

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 10:48 a.m.
Elizabeth A. Brown
Dist. Ct. Case No: A-18-781084-B
Clerk of Supreme Court

1 **PETITION FOR EXTRAORDINARY WRIT RELIEF**

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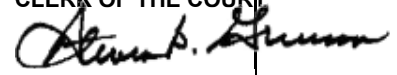
Notice of Entry of Order on Plaintiff’s Motion for Preliminary Injunction (01/17/2019)	II	00395-00399
Notice of Entry of Order on Plaintiff’s Motion to Disqualify C. Keith Greer as Attorney of Record for Defendants (01/25/2019)	II	00410-00415
Notice of Entry of Order on Plaintiff’s Petition for Appointment of Receiver and for an Accounting (11/27/2018)	I	00098-00103
Notice of Entry of Order on Plaintiff’s Renewed Motion for an Accounting Related to Defendants Las Vegas Development Fund LLC and Robert Dziubla and for Release of Funds (01/17/2019)	II	00400-00404
Notice of Entry of Order Regarding Defendants’ Motions to Dismiss Plaintiff’s Second Amended Complaint and Motion to Strike Portions of Second Amended Complaint (04/10/2019)	III	00563-00569
Notice of Entry of Order Shortening Time (11/15/2019)	XVII	03557-03565
Notice of Entry of Order Staying All Subpoenas For Documents and Depositions which were Served on Non-Parties by Plaintiff (09/13/2019)	VIII	01619-01626
Notice of Entry of Protective Order (11/27/2018)	I	00109-00127
Notice of Entry of Stipulation and Order Regarding Defendants’ Judicial Foreclosure Cause of Action (06/25/2019)	V	00978-00983
Notice of Entry of Stipulation and Order Regarding Exhibit (12/6/2019)	XVIII	03665-03680

1	Notice of Entry of Stipulation and Order Resetting	IV	00737-00742
2	Evidentiary Hearing and Extending Temporary		
3	Restraining Order (05/16/2019)		
4	Notice of Entry of Stipulation and Order Setting	V	00971-00977
5	Briefing Schedule on Defendant Las Vegas		
6	Development Fund, LLC's Motion for Appointment		
7	of a Special Master (06/25/2019)		
8	Order Re Rule 16 Conference, Setting Civil Jury	VII	01402-01406
9	Trial, Pre-Trial/Calendar Call and Deadlines for		
10	Motions; Discovery Scheduling Order (08/20/2019)		
11	Order Scheduling Hearing, to discuss NRCP	XI	02372-02373
12	65(a)(2) Notice (09/27/2019)		
13	Order Setting Settlement Conference (12/06/2018)	I	00177-00178
14	Order Setting Settlement Conference (06/04/2019)	V	00967-00968
15	Plaintiff's Motion for Sanctions (09/17/2019)	IX	01627-01670
16	Plaintiff's Motion to Extinguish LVDF's Deed of	XII	02509-02601
17	Trust, or Alternatively to Grant Senior Debt Lender		
18	Romspen a First Lien Position, and Motion to		
19	Deposit Funds Pursuant to NRCP 67 (10/04/2019)		
20	Plaintiff's Motion to Quash Subpoenas (10/29/2019)	XIV	02952-02970
21	Plaintiff's Notice of Intent to Issue Amended	VII	01274-01289
22	Subpoena Duces Tecum to Bank of Hope		
23	(08/06/2019)		
24	Plaintiff's Notice of Intent to Issue Amended	VII	01242-01257
25	Subpoena Duces Tecum to Open Bank (08/06/2019)		
26	Plaintiff's Notice of Intent to Issue Amended	VII	01226-01241
27	Subpoena Duces Tecum to Signature Bank		
28	(08/06/2019)		

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Plaintiff's Notice of Intent to Issue Amended Subpoena Duces Tecum to Wells Fargo Bank (08/06/2019)	VII	01258-01273
Plaintiff's Omnibus Opposition to Defendants' Motions to Quash Subpoena and/or Motions for Protective Order Regarding Subpoenas (08/26/2019)	VIII	01408-01591
Plaintiff's Reply to Opposition to Motion to Quash Subpoenas (11/15/2019)	XVI	03153-03268
Plaintiff's Second Motion for Temporary Restraining Order and Preliminary Injunction, Motion for Order Shortening Time, and Order Shortening Time (03/01/19)	III	00423-00489
Renewed Motion for an Accounting Related to Defendants Las Vegas Development Fund LLC and Robert Dziubla and for Release of Funds, Motion for Order Shortening Time, and Order Shortening Time (11/13/2018)	I	00064-00092
Reply to Opposition to Plaintiff's Motion for Sanctions (10/18/2019)	XIV	02843-02907
Reply to Opposition to Motion to Compel and for Sanctions (10/18/2019)	XIV	02908-02938
Reply to Opposition to Motion to Extinguish LVDF's Deed of Trust, or Alternatively to Grant Senior Debt Lender Romspen a First Lien Position, and Motion to Deposit Funds Pursuant to NRCP 67 (10/18/2019)	XIV	02939-02949
Reporter's Transcript of Hearing (Preliminary Injunction Hearing) (09/20/2019)	X XI	02085-02126 02127-02371

