.g.*, cash, cashier's check,
11 etc.). The remaining \$625,000 will remain with Romspen or with the Clerk of the Court to
12 secure LVDF's claims until such time as they are fully adjudicated.
13

14 Front Sight also seeks entry of a declaration from the Court ordering that once the Court
15 issues a Rule 67 deposit order and Front Sight has deposited the \$6,375,000 in Loan proceeds
16 with the Clerk of the Court or into an approved interest-bearing account pursuant to NRCP 67, or
17 once Front Sight has tendered payment to LVDF, LVDF must execute a substitution of trustee
18 and reconveyance of the entire beneficial interest LVDF currently holds to Front Sight, as to both
19 LVDF's Deed of Trust #1 and LVDF's Deed of Trust #2.
20

21 The Court should also enter a declaration that, effective immediately, the Romspen loan
22 is senior to the Amended Deed of Trust and any and all other encumbrances for which LVDF or
23 its successor in interest, if any arises, is the beneficiary of record. The CLA gives Front Sight
24 express authorization to seek additional financing that would be senior in right to the Deed of
25 Trust, and now Front Sight has obtained such financing.
26

27 The Court should also enter a declaration that the ongoing sale proceeding under the
28

1 Amended Deed of Trust is null and void based on the defect in the Notice of Default recorded on
2 January 18, 2019, as Doc. #905512.

3 DATED this 4th day of October, 2019.

4 **ALDRICH LAW FIRM, LTD.**

5 /s/ John P. Aldrich

6 John P. Aldrich, Esq.
7 Nevada Bar No. 6877

8 Catherine Hernandez, Esq.
9 Nevada Bar No. 8410

10 Matthew B. Beckstead, Esq.
11 Nevada Bar No. 14168

12 7866 West Sahara Avenue
13 Las Vegas, Nevada 89117

14 Telephone: (702) 853-5490

15 Facsimile: (702) 227-1975

16 *Attorneys for Plaintiff/Counterdefendants*

CERTIFICATE OF SERVICE

1
2 I HEREBY CERTIFY that on the 4th day of October, 2019, I caused the foregoing
3 **PLAINTIFF’S MOTION TO EXTINGUISH LVDF’S DEED OF TRUST, OR**
4 **ALTERNATIVELY TO GRANT SENIOR DEBT LENDER ROMSPEN A FIRST LIEN**
5 **POSITION, AND MOTION TO DEPOSIT FUNDS PURSUANT TO NRCP 67** to be
6 electronically filed and served with the Clerk of the Court using Wiznet which will send
7 notification of such filing to the email addresses denoted on the Electronic Mail Notice List, or
8 by U.S. mail, postage prepaid, if not included on the Electronic Mail Notice List, to the
9 following parties:
10

11 Anthony T. Case, Esq.
12 Kathryn Holbert, Esq.
13 FARMER CASE & FEDOR
14 2190 E. Pebble Rd., Suite #205
15 Las Vegas, NV 89123
16 *Attorneys for Defendants LAS VEGAS DEVELOPMENT FUND
LLC, EB5IMPACT CAPITAL REGIONAL CENTER LLC,
EB5 IMPACT ADVISORS LLC, ROBERT W. DZIUBLA,
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JON FLEMING and LINDA STANWOOD*

21
22 /s/ T. Bixenmann
23 An employee of ALDRICH LAW FIRM, LTD.
24
25
26
27
28

EXHIBIT 1

EXHIBIT 1

<u>DATE OF FALSE STATEMENT</u>	<u>FALSE STATEMENT</u>	<u>DATE FRONT SIGHT KNEW THE TRUTH</u>	<u>TRUTH</u>
3/22/12	<p>“Because we have confidence in our ability to help you raise the money sought, we are willing to work on a pure success fee basis that compensates us for the speculative risk we are undertaking.” (FS 01163, emphasis added.)</p>		<ul style="list-style-type: none"> ● 8/11/15 – “We look forward to having the \$53.5k deposited into our Wells Fargo account tomorrow.” (FS 00044.) ● 10/16/15 – “Per your request, please find attached an updated budget & reconciliation. In sum, Front Sight has now paid \$241,730 against a total budget commitment of \$282,230. Therefore, we are expecting the final payment of \$40,500 at the end of this month.” (FS 03878.) ● 10/30/15 – “In closing, we kindly ask that Front Sight make the final payment of \$40,500 by depositing a check into our Wells Fargo account so that we can pay our agents and keep them beavering away.” (FS 03918 – 19.) ● 10/24/16 – “Please be advised that we will be retaining \$39,375 of this disbursement as an Interest Reserve per the loan documents (3 months interest times the outstanding balance of the loan).” (FS 04769.) ● 10/5/16 – “How about this: you pay us \$8k for each of the 4 remaining investors that we get to fund by the closing (i.e., above the 4 we already had in escrow when we met in May)? I.e. if we get investor #5 to fund by closing, that’s another \$8k and ditto for #s 6, 7, and 8?” (FS 04776.) ● 10/10/16 – “Please pay the \$19k tomorrow when the banks re-open. . . . Also attached are the wiring instructions for the EB5 Impact Advisors account for the payments due under our side letter agreement. The minimum amount due today is \$19k, comprised of the \$11k in legal fees and the \$8k for October.” (FS 04953.) ● 12/5/16 – “Per our side agreement, please separately wire the \$8k to EB5 Impact Advisors per the attached wire instructions (same as last time).” (FS 05052.) ● 2/23/17 – “In lieu of paying Sudhir up to \$75,000 of costs for a dedicated road show for the Front Sight Project, upon his achieving at least 5 new investors committed, Front Sight will pay out a \$10,000 per investor bonus to Sudhir. This bonus will only be paid for investors that sign up and fund into escrow, between now and the date that the EB5 program is extended. After that date, any compensation to him will be discussed at that time. In addition, this compensation for Sudhir Shah is independent of the \$8,000 bonus that FS will pay to Bob and I following each month that a new investor comes into escrow. Is this understanding correct?” (FS 05091.)

- 2/23/17 – “I also want to clarify that when FS pays out the \$10,000 per investor, we need the payment to go through us and then we disburse the \$10k to Sudhir. We are the ones that have the contract with Sudhir.” (FS 05098.)
- 5/30/17 – “Here is an outline of the changes to the compensation and marketing budget: Marketing budget for Endeavor: \$20,000 per month (guaranteed at least through 9/30/17 – re-evaluate after that date) – this includes extensive travel, brochures, seminars. Agent Success Fee: \$20,000 per investor (this is on top of the \$50,000 per investor - admin fee paid by the investor) Loan Interest rate: 1.0% increase (from 6% to 7%). This increase will be largely split between Kyle / David and the agents. You and I just discussed the marketing of Sudhir Shah in India, and we agreed that the above success fee should also be applied to his investors that he brings in. Sudhir indicated to me last week that he has 3 – 6 Investors in the pipeline and that he hopes to have at least 3 funded by 9/30. I am also re-stating our prior agreement with Naish, that up to the point where \$10m of EB5 is funded into escrow FS will pay EB5 Impact \$8,000 per investor.” (FS 05127 – 28.)
- 9/4/17 – “Mike, We will be doing all that we can with all of our sources to bring in investors this month. We cannot guarantee that 10 investors will be funded, but we will give our best. We have checked our account and noticed that the September 1 interest payment has not been deposited yet. Will that be done tomorrow? Also, can you make sure that the \$20,000 payment for Endeavor’s marketing in China is also made? Thanks, Jon” (FS 05443.)
- 11/14/17 – “Please prepare a wire of \$90,000 (\$70K – Dr. Shah marketing funds and \$20k for Dr. Shah’s per investor performance bonus on the new investor). . . . Also, please prepare to send a wire of \$8,000 in performance bonus for Bob and I for the new Shah investor.” (FS 05477.)
- 12/20/17 – “Upon receipt of the wire please prepare a wire of \$20,000 for Dr. Shah’s per investor performance bonus on the new investor. . . . Also, please prepare to send a wire of \$8,000 in performance bonus for Bob and I for this new investor” (FS 05540.)
- 2/2/18 – “Dear Mike, Please confirm that the following is what Front Sight has agreed to pay with regard to new investors funding into the project: 1. To our agents - \$20k per investor as a success fee paid to our agents regardless of how many investors they source 2. To EB5 Impact Advisors - \$8k per month so long as at least one investor’s funds have been disbursed to the project during that particular month. a. For example: If we have funded one or more

			<p>investors to the project in Month 1 (and were paid \$8k by FS in that Month 1), but Month 2 is dry, and we then fund two investors in Month 3, FS will pay \$8k for the first investor PLUS another \$8k for the second investor to make up for the dry spell in Month 2. FS will not, however, make any additional payment for investors beyond #2. Thank you, Bob” (FS 05625.)</p> <ul style="list-style-type: none"> • 2/13/18 – “We have wired to FSM this morning the \$375,000 for the newest investor into the project. Upon receipt of the wire, please wire the \$20,000 for Endeavor Shanghai’s (Kyle & David) per investor performance bonus on the new investor. . . . Also, please wire the \$8,000 performance payment to us for this new investor.” (FS 09138.) • 2/28/18 – “Through yesterday, we have wired to FSM \$1,125,000 representing EB5 investments from three Chinese investors sourced by Endeavor Shanghai (Kyle and David) at \$375k each. Accordingly, please wire the \$60,000 for Endeavor Shanghai’s \$20k per investor performance bonus. . . . Also, please wire the \$24,000 as the \$8k per investor performance payment to us for these three investors.” (FS 05654.) • 4/24/18 – “Thanks for that confirmation on FS providing the EB5 documentation by the stated dates. I will wire the \$750k tomorrow as instructed. Here is the invoice amount for the success fees / marketing fees / commission fees due on this funding from two Chinese investors: Agent success fee @ \$20k / investor = \$40,000 EB5 Impact success / marketing fee = \$8,000 / investor, plus retroactive payment of \$8,000 for March in which no investors were delivered = \$24,000 Please wire the total sum of \$64,000 to the following account” (FS 05722.)
<p>4/7/12</p>	<p>“We have been underwriting over a dozen hospitality transactions during the past 8 months, with two of them located in the desert just like Front Sight, so we have a keen appreciation and understanding of the peculiarities of that market and <u>how to structure the transaction</u></p>	<p>6/3/19</p>	<ul style="list-style-type: none"> • Defendants actually lacked the capability and knowledge to raise tens of millions of dollars. • Fleming had no experience with EB-5 lending prior to joining EB51A. (Dziubla Testimony, 6/3/19 Hrg. Tr., p. 26.) • “This was our first direct project [in EB-5 lending].” (Dziubla Testimony, 6/3/19 Hrg. Tr., p. 38.) • After taking a break, Dziubla changed his testimony a little, stating that besides the Front Sight Project and the single project at Baker & McKenzie in 1990, Dziubla had no experience in EB-5 lending. (Dziubla Testimony, 6/3/19 Hrg. Tr., Pg. 39.) • Defendants actually lacked the network they said they had to timely raise the tens of millions of dollars Front Sight expected.

	<p>appropriately. (FS 01184, emphasis added.)</p>		<ul style="list-style-type: none"> Ethan Devine was tasked with creating such a network instead. (See Dziubla Email, 1/31/16, at FS 04355. See <i>also</i> Exhibit 44, p. Contracts(2) 00046 (showing a consulting agreement with Devine to use his “network and relationships in China (and elsewhere) to source direct investors.”)
<p>8/27/12</p>	<p>“I think that we may be able to put together a financing package for some, or perhaps all, of the \$150m you were seeking to raise.” (Ex. 2, FS 00002.)</p>	<p>6/3/19</p>	<ul style="list-style-type: none"> Defendants actually lacked the capability and knowledge to raise \$150m. Fleming had no experience with EB-5 lending prior to joining EB51A. (Dziubla Testimony, 6/3/19 Hrg. Tr., p. 26.) “This was our first direct project [in EB-5 lending].” (Dziubla Testimony, 6/3/19 Hrg. Tr., p. 38.) After taking a break, Dziubla changed his testimony a little, stating that besides the Front Sight Project and the single project at Baker & McKenzie in 1990, Dziubla had no experience in EB-5 lending. (Dziubla Testimony, 6/3/19 Hrg. Tr., Pg. 39.) Defendants actually lacked the network they said they had to timely raise the \$150m. Ethan Devine was tasked with creating such a network instead. (See Dziubla Email, 1/31/16, at FS 04355. See <i>also</i> Exhibit 44, p. Contracts(2) 00046 (showing a consulting agreement with Devine to use his “network and relationships in China (and elsewhere) to source direct investors.”)
<p>8/31/12</p>	<p>“Although you’ve already met Jon Fleming, you’ve not met my other partners on the EB-5 work, so I would like to suggest that all four of us come out to Front Sight sometime the week after next so that my other two partners can see the facility.” (FS 01196.)</p>	<p>6/3/19</p>	<ul style="list-style-type: none"> Fleming had no experience with EB-5 lending prior to joining EB51A. (Dziubla Testimony, 6/3/19 Hrg. Tr., p. 26.) Dziubla hedged during his testimony, saying Empyrean West was his partner “[i]n the generic term . . .” (Dziubla Testimony, 6/3/19 Hrg. Tr., p. 61.)
<p>9/13/12</p>	<p>“I personally have been conversant with and involved in EB-5 financing since the program was first established in 1990, as one of my oldest friends and a</p>	<p>6/3/19</p>	<ul style="list-style-type: none"> Defendants actually lacked the capability and knowledge to raise tens of millions of dollars in EB-5 financing. Fleming had no experience with EB-5 lending prior to joining EB51A. (Dziubla Testimony, 6/3/19 Hrg. Tr., p. 26.) “This was our first direct project [in EB-5 lending].” (Dziubla Testimony, 6/3/19 Hrg. Tr., p. 38.)

	<p>fellow partner of mine at Baker & McKenzie, the world's largest law firm, ran the Firm's global immigration practice out of the Hong Kong office. During my career, I have spent much of my life living and working in China / Asia and have worked with many Chinese clients and institutions investing abroad. This experience has provided me with an expansive network of relationships throughout China for sourcing EB-5 investors; and this personal network is coupled with our collective relationships with the leading visa advisory firms operating in China." (FS 00006.)</p>		<ul style="list-style-type: none"> • Dziuabla was involved in a single project at Baker & McKenzie in 1990, and Dziuabla had no experience in EB-5 lending after 1990. The San Diego Hyatt project he claimed to participate in failed. (Dziuabla Testimony, 6/3/19 Hrg. Tr., Pg. 39.) • "What I meant is I was familiar with EB-5." (Dziuabla Testimony, 6/3/19 Hrg. Tr., Pg. 77.) • Defendants actually lacked the network they said they had to timely raise the tens of millions of dollars Front Sight expected. • Dziuabla Memo Dated Aug. 5, 2015 – "Per your request, this memorandum will supplement our memo of July 29 that explained why we must develop a <u>global marketing network</u> for the Front Sight project and not rely solely upon <u>Sinowel.</u>" (FS 00074.) • Ethan Devine was tasked with creating such a network instead. (See Dziuabla Email, 1/31/16, at FS 04355.)
<p>9/13/12</p>	<p>"In addition to the Chinese EB-5 funding, Empyrean 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." (FS 00007.)</p>	<p>2/21/19 (Holmes's Expert Witness Report, attached as Exhibit 1 to Plaintiff's Second Motion for TRO (filed Mar. 1, 2019))</p>	<ul style="list-style-type: none"> • "The initial letter proposal ("Proposal") dated September 13, 2012 of Kenworth Capital, Inc. addressed to Front Sight Enterprises, LLC (<u>Exhibit 2 of the Declaration</u>) states in paragraph 2 that Kenworth's 'partners' are Empyrean West (Dave Keller and Jay Carter), the owners of Liberty West Regional Center. The letter agreement further represents in paragraph 3 that Empyrean 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 Empyrean 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" Empyrean West had special access to EB-5 investors in Vietnam." (Expert Witness Report of Catherine DeBono Holmes, Esq., Pg. 1, ¶ 1 (emphasis in original).)

9/13/12	<p>“As we discussed over lunch, our direct out-of-pocket cost to do an EB-5 raise is typically \$300k (paid upfront), as we need to engage a number of providers immediately as well as conduct an international roadshow.” (FS 00003.)</p>	2/21/19 (Holmes’s Expert Report)	<ul style="list-style-type: none"> • “The Proposal [Sep. 13, 2012 letter from Kenworth Capital] 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.” (Expert Witness Report of Catherine DeBono Holmes, Esq., Pg. 1, ¶ 2.)
9/13/12	<p>“Perhaps most importantly, because Front Sight has been in business for over 15 years and is generating substantial positive cash flow, we will be able to structure the \$65m of EB-5 financing as non-recourse debt secured only by a mortgage on the property. Thus, no personal guaranties or other collateral will be required from Dr. Piazza or Front Sight. This non-recourse element of the EB-5 financing is truly extraordinary.” (FS 00007.)</p>	6/3/19	<ul style="list-style-type: none"> • Defendants actually lacked the capability and knowledge to raise \$65m. • Fleming had no experience with EB-5 lending prior to joining EB51A. (Dziubla Testimony, 6/3/19 Hrg. Tr., p. 26.) • “This was our first direct project [in EB-5 lending].” (Dziubla Testimony, 6/3/19 Hrg. Tr., p. 38.) • After taking a break, Dziubla changed his testimony a little, stating that besides the Front Sight Project and the single project at Baker & McKenzie in 1990, Dziubla had no experience in EB-5 lending. (Dziubla Testimony, 6/3/19 Hrg. Tr., Pg. 39.) • Defendants actually lacked the network they said they had to timely raise the \$65m. • Ethan Devine was tasked with creating such a network instead. (See Dziubla Email, 1/31/16, at FS 04355.)
9/28/12	<p>“[W]e are currently working on a handful of other select projects totaling over \$250m of EB-5 debt financing.”(FS 01211.)</p>	6/3/19	<ul style="list-style-type: none"> • After taking a break, Dziubla changed his testimony a little, stating that besides the Front Sight Project and the single project at Baker & McKenzie in 1990, Dziubla had no experience in EB-5 lending. (Dziubla Testimony, 6/3/19 Hrg. Tr., Pg. 39.)
10/24/12	<p>“Jon and I would like to work expeditiously with you and Front Sight to identify a suitable regional center for</p>	6/3/19 (Evid. Hrg.)	<ul style="list-style-type: none"> • Defendants actually lacked the capability and knowledge to raise \$65m. • Fleming had no experience with EB-5 lending prior to joining EB51A. (Dziubla Testimony, 6/3/19 Hrg. Tr., p. 26.) • “This was our first direct project [in EB-5 lending].” (Dziubla Testimony,

	<p>your hospitality project and raise \$65m of EB-5 money for that.” (FS 01223.)</p>	<p>2/21/19 (Holmes’s Expert Witness Report, attached as Exhibit 1 to Plaintiff’s Second Motion for TRO (filed Mar. 1, 2019))</p>	<p>6/3/19 Hrg. Tr., p. 38.)</p> <ul style="list-style-type: none"> • After taking a break, Dziubla changed his testimony a little, stating that besides the Front Sight Project and the single project at Baker & McKenzie in 1990, Dziubla had no experience in EB-5 lending. (Dziubla Testimony, 6/3/19 Hrg. Tr., Pg. 39.) • Defendants actually lacked the network they said they had to timely raise the \$65m. • Ethan Devine was tasked with creating such a network instead. (See Dziubla Email, 1/31/16, at FS 04355.) • “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.” (Expert Witness Report of Catherine DeBono Holmes, Esq., Pg. 1, ¶ 2.)
<p>10/24/12</p>	<p>“Kenworth Capital, Inc. and its affiliate, Legacy Realty Capital Inc. (collectively, the ‘Company’) have experience and expertise in raising EB-5 immigrant investor financing for real estate development projects in the USA and that the anticipated \$65m raise for the Front Sight hospitality project located in Nye County, NV, could be an appropriate candidate for EB-5 financing (the ‘Financing’).” (FS 01224.)</p>	<p>6/3/19</p>	<ul style="list-style-type: none"> • Defendants actually lacked the capability and knowledge to raise \$65m. • Fleming had no experience with EB-5 lending prior to joining EB51A. (Dziubla Testimony, 6/3/19 Hrg. Tr., p. 26.) • “This was our first direct project [in EB-5 lending].” (Dziubla Testimony, 6/3/19 Hrg. Tr., p. 38.) • Besides the single project at Baker & McKenzie in 1990, Dziubla had no experience in EB-5 lending. (Dziubla Testimony, 6/3/19 Hrg. Tr., Pg. 39.) • “Well, Kenworth was essentially myself.” (Dziubla Testimony, 6/3/19 Hrg. Tr., Pg. 21.) • Defendants actually lacked the network they said they had to timely raise the \$65m. • Ethan Devine was tasked with creating such a network instead. (See Dziubla Email, 1/31/16, at FS 04355.)
<p>1/21/13</p>	<p>“Over the past three weeks, we have vetted numerous lawyers and law firms for establishing the new regional center and doing the legal work for the \$75m</p>	<p>6/3/19</p>	<ul style="list-style-type: none"> • Defendants actually lacked the capability and knowledge to raise \$75m. • Fleming had no experience with EB-5 lending prior to joining EB51A. (Dziubla Testimony, 6/3/19 Hrg. Tr., p. 26.) • “This was our first direct project [in EB-5 lending].” (Dziubla Testimony, 6/3/19 Hrg. Tr., p. 38.)

	EB5 raise for Front Sight.” (FS 01298 (emphasis added).)		<ul style="list-style-type: none"> • Besides the single project at Baker & McKenzie in 1990, Dziubla had no experience in EB-5 lending. (Dziubla Testimony, 6/3/19 Hrg. Tr., Pg. 39.) • Defendants actually lacked the network they said they had to timely raise the \$75m. • Ethan Devine was tasked with creating such a network instead. (See Dziubla Email, 1/31/16, at FS 04355.)
1/31/13	<p>“Please find attached the updated budget with a projected monthly breakdown of the cost expenditures; this breakdown assumes that USCIS moves expeditiously, which means that the full \$75m would be raised by Day 361; thus, the costs are incurred in the first 10 months. If USCIS is slower, than this burn rate would slow down a bit.” (FS 01287 – 91 (emphasis added).)</p>	6/3/19	<ul style="list-style-type: none"> • Defendants actually lacked the capability and knowledge to raise \$75m. • Fleming had no experience with EB-5 lending prior to joining EB5IA. (Dziubla Testimony, 6/3/19 Hrg. Tr., p. 26.) • “This was our first direct project [in EB-5 lending].” (Dziubla Testimony, 6/3/19 Hrg. Tr., p. 38.) • Besides the single project at Baker & McKenzie in 1990, Dziubla had no experience in EB-5 lending. (Dziubla Testimony, 6/3/19 Hrg. Tr., Pg. 39.) • Defendants actually lacked the network they said they had to timely raise the \$75m. • Ethan Devine was tasked with creating such a network instead. (See Dziubla Email, 1/31/16, at FS 04355.) • “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.” (Expert Witness Report of Catherine DeBono Holmes, Esq., Pg. 1, ¶ 2.)
2/8/13	<p>“Per our discussion last Friday, please find attached a proposal for our moving forward on the \$75m raise of EB5 debt financing.” (FS 01303 (emphasis added).)</p>	6/3/19	<ul style="list-style-type: none"> • This promised to Front Sight that Defendants could raise \$75 million. Defendants actually lacked the capability and knowledge to raise \$75m. • Fleming had no experience with EB-5 lending prior to joining EB5IA. (Dziubla Testimony, 6/3/19 Hrg. Tr., p. 26.) • “This was our first direct project [in EB-5 lending].” (Dziubla Testimony, 6/3/19 Hrg. Tr., p. 38.) • Besides the single project at Baker & McKenzie in 1990, Dziubla had no experience in EB-5 lending. (Dziubla Testimony, 6/3/19 Hrg. Tr., Pg. 39.) • Defendants actually lacked the network they said they had to timely raise the \$75m. • Ethan Devine was tasked with creating such a network instead. (See Dziubla Email, 1/31/16, at FS 04355.)

<p>2/14/13</p>	<p>“As Financial Advisor to the Company, EB5IA will perform the following services (the ‘Services’):</p> <p>(a) EB5IA will promptly engage Baker & McKenzie as its legal counsel to establish the ‘EB5 Impact Capital Regional Center’ (‘RC’) approved by USCIS to cover at a minimum Nye County, Nevada, and to have approved job codes that will encompass the Project.”</p>	<p>2/21/19 (Holmes’s Expert Report)</p>	<ul style="list-style-type: none"> • “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 mislead the plaintiff into believing that this was a normal part of an EB-5 financing, which it was not.” Expert Witness Report of Catherine DeBono Holmes, Esq., Pgs. 1 - 2, ¶ 3 (emphases in original).)
<p>March 2014, March 2015</p>	<p>“Fleming has over 32 years of business experience as an investor, lender and investment banker of commercial real estate properties. He began his career in commercial real estate as a broker in Calgary, Canada in 1980. Fleming moved to Los Angeles and became active in the lending industry in 1984 while working as a loan officer for Security Pacific National Bank. In 1987 he became a senior lender for HomeFed Bank in San Diego. During his career with HomeFed he financed various major commercial real estate</p>	<p>6/3/19</p>	<ul style="list-style-type: none"> • Fleming had no experience with EB-5 lending prior to joining EB5IA. (Dziubla Testimony, 6/3/19 Hrg. Tr., p. 26.) • “This was our first direct project [in EB-5 lending].” (Dziubla Testimony, 6/3/19 Hrg. Tr., p. 38.)

	<p>construction projects throughout California, Nevada and Arizona. Fleming serves as the President of Legacy Realty Capital Inc. (LR), a company established to acquire and oversee non-performing commercial real estate notes and properties. His responsibilities included negotiating and underwriting loan purchases, bridging loan funding, as well as managing the assets to maximize profitability. In addition, LRC provides high-quality court-appointed third-party receivership services for financial institutions and secured lenders. During his career he has completed over \$500 million in project financing and investment transactions.” (March 2014 v. of Business Plan, at FS 02622; March 2015 v. of Business Plan, at FS 03239 – 40.)</p>		
4/2/13	<p>“Mike, We are preparing our response to the business plan writer’s request for info on the Regional Center /</p>	6/3/19	<ul style="list-style-type: none"> • Defendants actually lacked the capability and knowledge to raise \$75m. • Fleming had no experience with EB-5 lending prior to joining EB5IA. (Dziubla Testimony, 6/3/19 Hrg. Tr., p. 26.) • “This was our first direct project [in EB-5 lending].” (Dziubla Testimony, 6/3/19 Hrg. Tr., p. 38.)

	<p>Front Sight deal. In that regard, have you yet decided on your preferred corporate structure and ownership percentages? I.e., will you set up a special purpose vehicle [“SPV”] such as ‘Front Sight Development LLC’ as a NV limited liability corporation to be the borrower of the \$75m and thus the owner of the facilities to be built with the \$75m, and will Naish directly own 100% of that SPV? Or, will Front Sight Management Inc., which is long established and successful and which in turn is owned 100% by Naish, be the 100% parent of the SPV? Or do you have some other structure in mind? Thanks, Bob” (FS 01409 (emphases added).)</p>		<ul style="list-style-type: none"> • Besides the Front Sight Project and the single project at Baker & McKenzie in 1990, Dziubla had no experience in EB-5 lending. (Dziubla Testimony, 6/3/19 Hrg. Tr., Pg. 39.) • Defendants actually lacked the network they said they had to timely raise the \$75m. • Ethan Devine was tasked with creating such a network instead. (See Dziubla Email, 1/31/16, at FS 04355.)
9/14/13	<p>“Ownership of the project – given that the \$75m construction loan will be used to improve both the resort parcel and the firearms training parcel,” (FS 01486 (emphasis added).)</p>	6/3/19	<ul style="list-style-type: none"> • Defendants actually lacked the capability and knowledge to raise \$75m. • Fleming had no experience with EB-5 lending prior to joining EB5IA. (Dziubla Testimony, 6/3/19 Hrg. Tr., p. 26.) • “This was our first direct project [in EB-5 lending].” (Dziubla Testimony, 6/3/19 Hrg. Tr., p. 38.) • After taking a break, Dziubla changed his testimony a little, stating that besides the Front Sight Project and the single project at Baker & McKenzie in 1990, Dziubla had no experience in EB-5 lending. (Dziubla Testimony, 6/3/19 Hrg. Tr., Pg. 39.) • Defendants actually lacked the network they said they had to timely raise the

9/18/13	<p>“Given that the \$75m mortgage will be secured by both parcels, we’ll need to agree the key lease terms.” (FS 01492 (emphasis added).)</p>	6/3/19	<p>\$75m.</p> <ul style="list-style-type: none"> • Ethan Devine was tasked with creating such a network instead. (See Dziubla Email, 1/31/16, at FS 04355.) • Defendants actually lacked the capability and knowledge to raise \$75m. • Fleming had no experience with EB-5 lending prior to joining EB51A. (Dziubla Testimony, 6/3/19 Hrg. Tr., p. 26.) • “This was our first direct project [in EB-5 lending].” (Dziubla Testimony, 6/3/19 Hrg. Tr., p. 38.) • After taking a break, Dziubla changed his testimony a little, stating that besides the Front Sight Project and the single project at Baker & McKenzie in 1990, Dziubla had no experience in EB-5 lending. (Dziubla Testimony, 6/3/19 Hrg. Tr., Pg. 39.) • Defendants actually lacked the network they said they had to timely raise the \$75m. • Ethan Devine was tasked with creating such a network instead. (See Dziubla Email, 1/31/16, at FS 04355.)
10/3/13	<p>“With regard to that valuation element, given that FS had NOI of \$7.3m in 2012, if we apply an intensely conservative P/E multiplier of 7x to that, then the firearms business has a market valuation of \$50m. That \$50m coupled with the \$25m for the timeshare parcel, gives us an enterprise valuation of \$75m, which is equal to the EB5 loan we are raising, i.e. a 50% loan to value. That is very good for our marketing purposes.” (FS 01612.)</p>	6/3/19	<ul style="list-style-type: none"> • Defendants actually lacked the capability and knowledge to raise \$75m. • Fleming had no experience with EB-5 lending prior to joining EB51A. (Dziubla Testimony, 6/3/19 Hrg. Tr., p. 26.) • “This was our first direct project [in EB-5 lending].” (Dziubla Testimony, 6/3/19 Hrg. Tr., p. 38.) • After taking a break, Dziubla changed his testimony a little, stating that besides the Front Sight Project and the single project at Baker & McKenzie in 1990, Dziubla had no experience in EB-5 lending. (Dziubla Testimony, 6/3/19 Hrg. Tr., Pg. 39.) • Defendants actually lacked the network they said they had to timely raise the \$75m. • Ethan Devine was tasked with creating such a network instead. (See Dziubla Email, 1/31/16, at FS 04355.)
11/12/13	<p>“Per our t/c yesterday, here</p>	6/3/19	<ul style="list-style-type: none"> • Defendants actually lacked the capability and knowledge to raise \$75m.