1	Reporter's Transcript of Motion (Preliminary	V	00743-00966
2	Injunction Hearing) (06/03/2019)		
3	Reporter's Transcript of Motions (Defendants'	XIII	02602-02789
4	Motions to Quash Subpoena to Wells Fargo Bank,		
5	Signature Bank, Open Bank and Bank of Hope)		
6	(10/09/2019)		
7	Reporter's Transcript of Preliminary Injunction	VI	01167-01218
8	(07/23/2019)		
9	Reporter's Transcript of Preliminary Injunction	VI	00984-01166
10	Hearing (07/22/2019)		
11	Second Amended Complaint (01/04/2019)	II	00179-00394
12			
13	Second Supplement to Motion to Compel and for	XVII	03566-03640
14	Sanctions (11/18/2019)		
15	Supplement to Motion to Compel and for Sanctions	XVI	03269-03402
16	(11/15/2019)	XVII	03403-03549
17	Supplemental Declaration of Defendant Robert	I	00153-00176
18	Dziubla in Support of Defendants' Opposition to		
19	Plaintiff's Renewed Motion for an Accounting		
20	Related to Defendants Las Vegas Development		
21	Fund LLC and Robert Dziubla and for Release of		
22	Funds (12/03/2018)		
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Attorneys for Plaintiff

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

FRONT SIGHT MANAGEMENT LLC, a
Nevada Limited Liability Company,

Plaintiff,

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

vs.

**REPLY TO OPPOSITION TO
PLAINTIFF'S MOTION FOR
SANCTIONS**

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

Defendants.

AND ALL RELATED COUNTERCLAIMS.

COMES NOW Plaintiff FRONT SIGHT MANAGEMENT, LLC ('Plaintiff' or 'Front
Sight'), by and through its attorneys, John P. Aldrich, Esq., Catherine Hernandez, Esq., and
Matthew B. Beckstead, Esq., of the Aldrich Law Firm, Ltd., and hereby submit its Reply to
Opposition to Motion for Sanctions.

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

4 DATED this 18th day of October, 2019.

5 **ALDRICH LAW FIRM, LTD.**

6 /s/ John P. Aldrich
7 John P. Aldrich, Esq.
8 Nevada Bar No. 6877
9 Catherine Hernandez, Esq.
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14 Las Vegas, Nevada 89117
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16 Facsimile: (702) 227-1975
17 *Attorneys for Plaintiff/Counterdefendants*

18 **MEMORANDUM OF POINTS AND AUTHORITIES**

19 Defendant EB5IA feigns confusion about what sanctions Plaintiff seeks. However,
20 simply reviewing the opening paragraphs of the Motion makes it clear what Plaintiff is seeking.

21 In the Motion, Plaintiff:

22 ...moves the Court for an order of sanctions against Defendant EB5 Impact
23 Advisors LLC and its officers and members (collectively 'EB5IA') for Defendant
24 EB5IA's violation of the Court's Order to produce a full accounting and failure to
produce a full accounting pursuant to this Court's Order, and for Defendants'
EB5IA and Dziubla's intentional spoliation of key evidence in this case.'

Plaintiff then requests the following relief:

[1] [T]he Court should strike EB5IA's Answer or, [2] in the alternative, give an
adverse inference instruction that the records EB5IA should have retained and
produced would support Front Sight's claims of fraud, misrepresentation,
concealment, conversion, breach of contract, and civil conspiracy.

1 The Motion then continues:

2 In addition, the Court should sanction EB5IA in an amount equal to the amount of
3 money Defendant EB5IA took from Plaintiff that Defendant EB5IA cannot prove
was used properly to market the Front Sight project.