	<p>is a description of the contemplated lease arrangement:</p> <p>1. We are establishing a new special purpose vehicle that will be called Las Vegas Development Fund LLC as a Nevada limited liability company (“SPV”). This SPV will be the entity that formally raises the \$75m of EB5 financing for the Front Sight expansion project. The SPV will raise the money primarily in China and then also in other foreign countries.</p> <p>...</p> <p>3. SPV will lend the \$75m of EB5 funds to the Developer”</p> <p>(FS 01848 – 49 (emphases added).)</p>		<ul style="list-style-type: none"> • Fleming had no experience with EB-5 lending prior to joining EB51A. (Dziubla Testimony, 6/3/19 Hrg. Tr., p. 26.) • “This was our first direct project [in EB-5 lending].” (Dziubla Testimony, 6/3/19 Hrg. Tr., p. 38.) • After taking a break, Dziubla changed his testimony a little, stating that besides the Front Sight Project and the single project at Baker & McKenzie in 1990, Dziubla had no experience in EB-5 lending. (Dziubla Testimony, 6/3/19 Hrg. Tr., Pg. 39.) • Defendants actually lacked the network they said they had to timely raise the \$75m. • Ethan Devine was tasked with creating such a network instead. (See Dziubla Email, 1/31/16, at FS 04355.)
11/18/13	<p>Flynn’s Economic Report that was submitted with the I-924 Petition to USCIS describes “the \$75m loan” in multiple places. (FS 01908, 1914 – 15, 1927.)</p>	6/3/19	<ul style="list-style-type: none"> • Defendants actually lacked the capability and knowledge to raise \$75m. • Fleming had no experience with EB-5 lending prior to joining EB51A. (Dziubla Testimony, 6/3/19 Hrg. Tr., p. 26.) • “This was our first direct project [in EB-5 lending].” (Dziubla Testimony, 6/3/19 Hrg. Tr., p. 38.) • After taking a break, Dziubla changed his testimony a little, stating that besides the Front Sight Project and the single project at Baker & McKenzie in 1990, Dziubla had no experience in EB-5 lending. (Dziubla Testimony, 6/3/19 Hrg. Tr., Pg. 39.) • Defendants actually lacked the network they said they had to timely raise the \$75m.

1/31/14	“We are working with our corporate / securities counsel on crafting the offering documents for the \$75m EB5 raise on Front Sight.” (FS 01877.)	6/3/19	<ul style="list-style-type: none"> • Ethan Devine was tasked with creating such a network instead. (See Dziubla Email, 1/31/16, at FS 04355.) • Defendants actually lacked the capability and knowledge to raise \$75m. • Fleming had no experience with EB-5 lending prior to joining EB51A. (Dziubla Testimony, 6/3/19 Hrg. Tr., p. 26.) • “This was our first direct project [in EB-5 lending].” (Dziubla Testimony, 6/3/19 Hrg. Tr., p. 38.) • After taking a break, Dziubla changed his testimony a little, stating that besides the Front Sight Project and the single project at Baker & McKenzie in 1990, Dziubla had no experience in EB-5 lending. (Dziubla Testimony, 6/3/19 Hrg. Tr., Pg. 39.) • Defendants actually lacked the network they said they had to timely raise the \$75m. • Ethan Devine was tasked with creating such a network instead. (See Dziubla Email, 1/31/16, at FS 04355.)
3/4/14	“Please find attached a draft of the USCIS-compliant business plan for the Front Sight Vacation Club development using \$75m of EB5 financing.” (FS 07007.)	6/3/19	<ul style="list-style-type: none"> • Defendants actually lacked the capability and knowledge to raise \$75m. • Fleming had no experience with EB-5 lending prior to joining EB51A. (Dziubla Testimony, 6/3/19 Hrg. Tr., p. 26.) • “This was our first direct project [in EB-5 lending].” (Dziubla Testimony, 6/3/19 Hrg. Tr., p. 38.) • After taking a break, Dziubla changed his testimony a little, stating that besides the Front Sight Project and the single project at Baker & McKenzie in 1990, Dziubla had no experience in EB-5 lending. (Dziubla Testimony, 6/3/19 Hrg. Tr., Pg. 39.) • Defendants actually lacked the network they said they had to timely raise the \$75m. • Ethan Devine was tasked with creating such a network instead. (See Dziubla Email, 1/31/16, at FS 04355.)
3/5/14	“Re the interest rate, as we discussed up in Oakland with you and Naish, based on our discussions with Celinka & Team we are comfortable going to the	6/3/19	<ul style="list-style-type: none"> • Defendants actually lacked the capability and knowledge to raise \$75m. • Fleming had no experience with EB-5 lending prior to joining EB51A. (Dziubla Testimony, 6/3/19 Hrg. Tr., p. 26.) • “This was our first direct project [in EB-5 lending].” (Dziubla Testimony, 6/3/19 Hrg. Tr., p. 38.)

<p>EB5 market to raise the \$75m that our SPV entity, Las Vegas Development Fund, will lend to Front Sight at a 6% rate.” (FS 07008 (emphasis added).)</p>	<p>EB5 market to raise the \$75m that our SPV entity, Las Vegas Development Fund, will lend to Front Sight at a 6% rate.” (FS 07008 (emphasis added).)</p>		<ul style="list-style-type: none"> • After taking a break, Dziubla changed his testimony a little, stating that besides the Front Sight Project and the single project at Baker & McKenzie in 1990, Dziubla had no experience in EB-5 lending. (Dziubla Testimony, 6/3/19 Hrg. Tr., Pg. 39.) • Defendants actually lacked the network they said they had to timely raise the \$75m. • Ethan Devine was tasked with creating such a network instead. (See Dziubla Email, 1/31/16, at FS 04355.)
<p>March 2014</p>	<p>[EB5IC’s Business Plan states:]</p> <p>“All of the investment capital for the initial project (\$75,000,000) will be raised through an EB-5 Investment Program, offered exclusively to international investors seeking to gain the benefits of the program.” (FS 02115, 02123 (emphasis added).)</p>	<p>6/3/19</p>	<ul style="list-style-type: none"> • Defendants actually lacked the capability and knowledge to raise \$75m. • Defendants never came close to \$75 million, only lending \$6.375 million. (Dziubla, 6/3/19 Hrg. Tr., p. 157.) • Fleming had no experience with EB-5 lending prior to joining EB5IA. (Dziubla Testimony, 6/3/19 Hrg. Tr., p. 26.) • “This was our first direct project [in EB-5 lending].” (Dziubla Testimony, 6/3/19 Hrg. Tr., p. 38.) • After taking a break, Dziubla changed his testimony a little, stating that besides the single project at Baker & McKenzie in 1990, Dziubla had no experience in EB-5 lending. (Dziubla Testimony, 6/3/19 Hrg. Tr., Pg. 39.) • Defendants actually lacked the network they said they had to timely raise the \$75m. • Ethan Devine was tasked with creating such a network instead. (See Dziubla Email, 1/31/16, at FS 04355.) • In October 2015, Defendants hired Williams Global Law, PLLC to attempt to develop a network in China and Brazil, and among university students in California and Nevada. (Exhibit 46 to Evid. Hrg., p. 169.)
<p>March 2014</p>	<p>[LVDF Business Plan]</p> <p>“Las Vegas Development Fund, LLC (the ‘Company’ or ‘LVDF’) is a limited liability company created for the purposes of making a \$75,000,000 loan (the ‘Loan’) to Front Sight</p>	<p>6/3/19</p>	<ul style="list-style-type: none"> • Defendants actually lacked the capability and knowledge to raise \$75m. • Defendants never came close to \$75 million, only lending \$6.375 million. (Dziubla, 6/3/19 Hrg. Tr., p. 157.) • Fleming had no experience with EB-5 lending prior to joining EB5IA. (Dziubla Testimony, 6/3/19 Hrg. Tr., p. 26.) • “This was our first direct project [in EB-5 lending].” (Dziubla Testimony, 6/3/19 Hrg. Tr., p. 38.) • After taking a break, Dziubla changed his testimony a little, stating that besides the single project at Baker & McKenzie in 1990, Dziubla had no

<p>March 2014</p>	<p>Management, Inc. ('FSM') for the construction of the Front Sight Resort & Vacation Club (the 'Project' or "FSRVC"), an expansion of the Front Sight Firearms Training Institute ('SFTI'), located in Pahrump, Nevada.” (FS 02561 (emphasis added).) [LVDF Business Plan]</p> <p>“The Project will require construction and development financing of <u>\$75 million</u> to fund its expansion plan as outlined in this business plan. <u>This amount will be provided by EB-5 funds via the loan from LVDF.</u>”</p>	<p>6/3/19</p>	<p>experience in EB-5 lending. (Dziubla Testimony, 6/3/19 Hrg. Tr., Pg. 39.)</p> <ul style="list-style-type: none"> • Defendants actually lacked the network they said they had to timely raise the \$75m. • Ethan Devine was tasked with creating such a network instead. (See Dziubla Email, 1/31/16, at FS 04355.) • In October 2015, Defendants hired Williams Global Law, PLLC to attempt to develop a network in China and Brazil, and among university students in California and Nevada. (Exhibit 46 to Evid. Hrg., p. 169.)
<p>March 2014</p>	<p>[LVDF Business Plan]</p> <p>“The Project will require construction and development financing of <u>\$75 million</u> to fund its expansion plan as outlined in this business plan. <u>This amount will be provided by EB-5 funds via the loan from LVDF.</u>”</p>	<p>6/3/19</p>	<ul style="list-style-type: none"> • Defendants actually lacked the capability and knowledge to raise \$75m. • Defendants never came close to \$75 million, only lending \$6.375 million. (Dziubla, 6/3/19 Hrg. Tr., p. 157.) • Fleming had no experience with EB-5 lending prior to joining EB51A. (Dziubla Testimony, 6/3/19 Hrg. Tr., p. 26.) • “This was our first direct project [in EB-5 lending].” (Dziubla Testimony, 6/3/19 Hrg. Tr., p. 38.) • After taking a break, Dziubla changed his testimony a little, stating that besides the single project at Baker & McKenzie in 1990, Dziubla had no experience in EB-5 lending. (Dziubla Testimony, 6/3/19 Hrg. Tr., Pg. 39.) • Defendants actually lacked the network they said they had to timely raise the \$75m. • Ethan Devine was tasked with creating such a network instead. (See Dziubla Email, 1/31/16, at FS 04355.) • In October 2015, Defendants hired Williams Global Law, PLLC to attempt to develop a network in China and Brazil, and among university students in California and Nevada. (Exhibit 46 to Evid. Hrg., p. 169.)
<p>March 2014</p>	<p>“The <u>total cost</u> of expanding FSFTI and also developing and launching the FSRVC is anticipated to be \$75,000,000, which will be sourced from EB-5 investors and then lent to</p>	<p>6/3/19</p>	<ul style="list-style-type: none"> • Defendants claimed they could raise the total cost of Front Sight’s expansion. In reality, Defendants actually lacked the capability and knowledge to raise \$75m. • Defendants never came close to \$75 million, only lending \$6.375 million. (Dziubla, 6/3/19 Hrg. Tr., p. 157.) • Fleming had no experience with EB-5 lending prior to joining EB51A. (Dziubla Testimony, 6/3/19 Hrg. Tr., p. 26.) • “This was our first direct project [in EB-5 lending].” (Dziubla Testimony,

	<p>the Project as a secured loan.” (FS 02631.)</p>		<p>6/3/19 Hrg. Tr., p. 38.)</p> <ul style="list-style-type: none"> • After taking a break, Dziubla changed his testimony a little, stating that besides the single project at Baker & McKenzie in 1990, Dziubla had no experience in EB-5 lending. (Dziubla Testimony, 6/3/19 Hrg. Tr., Pg. 39.) • Defendants actually lacked the network they said they had to timely raise the \$75m. • Ethan Devine was tasked with creating such a network instead. (See Dziubla Email, 1/31/16, at FS 04355.) • In October 2015, Defendants hired Williams Global Law, PLLC to attempt to develop a network in China and Brazil, and among university students in California and Nevada. (Exhibit 46 to Evid. Hrg., p. 169.)
<p>March 2014</p>	<p>[LVDF Business Plan]</p> <p>“General Assumptions The following is an outline of the general financial assumptions upon which the financial plan of FSRVC is based: 1. The Company will raise the full \$75 million of needed funds in form of EB-5 capital” (FS 02636 (emphasis added).)</p>	<p>6/3/19</p>	<ul style="list-style-type: none"> • Defendants actually lacked the capability and knowledge to raise \$75m. • Defendants never came close to \$75 million, only lending \$6.375 million. (Dziubla, 6/3/19 Hrg. Tr., p. 157.) • Fleming had no experience with EB-5 lending prior to joining EB51A. (Dziubla Testimony, 6/3/19 Hrg. Tr., p. 26.) • “This was our first direct project [in EB-5 lending].” (Dziubla Testimony, 6/3/19 Hrg. Tr., p. 38.) • After taking a break, Dziubla changed his testimony a little, stating that besides the single project at Baker & McKenzie in 1990, Dziubla had no experience in EB-5 lending. (Dziubla Testimony, 6/3/19 Hrg. Tr., Pg. 39.) • Defendants actually lacked the network they said they had to timely raise the \$75m. • Ethan Devine was tasked with creating such a network instead. (See Dziubla Email, 1/31/16, at FS 04355.) • In October 2015, Defendants hired Williams Global Law, PLLC to attempt to develop a network in China and Brazil, and among university students in California and Nevada. (Exhibit 46 to Evid. Hrg., p. 169.)
<p>March 2014</p>	<p>[LVDF Business Plan]</p> <p>“Detailed Assumptions for Financial Pro Forma Statements The following is a more</p>	<p>6/3/19</p>	<ul style="list-style-type: none"> • Defendants actually lacked the capability and knowledge to raise \$75m. • Defendants never came close to \$75 million, only lending \$6.375 million. (Dziubla, 6/3/19 Hrg. Tr., p. 157.) • Fleming had no experience with EB-5 lending prior to joining EB51A. (Dziubla Testimony, 6/3/19 Hrg. Tr., p. 26.) • “This was our first direct project [in EB-5 lending].” (Dziubla Testimony,

	<p>detailed outline of the key financial assumptions upon which the financial proforma statements in this business plan are based:</p> <ul style="list-style-type: none"> • It is assumed that the Company will raise \$75,000,000 as EB-5 capital from 150 Investors” (FS 02637 (emphasis added).) 		<p>6/3/19 Hrg. Tr., p. 38.)</p> <ul style="list-style-type: none"> • After taking a break, Dziubla changed his testimony a little, stating that besides the single project at Baker & McKenzie in 1990, Dziubla had no experience in EB-5 lending. (Dziubla Testimony, 6/3/19 Hrg. Tr., Pg. 39.) • Defendants actually lacked the network they said they had to timely raise the \$75m. • Ethan Devine was tasked with creating such a network instead. (See Dziubla Email, 1/31/16, at FS 04355.) • In October 2015, Defendants hired Williams Global Law, PLLC to attempt to develop a network in China and Brazil, and among university students in California and Nevada. (Exhibit 46 to Evid. Hrg., p. 169.)
<p>4/28/14</p>	<p>“Thanks to your assistance, Senator Heller kindly provided a letter of support for Front Sight as per the attached in connection with a \$75 million expansion of the Front Sight facility in Pahrump, NV.” (FS 01887.)</p>	<p>6/3/19</p>	<ul style="list-style-type: none"> • Defendants actually lacked the capability and knowledge to raise \$75m. • Fleming had no experience with EB-5 lending prior to joining EB51A. (Dziubla Testimony, 6/3/19 Hrg. Tr., p. 26.) • “This was our first direct project [in EB-5 lending].” (Dziubla Testimony, 6/3/19 Hrg. Tr., p. 38.) • After taking a break, Dziubla changed his testimony a little, stating that besides the Front Sight Project and the single project at Baker & McKenzie in 1990, Dziubla had no experience in EB-5 lending. (Dziubla Testimony, 6/3/19 Hrg. Tr., Pg. 39.) • Defendants actually lacked the network they said they had to timely raise the \$75m. • Ethan Devine was tasked with creating such a network instead. (See Dziubla Email, 1/31/16, at FS 04355.)
<p>6/29/14</p>	<p>“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 to the</p>	<p>2/21/2019 (Date of Expert Witness Holmes’s Report)</p>	<ul style="list-style-type: none"> • Defendants actually lacked the capability and knowledge to raise \$25m, let alone \$75m. • Defendants never came close to \$75 million, only lending \$6.375 million. (Dziubla, 6/3/19 Hrg. Tr., p. 157.) • Fleming had no experience with EB-5 lending prior to joining EB51A. (Dziubla Testimony, 6/3/19 Hrg. Tr., p. 26.) • “This was our first direct project [in EB-5 lending].” (Dziubla Testimony, 6/3/19 Hrg. Tr., p. 38.) • After taking a break, Dziubla changed his testimony a little, stating that besides the single project at Baker & McKenzie in 1990, Dziubla had no

	<p>project (at the 75% level, i.e. \$18.75m, as discussed) <u>within 4 – 5 months.</u>” (FS 00036.)</p>		<p>experience in EB-5 lending. (Dziubla Testimony, 6/3/19 Hrg. Tr., Pg. 39.)</p> <ul style="list-style-type: none"> • Defendants actually lacked the network they said they had to timely raise the \$75m. • Ethan Devine was tasked with creating such a network instead. (See Dziubla Email, 1/31/16, at FS 04355.) • In October 2015, Defendants hired Williams Global Law, PLLC to attempt to develop a network in China and Brazil, and among university students in California and Nevada. (Exhibit 46 to Evid. Hrg., p. 169.) • Regarding the 4-5 month timeline Defendants represented applied: <ul style="list-style-type: none"> ○ “This assurance that it would take only 4 to 5 months to raise \$25,000,000 in EB-5 financing against overstates the ability of a new regional center to raise EB-5 financing.” Expert Witness Report of Catherine DeBono Holmes, Esq., Pg. 2, ¶ 6.
<p>8/22/14</p>	<p>“<i>Sinowel request</i>: Sinowel has asked that we provide them with a valuation of Front Sight as an ongoing business concern, since the <u>\$75m they will be raising from their clients</u> will be used to build the timeshare resort and also improve the entire 550 acre property and business.” (FS 02811.)</p>	<p>6/3/19</p>	<ul style="list-style-type: none"> • Defendants actually lacked the capability and knowledge to raise \$75m. • Defendants never came close to \$75 million, only lending \$6.375 million. (Dziubla, 6/3/19 Hrg. Tr., p. 157.) • Fleming had no experience with EB-5 lending prior to joining EB51A. (Dziubla Testimony, 6/3/19 Hrg. Tr., p. 26.) • “This was our first direct project [in EB-5 lending].” (Dziubla Testimony, 6/3/19 Hrg. Tr., p. 38.) • After taking a break, Dziubla changed his testimony a little, stating that besides the single project at Baker & McKenzie in 1990, Dziubla had no experience in EB-5 lending. (Dziubla Testimony, 6/3/19 Hrg. Tr., Pg. 39.) • Defendants actually lacked the network they said they had to timely raise the \$75m. • Ethan Devine was tasked with creating such a network instead. (See Dziubla Email, 1/31/16, at FS 04355.) • In October 2015, Defendants hired Williams Global Law, PLLC to attempt to develop a network in China and Brazil, and among university students in California and Nevada. (Exhibit 46 to Evid. Hrg., p. 169.)
<p>11/14/14</p>	<p>“We have over 1,800 jobs and a \$75m direct infusion of new money into the Nye County economy that are waiting on USCIS approval.” (FS 02985)</p>	<p>6/3/19</p>	<ul style="list-style-type: none"> • Defendants actually lacked the capability and knowledge to raise \$75m. • Defendants never came close to \$75 million, only lending \$6.375 million. (Dziubla, 6/3/19 Hrg. Tr., p. 157.) • Fleming had no experience with EB-5 lending prior to joining EB51A. (Dziubla Testimony, 6/3/19 Hrg. Tr., p. 26.) • “This was our first direct project [in EB-5 lending].” (Dziubla Testimony,

	(emphasis added).		<p>6/3/19 Hrg. Tr., p. 38.)</p> <ul style="list-style-type: none"> • After taking a break, Dziubla changed his testimony a little, stating that besides the Front Sight Project and the single project at Baker & McKenzie in 1990, Dziubla had no experience in EB-5 lending. (Dziubla Testimony, 6/3/19 Hrg. Tr., Pg. 39.) • Defendants actually lacked the network they said they had to timely raise the \$75m. • Ethan Devine was tasked with creating such a network instead. (See Dziubla Email, 1/31/16, at FS 04355.) • In October 2015, Defendants hired Williams Global Law, PLLC to attempt to develop a network in China and Brazil, and among university students in California and Nevada. (Exhibit 46 to Evid. Hrg., p. 169.)
2014	<p>[LVDF states in the PPM:]</p> <p>“Confidential Private Placement Memorandum Las Vegas Development Fund, LLC US \$75,000,000” (FS 02258.)</p> <p>“We are a special purpose entity that was organized for the sole purpose of offering the Interests and making a loan in minimum the amount of \$25,000,000 and in the maximum amount of \$75,000,000 (the ‘Loan’) to Front Sight Management LLC, a Nevada limited liability company (the ‘Borrower’).” (FS 02305 (emphasis added).)</p>	6/3/19	<ul style="list-style-type: none"> • Defendants actually lacked the capability and knowledge to raise \$25m or \$75m. • Defendants never came close to \$75 million, only lending \$6.375 million. (Dziubla, 6/3/19 Hrg. Tr., p. 157.) • Fleming had no experience with EB-5 lending prior to joining EB5IA. (Dziubla Testimony, 6/3/19 Hrg. Tr., p. 26.) • “This was our first direct project [in EB-5 lending].” (Dziubla Testimony, 6/3/19 Hrg. Tr., p. 38.) • After taking a break, Dziubla changed his testimony a little, stating that besides the Front Sight Project and the single project at Baker & McKenzie in 1990, Dziubla had no experience in EB-5 lending. (Dziubla Testimony, 6/3/19 Hrg. Tr., Pg. 39.) • Defendants actually lacked the network they said they had to timely raise the \$75m. • Ethan Devine was tasked with creating such a network instead. (See Dziubla Email, 1/31/16, at FS 04355.) • In October 2015, Defendants hired Williams Global Law, PLLC to attempt to develop a network in China and Brazil, and among university students in California and Nevada. (Exhibit 46 to Evid. Hrg., p. 169.)
1/23/15	[EB5IC letter to USCIS]	6/3/19	<ul style="list-style-type: none"> • Defendants actually lacked the capability and knowledge to raise \$75m. • Defendants never came close to \$75 million, only lending \$6.375 million.

	<p>“Front Sight therefore has engaged the RC to raise \$75m to fund the development of the Front Sight Resort & Vacation Club (“EBS Project”) and related facilities.</p> <p>...</p> <p>The Regional Center and its dedicated marketing agents in China and elsewhere around the world are solely dependent on the approval of the Regional Center and the Front Sight exemplar project in order to provide the \$75m construction loan to Front Sight.” (FS 03006 – 07 (emphases added).)</p>		<p>(Dziubla, 6/3/19 Hrg. Tr., p. 157.)</p> <ul style="list-style-type: none"> • Fleming had no experience with EB-5 lending prior to joining EB51A. (Dziubla Testimony, 6/3/19 Hrg. Tr., p. 26.) • “This was our first direct project [in EB-5 lending].” (Dziubla Testimony, 6/3/19 Hrg. Tr., p. 38.) • After taking a break, Dziubla changed his testimony a little, stating that besides the Front Sight Project and the single project at Baker & McKenzie in 1990, Dziubla had no experience in EB-5 lending. (Dziubla Testimony, 6/3/19 Hrg. Tr., Pg. 39.) • Defendants actually lacked the network they said they had to timely raise the \$75m. • Ethan Devine was tasked with creating such a network instead. (See Dziubla Email, 1/31/16, at FS 04355.) • In October 2015, Defendants hired Williams Global Law, PLLC to attempt to develop a network in China and Brazil, and among university students in California and Nevada. (Exhibit 46 to Evid. Hrg., p. 169.)
<p>March 2015</p>	<p>[March 2015 version of the Business Plan]</p> <p>“Investor Program Summary</p> <p>All of the investment capital for the initial project (\$75,000,000) will be raised through an EB-5 Investment Program, offered exclusively to international investors seeking to gain the benefits of the program.</p>	<p>6/3/19</p>	<ul style="list-style-type: none"> • Defendants actually lacked the capability and knowledge to raise \$75m. • Defendants never came close to \$75 million, only lending \$6.375 million. (Dziubla, 6/3/19 Hrg. Tr., p. 157.) • Fleming had no experience with EB-5 lending prior to joining EB51A. (Dziubla Testimony, 6/3/19 Hrg. Tr., p. 26.) • “This was our first direct project [in EB-5 lending].” (Dziubla Testimony, 6/3/19 Hrg. Tr., p. 38.) • After taking a break, Dziubla changed his testimony a little, stating that besides the single project at Baker & McKenzie in 1990, Dziubla had no experience in EB-5 lending. (Dziubla Testimony, 6/3/19 Hrg. Tr., Pg. 39.) • Defendants actually lacked the network they said they had to timely raise the \$75m. • Ethan Devine was tasked with creating such a network instead. (See Dziubla Email, 1/31/16, at FS 04355.)

	<p>A total of up to 150 investors, with an investment of \$500,000 each, will be solicited through Las Vegas Development Fund, LLC, the entity that will finance the project.” (FS 03120)(emphasis added).</p> <p>[Attorney Matt Schulz’s Response to USCIS’s Request for Evidence]</p> <p>“I. Clarification whether the correct total of the project is \$75M or \$150M The correct total of the project is \$150M. \$75M will be funded with EB5 investor funds and the developer has already invested \$75M. The revised Sources & Use of Funds chart shows the correct \$150M total, as well as the developer’s two contributions of \$50M and \$25M.” (FS 03616.)</p>		<ul style="list-style-type: none"> • In October 2015, Defendants hired Williams Global Law, PLLC to attempt to develop a network in China and Brazil, and among university students in California and Nevada. (Exhibit 46 to Evid. Hrg., p. 169.)
<p>5/18/15</p>		<p>6/3/19</p>	<ul style="list-style-type: none"> • Defendants actually lacked the capability and knowledge to raise \$75m. • Defendants never came close to \$75 million, only lending \$6.375 million. (Dziubla, 6/3/19 Hrg. Tr., p. 157.) • Fleming had no experience with EB-5 lending prior to joining EB5IA. (Dziubla Testimony, 6/3/19 Hrg. Tr., p. 26.) • “This was our first direct project [in EB-5 lending].” (Dziubla Testimony, 6/3/19 Hrg. Tr., p. 38.) • After taking a break, Dziubla changed his testimony a little, stating that besides the Front Sight Project and the single project at Baker & McKenzie in 1990, Dziubla had no experience in EB-5 lending. (Dziubla Testimony, 6/3/19 Hrg. Tr., Pg. 39.) • Defendants actually lacked the network they said they had to timely raise the \$75m. • Ethan Devine was tasked with creating such a network instead. (See Dziubla Email, 1/31/16, at FS 04355.)
<p>6/30/15</p>	<p>[EB5IC Letter (Fleming) to Then-Senator Dean Heller]</p> <p>“On April 15· 2014, our company filed an 1-924 application for approval of our Regional Center with the USCIS. Our</p>	<p>6/3/19</p>	<ul style="list-style-type: none"> • Defendants actually lacked the capability and knowledge to raise \$75m. • Defendants never came close to \$75 million, only lending \$6.375 million. (Dziubla, 6/3/19 Hrg. Tr., p. 157.) • Fleming had no experience with EB-5 lending prior to joining EB5IA. (Dziubla Testimony, 6/3/19 Hrg. Tr., p. 26.) • “This was our first direct project [in EB-5 lending].” (Dziubla Testimony, 6/3/19 Hrg. Tr., p. 38.) • After taking a break, Dziubla changed his testimony a little, stating that

	<p>application also included detailed information on the exemplar investment project that we will be raising \$75,000,000 in foreign investor funds." (FS 03682 (emphasis added).)</p>		<p>besides the single project at Baker & McKenzie in 1990, Dziubla had no experience in EB-5 lending. (Dziubla Testimony, 6/3/19 Hrg. Tr., Pg. 39.)</p> <ul style="list-style-type: none"> • Defendants actually lacked the network they said they had to timely raise the \$75m. • Ethan Devine was tasked with creating such a network instead. (See Dziubla Email, 1/31/16, at FS 04355.) • In October 2015, Defendants hired Williams Global Law, PLLC to attempt to develop a network in China and Brazil, and among university students in California and Nevada. (Exhibit 46 to Evid. Hrg., p. 169.)
<p>7/27/15</p>	<p>"The proposal identifies the new commercial enterprise ("NCE") of the project as Las Vegas Development Fund, LLC, which was formed in the State of Nevada on February, 3, 2014. The project is located at PO Box 3003, 916 Southwood Blvd, Suite 1G in the City of Incline Village, Nevada. 150 immigrant investors will subscribe to the NCE as limited partners in exchange for capital contributions of \$500,000 each and an aggregate of \$75 million. The NCE will loan the \$75 million of EB-5 capital to a third-party entity, Front Sight Resort and Vacation Club and Front Sight Fire Arm Training Institute." (FS 00040 (Entire letter = FS 00038 – 43 (emphases added)).)</p>	<p>6/3/19</p>	<ul style="list-style-type: none"> • Defendants actually lacked the capability and knowledge to raise \$75m. • Defendants never came close to \$75 million, only lending \$6.375 million. (Dziubla, 6/3/19 Hrg. Tr., p. 157.) • Fleming had no experience with EB-5 lending prior to joining EB5IA. (Dziubla Testimony, 6/3/19 Hrg. Tr., p. 26.) • "This was our first direct project [in EB-5 lending]." (Dziubla Testimony, 6/3/19 Hrg. Tr., p. 38.) • After taking a break, Dziubla changed his testimony a little, stating that besides the single project at Baker & McKenzie in 1990, Dziubla had no experience in EB-5 lending. (Dziubla Testimony, 6/3/19 Hrg. Tr., Pg. 39.) • Defendants actually lacked the network they said they had to timely raise the \$75m. • Ethan Devine was tasked with creating such a network instead. (See Dziubla Email, 1/31/16, at FS 04355.) • In October 2015, Defendants hired Williams Global Law, PLLC to attempt to develop a network in China and Brazil, and among university students in California and Nevada. (Exhibit 46 to Evid. Hrg., p. 169.)

7/29/15	<p>“We look forward to working with you to resolve the issue of international marketing and travel costs as quickly as possible so that we can devote our efforts to actually raising the \$75m. Fortunately, we all agree on the key point, which is as Mike stated in his email: ‘We want it sold out ASAP.’” (FS 03702.)</p>	6/3/19	<ul style="list-style-type: none"> • Defendants actually lacked the capability and knowledge to raise \$75m. • Defendants never came close to \$75 million, only lending \$6.375 million. (Dziubla, 6/3/19 Hrg. Tr., p. 157.) • Fleming had no experience with EB-5 lending prior to joining EB51A. (Dziubla Testimony, 6/3/19 Hrg. Tr., p. 26.) • “This was our first direct project [in EB-5 lending].” (Dziubla Testimony, 6/3/19 Hrg. Tr., p. 38.) • After taking a break, Dziubla changed his testimony a little, stating that besides the single project at Baker & McKenzie in 1990, Dziubla had no experience in EB-5 lending. (Dziubla Testimony, 6/3/19 Hrg. Tr., Pg. 39.) • Defendants actually lacked the network they said they had to timely raise the \$75m. • Ethan Devine was tasked with creating such a network instead. (See Dziubla Email, 1/31/16, at FS 04355.) • In October 2015, Defendants hired Williams Global Law, PLLC to attempt to develop a network in China and Brazil, and among university students in California and Nevada. (Exhibit 46 to Evid. Hrg., p. 169.)
8/4/15	<p>“Therefore, as you and Naish are considering how specifically to deploy the \$75m that we are going to raise for Front Sight, please keep that in mind. If there were to be a material change, then the investors could have their green cards denied and all of us, most especially Front Sight, would become the target of endless litigation.” (FS 00072 (emphasis added).)</p>	6/3/19	<ul style="list-style-type: none"> • Defendants never came close to “the \$75 [million],” only lending \$6.375 million. (Dziubla, 6/3/19 Hrg. Tr., p. 157.) • Defendants actually lacked the capability and knowledge to raise \$75m. • Fleming had no experience with EB-5 lending prior to joining EB51A. (Dziubla Testimony, 6/3/19 Hrg. Tr., p. 26.) • “This was our first direct project [in EB-5 lending].” (Dziubla Testimony, 6/3/19 Hrg. Tr., p. 38.) • After taking a break, Dziubla changed his testimony a little, stating that besides the Front Sight Project and the single project at Baker & McKenzie in 1990, Dziubla had no experience in EB-5 lending. (Dziubla Testimony, 6/3/19 Hrg. Tr., Pg. 39.) • Defendants actually lacked the network they said they had to timely raise the \$75m. • Ethan Devine was tasked with creating such a network instead. (See Dziubla Email, 1/31/16, at FS 04355.) • Regarding Dziubla’s statement about “material change,” Plaintiff’s expert, Cathy Holmes stated: “...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

			<p>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.” (Expert Witness Report of Catherine DeBono Holmes, Esq., Pg. 5, ¶ 13.)</p>
8/11/15	<p>“Front Sight is the <u>ONLY EB5 project we are handling</u> and of course receives our full and diligent attention. Our goal is most assuredly to have the <u>minimum raise of \$25m (50 investors) subscribed by Thanksgiving.</u>” (FS 00044.)</p>	<p>Thanksgiving 2015 (regarding minimum raise); 2/21/19</p>	<ul style="list-style-type: none"> • Dziubla claims the regional center acted as a “rent a center” on at least one other project. (Dziubla, 6/3/19 Hrg. Tr., p. 45.) • Defendant EB51C, the regional center, has consistently advertised and continues to advertise for other project on its website. • Defendants never came close to the “minimum raise” of \$25 million, only lending \$6.375 million. (Dziubla, 6/3/19 Hrg. Tr., p. 157.) • Defendants failed to raise \$25m by Thanksgiving 2015. • Fleming had no experience with EB-5 lending prior to joining EB51A. (Dziubla Testimony, 6/3/19 Hrg. Tr., p. 26.) • “This was our first direct project [in EB-5 lending].” (Dziubla Testimony, 6/3/19 Hrg. Tr., p. 38.) • After taking a break, Dziubla changed his testimony a little, stating that besides the single project at Baker & McKenzie in 1990, Dziubla had no experience in EB-5 lending. (Dziubla Testimony, 6/3/19 Hrg. Tr., Pg. 39.) • Defendants actually lacked the network they said they had to timely raise the \$75m. • Ethan Devine was tasked with creating such a network instead. (See Dziubla Email, 1/31/16, at FS 04355.) • In October 2015, Defendants hired Williams Global Law, PLLC to attempt to develop a network in China and Brazil, and among university students in California and Nevada. (Exhibit 46 to Evid. Hrg., p. 169.) • “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.” Expert Witness Report of Catherine DeBono Holmes, Esq., Pg. 3, ¶ 7.
8/31/15	[From Fleming]	6/3/19, 9/5/19	<ul style="list-style-type: none"> • Defendants never came close to \$75 million, only lending \$6.375 million. (Dziubla, 6/3/19 Hrg. Tr., p. 157.)

	<p>“7. <u>When we have the first 50 investors</u> having gone through this process, we will fund from escrow into the New Commercial Enterprise, Las Vegas Development Fund and 75% of the escrowed funds (25% held back for the potential denial of investors I-526 conditional visa application). 8. LVDF will have executed loan documents with FSM and we will begin disbursing funds into the project.” (FS 07803.)</p>		<ul style="list-style-type: none"> • Defendants actually lacked the capability and knowledge to raise \$75m. • Fleming had no experience with EB-5 lending prior to joining EB51A. (Dziubla Testimony, 6/3/19 Hrg. Tr., p. 26.) • “This was our first direct project [in EB-5 lending].” (Dziubla Testimony, 6/3/19 Hrg. Tr., p. 38.) • After taking a break, Dziubla changed his testimony a little, stating that besides the Front Sight Project and the single project at Baker & McKenzie in 1990, Dziubla had no experience in EB-5 lending. (Dziubla Testimony, 6/3/19 Hrg. Tr., Pg. 39.) • Defendants actually lacked the network they said they had to timely raise the \$75m. • Ethan Devine was tasked with creating such a network instead. (See Dziubla Email, 1/31/16, at FS 04355.) • In October 2015, Defendants hired Williams Global Law, PLLC to attempt to develop a network in China and Brazil, and among university students in California and Nevada. (Exhibit 46 to Evid. Hrg., p. 169.)
10/16/15	<p>“We certainly are aiming to achieve <u>the \$25 minimum raise</u> by 12/31, buy it may go to Jan. 15.” (FS 08064.)</p>	6/15/16	<ul style="list-style-type: none"> • Defendants never came close to \$75 million, only lending \$6.375 million. (Dziubla, 6/3/19 Hrg. Tr., p. 157.) • Expert Witness Catherine DeBono Holmes, Esq’s Report indicates that this statement grossly overstated the ability of the EB5IC Regional Center to raise \$25m by the dates promised. (See Expert Witness Report of Catherine DeBono Holmes, Esq., Pg. 2, ¶ 6.) • Defendants actually lacked the capability and knowledge to raise \$75m. • Fleming had no experience with EB-5 lending prior to joining EB51A. (Dziubla Testimony, 6/3/19 Hrg. Tr., p. 26.) • “This was our first direct project [in EB-5 lending].” (Dziubla Testimony, 6/3/19 Hrg. Tr., p. 38.) • After taking a break, Dziubla changed his testimony a little, stating that besides the Front Sight Project and the single project at Baker & McKenzie in 1990, Dziubla had no experience in EB-5 lending. (Dziubla Testimony, 6/3/19 Hrg. Tr., Pg. 39.) • Defendants actually lacked the network they said they had to timely raise the \$75m. • Ethan Devine was tasked with creating such a network instead. (See Dziubla Email, 1/31/16, at FS 04355.)

10/19/15	<p>“This methodology mandates that we, as the lender and the sponsor of the EB5 loan / project, provide to each investor documents that prove the \$75m was spent on the project as described in the USCIS-approved business plan.” (FS 07823.)</p>	6/3/19	<ul style="list-style-type: none"> • In October 2015, Defendants hired Williams Global Law, PLLC to attempt to develop a network in China and Brazil, and among university students in California and Nevada. (Exhibit 46 to Evid. Hrg., p. 169.) • Defendants actually lacked the capability and knowledge to raise \$75m. • Fleming had no experience with EB-5 lending prior to joining EB5IA. (Dziubla Testimony, 6/3/19 Hrg. Tr., p. 26.) • “This was our first direct project [in EB-5 lending].” (Dziubla Testimony, 6/3/19 Hrg. Tr., p. 38.) • After taking a break, Dziubla changed his testimony a little, stating that besides the single project at Baker & McKenzie in 1990, Dziubla had no experience in EB-5 lending. (Dziubla Testimony, 6/3/19 Hrg. Tr., Pg. 39.) • Defendants never came close to \$75 million, only lending \$6.375 million. (Dziubla, 6/3/19 Hrg. Tr., p. 157.)
12/16/15	<p>“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.” (FS 08142.)</p>	2/21/19 (Holmes’s Expert Report)	<ul style="list-style-type: none"> • “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.” (Expert Witness Report of Catherine DeBono Holmes, Esq., Pg. 3, ¶ 8 (emphasis added).)
12/16/15	<p>“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</p>	2/21/19 (Holmes’s Expert Report)	<ul style="list-style-type: none"> • “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.” (Expert Witness Report of Catherine DeBono Holmes, Esq., Pg. 3, ¶ 9.) • Dziubla was promising to <i>disburse</i>, not just raise.

1/4/16	<p><u>construction loan proceeds to you, but a more realistic date might be February 8.</u> (FS 08142.)</p>	9/5/19	<ul style="list-style-type: none"> • Defendants loaned \$6.375 million, although they raised an additional \$1.5 million but refused to disburse it, even though Front Sight was <u>not in default</u> for over a month after the money was ready to be disbursed. (Dziubla, 6/3/19 Hrg. Tr., pp. 156-57. • Defendants never even approached the “Minimum Raise” of \$25M.
<p>“Once we have the \$25m in escrow and the loan documents have been signed (presumably within the next few days), then we will disburse 75% of that to you, i.e. \$18.75m and retain the other 25% in escrow to cover any I-526 applications that are rejected by USCIS, which is quite unlikely given that we already have USCIS exemplar approval for the project.</p> <p>...</p> <p>We are pushing our agents hard to have 50 investors into escrow by February 29. Once we have the 50 investors into escrow with the <u>Minimum Raise achieved</u>, we will disburse the initial \$18.75m to you and then continue with the fundraising”</p> <p>(FS 0817 – 18)(emphasis added).</p>	<p>“Given that the current EB-5 legislation expires on September 30, 2016, at</p>	6/3/19	<ul style="list-style-type: none"> • Defendants actually lacked the capability and knowledge to raise \$75m. • Fleming had no experience with EB-5 lending prior to joining EB51A.

	<p>which time the minimum investment amount will most likely increase to \$800k, we highly anticipate that we will have raised the full \$75m by then." (FS 08172 (emphasis added).)</p>		<p>(Dziubla Testimony, 6/3/19 Hrg. Tr., p. 26.)</p> <ul style="list-style-type: none"> • "This was our first direct project [in EB-5 lending]." (Dziubla Testimony, 6/3/19 Hrg. Tr., p. 38.) • After taking a break, Dziubla changed his testimony a little, stating that besides the Front Sight Project and the single project at Baker & McKenzie in 1990, Dziubla had no experience in EB-5 lending. (Dziubla Testimony, 6/3/19 Hrg. Tr., Pg. 39.) • Defendants actually lacked the network they said they had to timely raise the \$75m. • Ethan Devine was tasked with creating such a network instead. (See Dziubla Email, 1/31/16, at FS 04355.) • In October 2015, Defendants hired Williams Global Law, PLLC to attempt to develop a network in China and Brazil, and among university students in California and Nevada. (Exhibit 46 to Evid. Hrg., p. 169.)
<p>1/27/16</p>	<p>"5. New agents and a direct hire - We, like you, are frustrated and annoyed with the slow sales pace. Therefore, we are in the process of signing up four new agents and are interviewing tomorrow a potential new hire for our company to act as a dedicated sales manager.</p> <p>Details:</p> <p>a. One agent is native Chinese living in Washington state. He makes his living by sourcing direct investors for EB5 projects that he has vetted and approved. We worked with him on the San Diego Hyatt project, where he sourced</p>	<p>2/21/19 (Holmes's Expert Report)</p>	<ul style="list-style-type: none"> • "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." Expert Witness Report of Catherine DeBono Holmes, Esq., Pgs. 3-4, ¶ 10 (emphasis in original; bold emphasis added).

	<p>over 10 investors prior to Hyatt pulling the flag.</p> <p>b. The second agent is native Chinese living in the Chicago area, as she married an American man recently and accompanied him to the Chicago area, where she just finished her MBA degree. She was a very successful sales manager for several companies selling high-end dental and medical devices and implants in northeast China. Has an extensive network of wealthy medical professionals there that she will develop for EB5.</p> <p>c. The third agent is an American chap living in China and who has a highly placed and well connected Chinese partner. He was introduced thanks to your friend Fely, whom we met with when she was in San Diego last week. He and his partner have sourced over \$80m of EB5 money for various projects.” (FS 08180.)</p>		
3/1/16	[Email from Meacher to Dziubla]	2/21/19 (Holmes’s Expert Report)	<ul style="list-style-type: none"> • Meacher’s response to all of these misrepresentations was “At the risk of pointing out the obvious, all of the above is blue sky, hope or misrepresentation. The net result is ONE investor with money in escrow and

	<p>“Below are random excerpts from your communications with us since August.</p> <p>...</p> <ul style="list-style-type: none"> · August 2015—“our goal is to have the first 50 investors by Thanksgiving” · August 2015—“we have made contacts in Mexico, UAE, Russia and Ukraine” · September 2015—“Bob is going to Russia, Ukraine, Kazakhstan, London and Zurich in October”. Did this happen? · September 2015—“Jon is going to Mexico Brazil, Argentina in October”. Did this happen? · September 2015—First investor is secured from India · September 2015—“Agents believe the first \$25 million will be raised by 12-31 and the balance by 6-30-16” · October 2015—“Agents in Russia have 3 investors and have lined up 10 or more in the pipeline” 		<p>three possible investors. Something is terribly wrong.” (3/1/16 e-mail, Exhibit 16, p. 0066.)</p> <ul style="list-style-type: none"> • “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 finding amounts that were purportedly intended to be used for marketing the offering.” Expert Witness Report of Catherine DeBono Holmes, Esq., Pg. 4, ¶ 11.
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- October 2015—“Sinowel has 5 investors lined up”
- October 2015—“Second China agent is planning on 50 investors by year end”
- October 2015—“Third China agent anticipates 20 investors by year end”
- October 2015—“Will do road show in Brazil”. Did this happen?
- October 2015—“Aiming to achieve \$25 million by 12-31 but it might go to January 15”
- October 2015—“Sinowel has 3-4 investors ready to sign up”
- November 2015—“Believe Sinowel has 5-6 in process” · November 2015—“Planning a seminar in Brail for December 8-9.” Did this happen?
- November 2015—“Russia has 3 investors in process” · November 2015—“Sinowel is getting its act together and has a dedicated EB- 5 marketing team”

	<ul style="list-style-type: none"> · November 2015—“Many investors in the pipeline for the Front Sight deal” · December 2015—“May be able to achieve the minimum \$25 million raise by 1-31” · December 2015—“Various agents report a total of 20 investors in the pipeline” · January 2016—“5-10 investors in escrow by February 8th with an additional 20-30 in pipeline” · January 2016—“Sinowel continues to expand its team” · January 2016—“We await reports from agents but expect it to be more than the 21 previously reported” · January 2016—“The pipeline is now at 26 investors and Sinowel has 15 investors” · February 2016—“Shanghai agent has 2 high potential clients and 11 potential clients” 		
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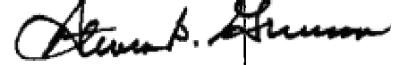
	<ul style="list-style-type: none"> · February 2016—“Jay Li going to China on 3-1-16 for 60 days to revamp and expand his EB-5 team” · February 2016—“2 Indian investors committed to Front Sight” · February 2016—“Swiss investor decided to invest” 		
9/22/16	<p>“We will release the funds pursuant to the signed loan agreement.” (FS 04689.)</p>	9/5/19	<ul style="list-style-type: none"> • Par. 3.1 of the CLA requires LVDF to notify Front Sight “within five (5) business days every time Lender has received a new EB-5 Investor’s funds into the Escrow Account.” (Exhibit 33, p. 201.) • Dziubla admitted to holding about \$1.5 million dollars in escrow instead of providing it to Plaintiff so that Plaintiff can move construction forward – even though Defendants had that financing at least a month before Defendants alleged <u>any</u> type of breach by Plaintiff. (Dziubla, 6/3/19 Hrg. Tr., pp. 156-57.) • Dziubla said no draw request provided; he had never required that before. (Dziubla, 6/3/19 Hrg. Tr., p. 157.)
1/8/18	<p>“ . . . I wish to point out that Front Sight seems to have a misconception, namely that the \$8k per investor success fee that we thought had been agreed, is <u>not</u> a marketing fee of any sort: as I clearly explained in my email of May 12, 2016, <u>we needed \$8k per month simply to keep alive the Regional Center that is</u></p>		<ul style="list-style-type: none"> • Dziubla knew that Front Sight understood the \$8,000.00 to be payment as a “marketing subsidy” as early as Jun. 17, 2016. (FS 04631. <i>See also</i> FS 04635 – 36; 04646; 04955 – 56; 05086; 05527.) • On October 24, 2016, Dziubla sent a draft agreement, for Dr. Piazza’s signature, expressly describing the \$8,000.00 payments as “monthly marketing fee[s].” (FS 04769 – 70.) • Dziubla himself described the \$8,000.00 payments as “marketing fee[s].” (<i>See</i> FS 04955 – 56; 04962 – 63; 05057; 05082.)

2/2/18	<p>sponsoring the Front Sight project.” (FS 05609.)</p> <p>“To EB5 Impact Advisors - \$8k per month so long as at least one investor’s funds have been disbursed to the project during that particular month.” (FS 05625.)</p>	6/3/19	<ul style="list-style-type: none"> • Between the end of 2017 and when it was dissolved in 2018, EB5IA was not doing fundraising for the Project. See Dziubla Testimony, Jun. 3, 2019, Pg. 32, Ls. 1 – 15. • “[W]e will have funded three investors during February, Front Sight has agreed to pay . . . \$8k for each investor to EB5 Impact Advisors.” (FS. 05660 (dated Feb. 25, 2018).) • EB5IA received \$24,000.00 via wire transfer on March 2, 2018. See Renewed Motion for Accounting, at Exhibit 1, pg. 11.
5/12/18	<p>“ . . . I am pleased to say that Linda Stanwood. . . has joined our company as Senior Vice President. . . .” (Exhibit 1 to Evidentiary Hearing, Bates No. 0001.)</p>		<ul style="list-style-type: none"> • She had no direct involvement in anything related to EB-5 funding. (Dziubla, 6/3/19 Hrg. Tr., p. 143.) • She listened to [Dziubla] discuss the transaction and was a sounding board . . . like all good wives are.” (Dziubla, 6/3/19 Hrg. Tr., p. 143.)
5/12/18	<p>“Linda has been working informally with us for several years. . . .” (Exhibit 1 to Evidentiary Hearing, Bates No. 0001.)</p>	6/3/19	<ul style="list-style-type: none"> • She had no direct involvement in anything related to EB-5 funding. (Dziubla, 6/3/19 Hrg. Tr., p. 143.) • She listened to [Dziubla] discuss the transaction and was a sounding board . . . like all good wives are.” (Dziubla, 6/3/19 Hrg. Tr., p. 143.)
5/12/18	<p>“Linda . . . is quite familiar with the EB5 business.” (Exhibit 1 to Evidentiary Hearing, Bates No. 0001.)</p>	6/3/19	<ul style="list-style-type: none"> • “She’s been married to [Robert Dziubla] for 36 years, so she’s gotten a lot of kitchen table talk education.” (Dziubla, 6/3/19 Hrg. Tr., p. 142, 143.) • Ms. Stanwood has never been a Senior Vice President of a regional center before. (Dziubla, 6/3/19 Hrg. Tr., pp 142-43.) • Ms. Stanwood has no direct experience with EB-5 funding. (Dziubla, 6/3/19 Hrg. Tr., p. 143.) • Stanwood has no experience with EB-5 lending. (Stanwood, 7/23/19 Hrg. Tr., p. 17.) • Stanwood has “discussions about his EB5 business on a very informal basis over the years.” (Stanwood, 7/23/19 Hrg. Tr., p. 23.)
5/12/18	<p>“She [Linda Stanwood] has been working with us on a formal and full time basis since January 1. . . .”</p>		<ul style="list-style-type: none"> • Ms. Stanwood has no direct experience with EB-5 funding. (Dziubla, 6/3/19 Hrg. Tr., p. 143.) • Stanwood has no experience in EB5 fundraising. Stanwood, 7/23/19 Hrg. Tr., p. 17.)

	(Exhibit I to Evidentiary Hearing, Bates No. 0001.)	<ul style="list-style-type: none"> • Stanwood did not know what entity she was SVP of, although later after prompting she thought it was the lender, LVDF. (Stanwood, 7/23/19 Hrg. Tr., pp. 19, 26-27.) • Stanwood has “discussions about his EB5 business on a very informal basis over the years.” (Stanwood, 7/23/19 Hrg. Tr., p. 23.) • Stanwood does not remember reviewing any specific documents, although it is “possible” she did. (Stanwood, 7/23/19 Hrg. Tr., p. 24.) • Stanwood had “informal discussions” with Dziubla and could not identify a single document she reviewed. (Stanwood, 7/23/19 Hrg. Tr., p. 24.) • Stanwood could not identify a single thing she did between January 1 and May 18, 2018 except for “informal discussions.” (Stanwood, 7/23/19 Hrg. Tr., p. 26.)
Various	Representations in this litigation re: breaches	<ul style="list-style-type: none"> • See Opposition to Motion for Appointment of Receiver and Motion to Dissolve TRO

EXHIBIT 2

EXHIBIT 2



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Las Vegas, Nevada 89117
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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

**ORDER GRANTING TEMPORARY
RESTRAINING ORDER AND
EXPUNGING NOTICE OF DEFAULT**

NOV 20 2018

ORDER

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3 This matter having come before the Court, on October 31, 2018 at 9:30 a.m. on
4 Plaintiff's Motion for Temporary Restraining Order and Preliminary Injunction, John P.
5 Aldrich, Esq. appearing on behalf of Plaintiff and Kathryn Holbert, Esq., appearing on behalf
6 of all Defendants except Chicago Title, which Defendants opposed the Motion, and with Marni
7 Rubin-Watkins appearing telephonically on behalf of Defendant Chicago Title, which did not
8 oppose the Motion, the Court having reviewed the pleadings on file herein, having heard oral
9 argument by the parties, and good cause appearing therefore,

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

12 **IT IS FURTHER ORDERED** that a temporary restraining order is hereby entered
13 enjoining Defendants from proceeding with the foreclosure process and/or selling the subject
14 property under the Notice of Breach and Default and of Election to Sell Under Deed of Trust
15 which was recorded with the Nye County Recorder's Office on September 11, 2018.

16 **IT IS FURTHER ORDERED** that the Notice of Breach and Default and of Election to
17 Sell Under Deed of Trust recorded with the Nye County Recorder's Office on September 11,
18 2018 is hereby expunged.

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

21 **IT IS FURTHER ORDERED** that the hearing on Plaintiff's Motion for Preliminary
22 Injunction is set for December 13, 2018 at 1:15 p.m. before this Court.

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1 **IT IS FURTHER ORDERED** that Plaintiff is required to post a bond in the amount of
2 \$100.00.

3 **IT IS SO ORDERED.**

4 DATED this 20 day of November, 2018.


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DISTRICT COURT JUDGE CT

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 Catherine Hernandez, Esq.
14 Nevada Bar No. 8410
15 7866 West Sahara Avenue
16 Las Vegas, Nevada 89117
17 Tel: (702) 853-5490
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19 *Attorneys for Plaintiff*

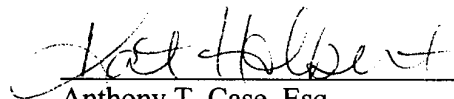
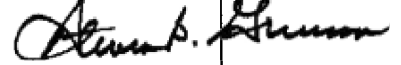
20 
21 Anthony T. Case, Esq.
22 Nevada Bar No. 6589
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DEVELOPMENT FUND LLC, EB5
IMPACT CAPITAL REGIONAL CENTER
LLC, EB5 IMPACT ADVISORS LLC,
ROBERT W. DZIUBLA, JON FLEMING
and LINDA STANWOOD*

EXHIBIT 3

EXHIBIT 3



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ORDR
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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

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.

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IT IS FURTHER ORDERED that Plaintiff is required to post a bond in the amount of \$100.00. Plaintiff need not post an additional \$100.00 bond; the prior bond is sufficient.

IT IS SO ORDERED.

DATED this 5 day of April, 2019.



DISTRICT COURT JUDGE *ce*

Respectfully submitted by:

Approved as to form and content:

ALDRICH LAW FIRM, LTD.

FARMER CASE & FEDOR


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Attorneys for Defendants

EXHIBIT 4

EXHIBIT 4



Our File: 8804

September 18, 2019

Front Sight Management, LLC
c/o Chris Abbott
44 Montgomery Street
Suite 3300
San Francisco, CA 94104

Dear Sirs:

Re: **US \$30,000,000 Loan**
1 Front Sight Road, Pahrump, Nevada ("Property")

We are pleased to inform you that, on the basis of the information and the documents supplied by you, Romspen Investment Corporation, (the "Lender") hereby submits to you this offer of financing ("Commitment") in connection with the property above mentioned and more fully described in Section 3 below.

This Commitment must be accepted by the Borrower and received by the Lender, together with any unpaid portion of the Standby Deposit as hereinafter set out, no later than three (3) business days following the date of this Commitment, failing which this Commitment shall become null and void without further notice. Borrower, Guarantor, and Lender agree to use good faith and commercially reasonable efforts to negotiate the Loan Documents and satisfy all applicable conditions precedent to any of their obligations set forth below.

1. **BORROWER**

Front Sight Management, LLC (the "**Borrower**"). The Loan Documents shall limit transfers of ownership of Borrower, and shall prohibit Borrower or Borrower's constituent owners from making any sale, transfer or pledge of the membership interests of Borrower without the written consent of Lender.

2. **GUARANTORS**

Ignatius Piazza ("Guarantor"). Such guaranty shall be secured through a security interest (UCC-1 financing statement filing) creating a first lien over the assets of Guarantor. Lender agrees not to file such financing statement unless default occurs under the Loan.

3. **THE PROPERTY**

The Property is a 550-acre parcel of land located at 1 Front Sight Road, Pahrump, Nevada. The Property is improved with a firearm training institute that trains more than 35,000 students per year

A handwritten signature in black ink, appearing to be a stylized 'D' or similar character, located in the bottom right corner of the page.

and has over 200,000 members. Projected 2019 EBITDA for operations on the site is approximately \$8,000,000.

4. APPROVED LOAN AMOUNT

The approved loan amount is \$30,000,000 (the "Loan"). The Loan will be secured as further described in this Commitment. The Loan shall be funded by way of multiple advances (each, an "Advance"), the timing and amount of each advance as set forth herein.

At no time shall the outstanding amount under the Loan exceed 65% of Lender's estimate of value for the Property. Lender agrees to act reasonably in making such estimate of value.

5. CURRENCY

All monetary amounts expressed in this Commitment are in US dollars.

6. INTEREST RATE

The interest rate for the Loan is twelve percent (12.00%) per annum, calculated on the basis of a 360-day year and the actual days in each month, on the amounts advanced from time to time from the date of each Advance, until all outstanding balances are repaid. Additional interest shall be paid in the event of a default, as provided for in the security documentation to be provided to secure the Loan. If the Loan is in default, interest on the outstanding balance shall be compounded monthly.

Interest shall be payable monthly on the 1st of each month, the first of such payments to be made one (1) month from the Interest Adjustment Date. The Interest Adjustment date is the 1st of the month following the First Advance Date. Lender shall be entitled to deduct from the First Advance, interest from the date of First Advance to the Interest Adjustment Date.

Commencing on the 13th payment date and to and including the 20th payment date under the Loan, the Borrower shall further remit monthly the sum of \$165,000 to be applied to the principal balance outstanding under the Loan.

Commencing on the 21st payment date under the Loan, the Borrower shall further remit monthly the sum of \$333,000 to be applied to the principal balance outstanding under the Loan.

The Borrower shall remit payments via an automatic debit service, by submitting the Authorization Form attached hereto as Schedule "E", together with a "void" check. If there are any changes to the Borrower's regular payment, the Lender will provide notice at least ten (10) days in advance of the debit. Please note that all of the account information provided in this respect will be kept confidential. Section 8 of this Commitment provides for an interest reserve to assist in servicing the Loan. Lender confirms that it will not automatically debit Borrower's account until such time as the interest reserve has been exhausted.

7. TERM

The term for the Loan is twenty-four (24) months commencing from the Interest Adjustment Date (the "Loan Term"). The date on which the Loan Term expires is sometimes referred to herein as the "Loan Maturity Date". The Loan may be repaid prior to the Loan Maturity Date, as set forth in Section 9 below. Provided there has been no event of default, the Lender grants to the Borrower three (3) six-month extension options. Borrower may exercise an extension option provided it provides not more than sixty (60) days' written notice and not less than thirty (30) days' written notice prior to the applicable Loan Maturity Date that it intends to do so and pays an extension fee equal to 0.5% of the then outstanding Loan amount at the time of exercise of the option.

8. USE OF FUNDS

The proceeds of the Loan will be used to:

- (a) Assist in discharging existing registered indebtedness against the Property (approximately \$7,000,000);
- (b) Assist in payment for horizontal improvement hard costs and working capital in accordance with a budget to be approved by Lender and its Project Monitor (should Lender appoint one) (approximately \$7,550,000). Advances with respect to same shall not be made more than once per month and each such advance shall be in an amount not less than \$200,000;
- (c) Assist in payment for vertical construction costs in accordance with a budget to be approved by Lender (approximately \$14,250,000). Advances with respect to same shall not be made more than once per month and each such advance shall be in an amount not less than \$200,000; and
- (d) To pay Lender Fee, Broker Fee and transaction costs related to this facility of the Loan (approximately \$1,200,000).

9. PREPAYMENT PRIVILEGE

The Borrower shall, when not in default, have the right to prepay all of the amount outstanding under the Loan prior to the Maturity Date, on any payment date, upon giving the Lender one (1) month's written notice in advance of payment and upon payment of a bonus equal to one (1) month's additional interest.

10. PARTIAL DISCHARGES

Provided there has been no event of default, the Borrower may be entitled to a partial discharge of any mortgaged lot on the following terms:

1. The provisions of any land use planning legislation are fully complied with in respect to each such partial discharge;
2. Payment to the Lender of an administration fee of \$500 per each such discharge (plus legal fees, if applicable);
3. The Lender receives, for each parcel or lot of the Property to be discharged, an amount equal to 100% of the net sale proceeds of any bona fide arm's length sale in respect of the subject parcel in an amount satisfactory to Lender; and
4. Any such partial discharge does not materially adversely affect the Lender's overall security position.

"Net Sale Proceeds" means the amount determined by subtracting from 100% of gross sale proceeds of the unit or parcel: (i) excise taxes if applicable and payable thereon (if payable by the Borrower); (ii) the closing costs which consist of reasonable (as compared to the sale of a similar property) fees and expenses of the Borrower's attorneys with respect to each such sale and the reasonable (as compared to the sale of a similar property) real estate commissions payable by the Borrower with respect to such sale.

11. SECURITY

To secure repayment of the Loan, the following security for the Loan shall be granted in favor of the Lender, in form and content satisfactory to the Lender, Borrower and Guarantors, acting reasonably, and Lender's legal counsel (hereinafter collectively referred to as the "Security" and sometimes collectively referred to as the "Loan Documents"):

- 11.1 a promissory note and loan agreement evidencing the Loan in the amount of \$30,000,000;
- 11.2 a first ranking deed of trust, and other security satisfactory to Lender's attorneys (including an absolute assignment of rents and leases) on the Property in the amount of \$30,000,000;
- 11.3 a first "all assets" security agreement encumbering all of the personal and real property of the Borrower, including, without limitation, goods, chattel paper, documents, accounts, intangibles, securities, monies, books and records and all replacements of, substitutions for and increases, additions and accessories to the foregoing and proceeds thereof, present and future;
- 11.4 security agreement as described in Section 2;
- 11.5 a specific assignment of all the Borrower's right, title and interest in, to and under all economic incentives associated with the Property and material contracts (including all contracts with the general contractor and project architect), project plans and specifications, and including all development permits and applications and building permits and letters of credit and/or bonds securing municipal obligations affecting or with respect to the Property, as required by the Lender, with all necessary consents of the other parties thereto;
- 11.6 a specific assignment of all agreements of purchase and sale and deposits with respect to the Property;
- 11.7 acknowledgment of the status and terms of any contracts affecting or with respect to the Property including, without limitation, any pertaining to ownership, insurance, shared facilities, passageway agreements or other similar matters specifically, but without limitation, confirming the good standing of such contracts and the rights of the Lender under its security;
- 11.8 the guaranty described in Section 2. Such guaranty shall further provide that the Lender shall not be obliged to proceed against the Borrower or to enforce or exhaust any security before enforcing the guaranty;
- 11.9 assignment of all insurance policies with respect to the Property and all proceeds and benefits therefrom in favor of the Lender;

- 11.10 an environmental indemnity from the Borrower and Guarantor;
- 11.11 assignment, postponement and subordination by the respective shareholders and/or members of the Borrower, in favor of the Lender, of any and all loans, indebtedness, distributions of income and/or capital owing or due to them from time to time by Borrower or its affiliates;
- 11.12 a first ranking pledge of all membership interests in the Borrower; and
- 11.13 such further and other security as the attorneys for the Lender may reasonably require.

No secondary financing with respect to the Property shall be permitted at any time during which the Loan remains outstanding, without Lender's express written consent.

12. ADVANCE DATE

The parties will use their best efforts to enable the first Advance to take place on or around October 2, 2019 (the "**First Advance Date**"). Subsequent advances will take place from time to time thereafter for the purposes set out in Section 8 upon satisfaction of all terms and conditions precedent to such Advance provided for herein and in the Loan Documents. The Date of any Advance is an "**Advance Date**".

13. ADVANCE CONDITIONS

13.1 For the First Advance:

- 13.1.1 Subject to the other terms and conditions set forth in this Commitment and the Loan Documents, the Lender shall disburse the proceeds of the Loan to or on behalf of the Borrower in the amounts and as specified in Sections 4 and 8 herein.
- 13.1.2 It shall be a condition precedent to Lender's obligation to execute the Loan Documents and advance the Loan that: (a) the Borrower shall be the legal and beneficial owner of a good and marketable title to the Property and all personal property associated therewith; and (b) the Property shall be free and clear of all security interests, charges, liens, mortgages, claims or other encumbrances, with the exception of the Security provided for in this Commitment and encumbrances or liens approved by Lender prior to closing, based on Lender's review and Lender's attorney(s)' review of the title, all existing loan documentation related to the permitted encumbrances, and other records related to the Property, and other due diligence, to the complete satisfaction of legal counsel for the Lender. In addition the promissory note, loan agreement, Security, guaranties and any other documents relating to the Loan that are required or contemplated hereunder or which the Lender and its legal counsel may deem necessary, shall have been received and approved to the complete satisfaction of the Lender and its counsel and duly executed and recorded and perfected, as the case may be, and all approvals required by the Lender or its attorneys shall have been given. An opinion of the Borrower's counsel on the due incorporation, corporate power and authority of the Borrower, the due authorization, execution, delivery, validity and

enforceability of the Loan Documents and such other matters as the Lender or its counsel may reasonably require shall be provided as well;

- 13.1.3 A title insurance policy insuring title to the Property issued by a title insurance company acceptable to the Lender (the "Title Company") and in form and content satisfactory to the Lender (including customary endorsements) with the premiums to be paid for by the Borrower;
- 13.1.4 All taxes, assessments, duties, utility charges and other levies, liens and charges affecting the Property, other than amounts which are not yet due and payable, shall have been paid prior to the first Advance, failing which they shall be paid from the proceeds of the first Advance;
- 13.1.5 The Borrower shall fulfill all its obligations under any laws entitling a creditor to exercise rights against the Property. In this respect, if requested by Lender, the Borrower shall provide to the appropriate taxation, municipal, utilities and other authorities an authorization by which the Lender or any person authorized by it as its legal counsel, agent or manager, shall be able to obtain, in the name of the Borrower, a confirmation from such authorities that all payments, declarations and other filings of the Borrower are up to date, whether the authorities concerned have issued or will issue a default notice or demand for payment to the Borrower and whether any such notice concerns arrears. This authorization shall remain in effect until the Loan has been fully repaid;
- 13.1.6 Within five (5) business days from acceptance of this Commitment, the Borrower shall deliver to the aforementioned legal counsel the following documents (where applicable):
- 13.1.6.1 required insurance policies;
 - ✓ 13.1.6.2 evidence that the tax accounts have been duly paid or will be paid at closing;
 - ✓ 13.1.6.3 copies of the articles of incorporation, operating agreement, certificate of incorporation, of status and/or of compliance of the Borrower;
 - ✓ 13.1.6.4 an original up to date survey of the Property prepared by a duly qualified land surveyor showing the location of all improvements on the Property accompanied by a certificate wherein the surveyor confirms that the location of the improvements comply with applicable municipal set-back requirements (or, if not, setting on details of the non-compliance); such survey must be in a form acceptable to the Lender's counsel. Lender agrees to waive such requirement provided the survey exception is deleted from the title insurance commitment;
- 13.1.7 evidence that the Borrower has complied with its obligations with respect to insurance requirements as more fully set out in Schedule "D", together with a favorable opinion of the Lender's insurance consultant on the adequacy of all

- insurance policies and or bonding requirements referred to and/or required to be delivered and/or maintained hereunder
- ✓ 13.1.8 an acceptable site inspection has been completed on behalf of the Lender;
 - ✓ 13.1.9 a satisfactory interview with the Borrower has been conducted by the Lender;
 - ✓ 13.1.10 a satisfactory review of the present and intended use of the Property and the income generated and to be generated from the Property;
 - ✓ 13.1.11 satisfactory review of all zoning and development matters with respect to the Property;
 - ✓ 13.1.12 satisfactory review by Lender and its Project Monitor of the budget(s) for horizontal and vertical improvements to made on the Property;
 - ✓ 13.1.13 an environmental report acceptable to the Lender prepared, at the expense of the Borrower, by qualified environmental consultants acceptable to the Lender, addressed to the Lender or, alternatively, accompanied by a letter of transmittal from the environmental consultants who prepared the report, allowing the Lender to rely upon the same and to use it for mortgage purposes. The Borrower hereby agrees to provide all information that it has with respect to environmental matters and hereby warrants to provide full disclosure in this regard to the Lender;
 - ✓ 13.1.14 an appraisal report of the Property prepared in a form and substance satisfactory to the Lender, at the expense of the Borrower, by a qualified appraiser acceptable to the Lender, addressed to the Lender, or, alternatively, accompanied by a letter of transmittal from the appraiser allowing the Lender to rely upon the same and use it for mortgage purposes;
 - ✓ 13.1.15 a geotechnical report of the Property prepared in a form and substance satisfactory to the Lender, at the expense of the Borrower, by a qualified engineer acceptable to the Lender, addressed to the Lender, or, alternatively, accompanied by a letter of transmittal allowing the Lender to rely upon the same and use if for mortgage purposes;
 - 13.1.16 the Lender and its counsel shall have approved any, and all material contracts and documents affecting or with respect to the Property;
 - 13.1.17 evidence of compliance with The Proceeds of Crime (Money Laundering) and Terrorist Financing Act (Canada) and Regulations, including but not limited to:
 - (a) Each individual Guarantor is to provide, **at least 3 days prior to funding**, the completed Agent Examination of Identification as shall be provided to Borrower by Lender;
 - (b) Borrower and any corporate Guarantor is to provide, **at least 3 days prior to funding**, with the following:

- (i) Corporation profile report or Certificate of Status confirming such corporate Borrower or corporate Guarantor has not been dissolved;
- (ii) Executed Certificate of Incumbency setting out the names of all directors and officers, and the office held by each officer;
- (iii) Executed director(s)' resolution authorizing the transaction;
- (iv) Shareholders' register;
- (v) A completed Agent Examination of Identification form is required for each signing officer (up to a maximum of 3);
- (vi) Borrower and each Guarantor shall represent and covenant that it is not and will not become a person (individually, a "Prohibited Person" and collectively "Prohibited Persons") listed on the Specially Designated Nationals and Blocked Persons List maintained by the Office of Foreign Asset Control, U.S. Department of the Treasury (the "OFAC List") or otherwise subject to any other prohibitions or restriction imposed by laws, rules, regulations or executive orders, including Executive Order No. 13224, administered by OFAC (collectively the "OFAC Rules"). Borrower and Guarantor also shall represent and covenant that it also (i) is not and will not become owned or controlled by a Prohibited Person, (ii) is not acting and will not act for or on behalf of a Prohibited Person, (iii) is not otherwise associated with and will not become associated with a Prohibited Person, and (iv) is not providing and will not provide any material, financial or technological support for or financial or other service to or in support of acts of terrorism or a Prohibited Person. Borrower will not transfer any interest in Borrower to or enter into a Lease with any Prohibited Person. Borrower shall immediately notify Lender if Borrower has knowledge that any Guarantor or any member or beneficial owner of Borrower or any Guarantor is or becomes a Prohibited Person or (A) is indicted on or (B) arraigned and held over on charges involving money laundering or predicate crimes to money laundering. Borrower will not enter into any Lease or any other transaction or undertake any activities related to the Loan in violation of the federal Bank Secrecy Act, as amended ("BSA"), 31 U.S.C. §5311, et seq. or any federal or state laws, rules, regulations or executive orders, including, but not limited to, 18 U.S.C. §§1956, 1957 and 1960, prohibiting money laundering and terrorist financing (collectively "Anti-Money Laundering Laws"). Borrower shall (a) not use or permit the use of any proceeds of the Loan in any way that will violate either the OFAC Rules or Anti-Money Laundering Laws, (b) comply and cause all of its subsidiaries to comply with applicable OFAC Rules and Anti-Money Laundering Laws, (c) provide information as Lender may require from time to time to permit Lender to satisfy its obligations under the OFAC Rules and/or the Anti-Money Laundering Laws and (d) not engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the foregoing. Borrower shall



immediately notify Lender if any Tenant becomes a Prohibited Person or (A) is convicted of, (B) pleads nolo contendere to, (C) is indicted on, or (D) is arraigned and held over on charges involving money laundering or predicate crimes to money laundering.

- 13.1.18 Notwithstanding anything contained herein, no Advance shall be made by the Lender until such time as the Lender is in receipt of, and has reviewed, all due diligence material referred to in Schedule A of the letter agreement dated August 28, 2019, and not hereinbefore requested; and
- 13.1.19 notwithstanding anything contained herein, no Advance shall be made by the Lender until it shall have been duly advised by its legal counsel that, having regard to all the circumstances, such Advance should be made;

For subsequent advances, the following conditions shall be satisfied before any advance is made:

- 13.1.20 back-up documentation for the advance request including an up to date summary of the current work in place, cost to complete, a detailed budget for both onsite and offsite work and a schematic showing the work in place to date that such further advance is being requested. In support of the aforesaid, Borrower shall provide back-up accounting satisfactory to Lender that confirms the work in place (such accounting to include a copy of the general ledger for each respective Project, bank statements and cancelled checks). Lender's Project Monitor shall review and monitor same, such cost to be borne by Borrower. Prior to the first advance being made under the Loan, Borrower shall provide satisfactory evidence to Lender that the construction contract for each Project is in full force and effect, the extent and value of the work in place, the amount of funds which has been paid to the respective general contractors and the amounts, if any, outstanding to them. As well, prior to the first advance being made under the Loan, Borrower shall provide Lender with a list of subtrades working on the Project, and the status of all conditional and unconditional lien waivers from such sub-trades;
- 13.1.21 title search update confirming no subsequent registrations to Lender's security or registrations which may have priority over Lender's security;
- 13.1.22 satisfactory evidence of fulfilment of all post-closing conditions and any other outstanding undertakings provided by Borrower.

14. TRANSACTION FEES AND RELATED COSTS

Administration Fee:	\$ 1,000
Lender's Fee:	\$900,000
Broker's Fee (Avison Young)	\$300,000
Insurance Risk Management Fee:	\$ 1,000
Lender's Advance Fee (per advance)	\$ 1,000

In addition to the aforementioned, the Borrower agrees to pay all costs, fees and expenses in connection with the Loan, including, without limitation:

- 14.1 engineering, environmental assessment, appraisal, credit information, inspection, architectural, project monitoring, cost consultancy, ALTA survey, title insurance, mortgage brokerage fees and costs, third party underwriting costs, and any and all other professional fees, including legal fees, and advisory costs as may be reasonably required by the Lender; and
- 14.2 recording and filing fees, mortgage taxes, taxes and the like with regard to all documents required by the Lender's counsel to be recorded or filed.

Such fees and costs may, at the option of the Lender, be deducted from any Advance of the Loan.

15. STANDBY DEPOSIT

In consideration of the issuance of this Commitment and in recognition of the considerable effort that the Lender must immediately undertake in order to make funds available for closing, the Borrower agrees to submit to the Lender, together with this executed Commitment, a sum of \$70,000 ("Standby Deposit"), by way of a certified check, draft or wire, payable to the Lender. The Lender acknowledges receipt of \$35,000 of the Standby Deposit.

Standby Deposit shall bear no interest while in the possession of the Lender. Save as otherwise provided for herein, the Standby Deposit shall be credited to the Borrower at the time of the First Advance.

16. LEGAL COUNSEL

The documents relating to the financing shall be prepared by the Lender's counsel who shall act on behalf of the Lender:

Don G. Martin
Lewis Roca Rothberger LLP
3993 Howard Hughes Parkway
Las Vegas, Nevada 89169-5996
T: 702.474.2610
F: 702.216.6206
DMartin@LRRLaw.com

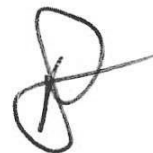
The Borrower shall be responsible for all legal costs involved in the preparation, settlement, execution and delivery of this Commitment, the Loan Documents and all other documentation and legal due diligence related to the Loan.

17. SPECIAL PROVISIONS

None.

18. SCHEDULES

The following documents marked "X" are attached as schedules to this Commitment and form a part hereof:



- X Schedule A Property Description
- X Schedule B Survey Certification
- X Schedule C Title Insurance Requirements
- X Schedule D Insurance Requirements
- X Schedule E Pre-authorized Debit Form
- X Schedule F Further Terms

19. COUNTERPARTS

This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same Agreement. Counterparts may be executed either in original or faxed or emailed form and the parties adopt any signature received by a receiving fax machine or email as original signatures of the parties; provided, however, that any party providing its signature in such manner shall promptly forward to the other party an original of the signed copy of this Agreement which was so faxed or emailed.

ROMSPEN INVESTMENT CORPORATION



By: _____
Name: Wesley Roitman
Title: Managing General Partner

I have authority to bind the corporation.



ACCEPTANCE

We hereby accept the terms and conditions set out in this Commitment and submit the Standby Deposit, on this 19th day of September, 2019.

BORROWER:

Front Sight Management, LLC

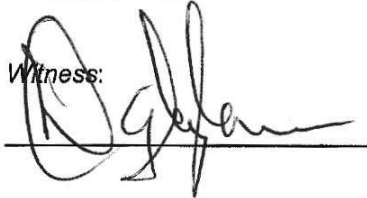
By: 
Name:
Title:

I have authority to bind the Borrower

GUARANTOR:

The Guarantor hereby accepts the terms and conditions of this Commitment and hereby agrees, jointly and severally and unconditionally, to observe and perform all obligations of the Borrower with respect to the Loan as provided for in Section 2 of this Commitment.


Ignatius Piazza

Witness: 

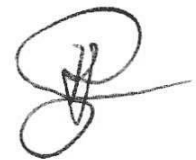


EXHIBIT 5

EXHIBIT 5

**2nd Supplement to Addendum to the Report
“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”,
Prepared November 2013**

**Prepared for:
Front Sight Management, Inc.**

**Prepared by:
Michael K. Evans
David R. Evans
Evans, Carroll & Associates, Inc.
2785 NW 26th St.
Boca Raton, FL 33434
703-835-6978**

mevans@evanscarrollecon.com

devans@evanscarrollecon.com

October 4, 2019

Upon signing a Memorandum of Understanding back in February of 2013, Front Sight had made the decision to engage in an EB-5 campaign and by the language of the USCIS statute below used its developer equity to fund construction. The project construction started with the equity the developer placed into the project, and therefore job creation started in February 2013, thus resulting in 254 new jobs created to date¹, more than satisfying the 130 jobs needed to satisfy Front Sight's obligation to 13 immigrant investors sourced through Las Vegas Development Fund's loan contract.

A developer or principal of a new commercial enterprise, either directly or through a separate job-creating entity, may use interim, temporary, or bridge financing, in the form of either debt or equity, prior to receipt of immigrant investor capital. If the project starts based on the interim or bridge financing prior to receiving immigrant investor capital and subsequently replaces that financing with immigrant investor capital, the new commercial enterprise may still receive credit for the job creation under the regulations.

Source: <https://www.uscis.gov/policy-manual/volume-6-part-g-chapter-2>, Section (D)(1)

Evans, Carroll & Associates has received approval from USCIS on many EB-5 economic impact reports. However, if someone were to make an argument that jobs creation should only start from first funding, it is a moot point: Front Sight has created 137 jobs from the first funding of the construction loan agreement in October 2016 to present², which is still 7 more jobs than the 130 jobs needed for completion for the 13 immigrant investors through Las Vegas Development Fund's loan contract.

This supplement submitted by:



David R. Evans, Principal
Evans, Carroll & Associates, Inc.

¹ Note that the Front Sight Econ Report Addendum (dated September 19, 2019) showed that the project had created 247 jobs since its inception in February 2013. After reviewing the detailed documentation of costs, we have now determined that the project has created 254 jobs since its inception in February 2013. The revised calculations are provided in Appendix A.

² Note that the Front Sight Econ Report Addendum (dated September 19, 2019) showed that the project created 135 jobs since first funding in October 2016. After reviewing the detailed documentation of costs, we have now determined that the project has created 137 jobs since first funding in October 2016. The revised calculations are provided in Appendix B.

Appendix A. Job Creation since Inception (February 2013)

As will be demonstrated below, this project has created 254 jobs since its inception in February 2013. Summary results are shown in Table 1.

Table 1. Summary of Expenditure and Employment Estimates, February 2013 - Present				
Activity	Expenditures (mil curr \$)	Expenditures (mil 2010 \$)	Final Demand Multiplier	Total New Jobs
Hard Construction Costs	8.140	7.333	16.9800	124.5
Activity		Direct Jobs	Direct Effect Multiplier	Total New Jobs
Training Institute Operations		81	1.6046	130.0
Total New Jobs				254.5

All figures calculated from unrounded numbers

The September 19, 2019 Addendum showed total job creation of 247: 117 from Hard Construction Costs and 130 from Training Institute Operations. While the job creation from Operations has remained unchanged, after reviewing the detailed documentation of the project costs, we have now determined that the Hard Construction Costs have generated 124 new jobs.

As shown in Table 2, construction costs for the project since February 2013 totaled about \$8.140 million; the detailed costs are provided in a separate exhibit.

Table 2. Summary of Construction Costs February 2013 – Present	
Total Payments to Contractors	\$ 8,171,141.78
Less Payments Made to American Express	\$ (313,976.72)
Less Payments Made to Home Depot	\$ (75,486.24)
Plus 90% of Home Depot Statements ¹	\$ 152,825.91
Plus Related American Express Charges	\$ 180,703.30
Plus Related City National Bank VISA Charges	\$ 24,537.16
GRAND TOTAL	\$ 8,139,745.19

¹ Per the developer, 90% of these charges were for construction and 10% were for maintenance. Thus, of the \$169,806.57 in costs on the Home Depot Statements, 90% – \$152,825.91 – are included here.

Consistent with the original report (from November 2013), as the RIMS II multipliers are from 2010, this figure must be deflated to a 2010-dollars basis. The deflator is approximately 1.11, thus the construction expenditures equal about \$7.333 million in 2010 dollars.

As the RIMS II final demand employment multiplier for Nonresidential Construction for the 8-county region is 16.9800, this activity has created 124 permanent, new jobs since February 2013.

Combined with the 130 jobs created from the Training Institute Operations, the project has created 254 permanent, new jobs since its inception in February 2013.

Appendix B. Job Creation since First Funding (October 2016)

As will be demonstrated below, this project has created 137 jobs since first funding in October 2016. Summary results are shown in Table 3.

Table 3. Summary of Expenditure and Employment Estimates, October 2016 – Present				
Activity	Expenditures (mil curr \$)	Expenditures (mil 2010 \$)	Final Demand Multiplier	Total New Jobs
Hard Construction Costs	6.851	6.172	16.9800	104.8
Activity		Direct Jobs	Direct Effect Multiplier	Total New Jobs
Training Institute Operations		20	1.6046	32.1
Total New Jobs				136.9

All figures calculated from unrounded numbers

The September 19, 2019 Addendum showed total job creation of 135 since first funding: 103 from Hard Construction Costs and 32 from Training Institute Operations. While the job creation from Operations has remained unchanged, after reviewing the detailed documentation of the project costs, we have now determined that the Hard Construction Costs since October 2016 have generated 105 new jobs.

As shown in Table 4, construction costs for the project since October 2016 totaled about \$6.851 million; the detailed costs are provided in a separate exhibit.

Table 4. Summary of Construction Costs October 2016 – Present	
Total Payments to Contractors	\$ 6,615,267.66
Less Payments Made to American Express	\$ -
Less Payments Made to Home Depot	\$ (22,045.37)
Plus 90% of Home Depot Statements ²	\$ 124,652.83
Plus Related American Express Charges	\$ 114,044.62
Plus Related City National Bank VISA Charges	\$ 21,006.16
GRAND TOTAL	\$ 6,852,925.90

² Per the developer, 90% of these charges were for construction and 10% were for maintenance. Thus, of the \$138,503.14 in costs on the Home Depot Statements, 90% – \$124,652.83 – are included here.

Consistent with the original report (from November 2013), as the RIMS II multipliers are from 2010, this figure must be deflated to a 2010-dollars basis. The deflator is approximately 1.11, thus the construction expenditures equal about \$6.172 million in 2010 dollars.

As the RIMS II final demand employment multiplier for Nonresidential Construction for the 8-county region is 16.9800, this activity has created 105 permanent, new jobs since October 2016.

Combined with the 32 jobs created from the Training Institute Operations, the project has created 137 permanent, new jobs since first funding in October 2016.

EXHIBIT 6

EXHIBIT 6

FRONT SIGHT MANAGEMENT, LLC
V.
LAS VEGAS DEVELOPMENT FUND LLC, ET AL.
SUPPLEMENTAL EXPERT WITNESS REPORT OF
CATHERINE DEBONO HOLMES, ESQ.

This Supplemental Report is provided to describe the significance of the **Addendum ("Addendum") and Supplement ("Supplement") to Addendum to the Report titled "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"** prepared for Front Sight Management, Inc. by Prepared by: Michael K. Evans and David R. Evans of Evans, Carroll & Associates, Inc., dated as of September 19, 2019.

1. I have personally reviewed copies of the Addendum and Supplement.
2. Based upon my review of the Addendum and Supplement, these reports provide evidence sufficient to support a finding by the U.S. Citizenship and Immigration Services ("USCIS") that the expenditures incurred to date to construct the Front Sight Firearms Training Institute Expansion Project (the "**Project**") have created new jobs in excess of the number required for the existing EB-5 investors who have invested in the Project. A total of 10 new jobs are required for every EB-5 Investor. According to the Addendum, 185 jobs have been created since July 2016 by the Project, and a total of 135 jobs have been created since October 2016, when the first EB-5 proceeds were received by the Project. Therefore, if 13 EB-5 Investors have invested in this Project, then all of those 13 investors have already met the job creation requirements necessary to obtain a permanent visa under the EB-5 Program. This means that even if no additional work was done on the Project, all of the existing EB-5 Investors in the Project would qualify to receive their visas under the EB-5 Program.
3. Michael Evans and David Evans, the economists who prepared the Addendum and Supplement, are two of the most respected and experienced economists within the EB-5 business community. They and their team have prepared hundreds if not thousands of economic reports used to support EB-5 applications. The fact that they prepared this Addendum and Supplement provides a high level of confidence that the Addendum and Supplement have been prepared in accordance with all USCIS requirements and will therefore be accepted by USCIS as evidence of job creation by this Project.
4. The opinions provided in my expert report were provided to a reasonable degree of probability and the factual statements included in my expert report are true and correct to the best of my knowledge.

I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct.

Dated: September 19, 2019.

A handwritten signature in cursive script that reads "Cath DeBono Holmes".

Catherine DeBono Holmes, Esq.