4 (Motion, at pp. 1-2.) While additional briefing may be pertinent to a specific request for
5 monetary sanctions, Mr. Winters' report provides a rational number: **at least \$144,574.27**. That
6 is the amount by which Front Sight's payments to EB5IA between February 2013 and October 6,
7 2016 exceeded the documented expenses – by Dziubla's own documentation. Plaintiff also
8 intends to ask for attorneys' fees for having to bring the Motion for Accounting and related
9 motions, including the Motion to Compel and the present Motion for Sanctions. Once Plaintiff
10 prevails on this Motion, it will submit a separate Motion for Attorneys' Fees. This is the proper
11 procedure because Plaintiff continues to incur attorneys' fees related to the scant accounting
12 Defendant EB5IA and Dziubla provided and Plaintiff's attempts to enforce the Court's Order.

13 Defendants assert:

14 Plaintiff's motion should be denied for the very simple reasons that: (1)
15 Defendant EB5IA has provided an accounting which details how every single
16 dollar received by EB5IA was spent; and (2) any backup documents which were
17 allegedly discarded were discarded contemporaneously in the ordinary course of
business, which was before litigation was contemplated[; and]...[3] Defendant
was not obligated to retain 'every scrap of paper.' (Opposition ("Opp."), p. 3
(citations omitted).)

18 Sadly, Defendants simply continue to ignore the true state of the facts and expect this
19 Court to ignore them as well.

20 **A. DEFENDANT EB5IA'S ACCOUNTING IS NOT A PROPER ACCOUNTING**

21 Defendant EB5IA claims "production of the general ledger is production of the complete
22 accounting records." (Opp., p. 3, l. 27.) Defendant EB5IA further claims "Defendant has
23 produced the complete and unredacted general ledger for EB5IA. This is, virtually by definition,
24 a full and complete accounting. Thus, Defendant has fully complied with the order to produce an

1 accounting.” (Opp., p. 4, ls. 18-20.) Finally, in Dziubla’s Declaration that was filed
2 contemporaneously with the Opposition, Dziubla claims that “individual invoices were discarded
3 consistent with the EB5IA document retention policy and practice[.]” (Dziubla Declaration, p. 2,
4 ls. 23-24.) Of course, no copy of the “document retention policy” – more aptly named a
5 “document destruction policy” – was provided.

6 Defendant EB5IA and Dziubla’s claims are blatantly false. The documentation provided
7 is not a proper accounting. Plaintiff has hired Douglas S. Winters, CPA, as an expert witness
8 and forensic accountant. However, Mr. Winters is not able to complete his analysis of how
9 Defendants, including EB5IA, Fleming, and Dziubla, spent Front Sight’s money. Mr. Winters
10 notes that EB5IA has not produced the following:

- 11 - An electronic copy of its Quick Books accounting records;
- 12 - Balance sheets;
- 13 - General ledger reports;
- 14 - Cash receipts or disbursement journals;
- 15 - All cancelled checks;
- 16 - Deposit slips;
- 17 - Expense reports or expense reimbursement requests with supporting
18 documentation;
- 19 - Invoices, receipts, statements, or other documents customarily maintained
20 as support for cash receipts and disbursements.

21 (Expert Report of Douglas S. Winters, CPA, dated October 18, 2019, at pp. 2-3, attached hereto
22 as **Exhibit 4**.) Mr. Winters goes on to provide an analysis of Dziubla’s April 3, 2019
23 Declaration and the accompanying Quickbooks. He noted the following (using the same
24 paragraph numbers as Defendant Dziubla used in his April 3, 2019 Declaration about the alleged
QuickBooks records):

4. Budget: Mr. Dziubla declares “The Budget contemplated that Plaintiff
Front Sight would pay EB5IA a total of \$277,230 to develop, structure and
implement an EB5 financing platform.” The \$277,230 Budget includes
both the fee that Front Sight agreed to pay and the estimated expenses.
The Budget was not a set amount that Front Sight owed EB5IA.

1 6. Exhibit B is list of funds that EB5IA received from Plaintiff totaling
2 \$336,730. Mr. Dziubla references the Wells Fargo (“WF”) bank
3 statements that were produced. I compared Exhibit B with the WF
4 statements and found that the second item on Exhibit B, a deposit dated
5 December 2, 2013 in the amount of \$24,500 is not on the WF statements.
The EB5IA production of Wells Fargo (“WF”) statements begins with
WF(2013)00001 which covers December 1 to December 31, 2013. It is
possible that it was deposited into the account in November 2013 and
entered into Quick Books in December 2013.

6 7. Exhibit C is, according the Declaration, purportedly “a transaction ledger
7 from Quickbooks.” I note that the pages lack headings or footings
customarily found on Quick Books reports.

8 Mr. Dziubla declared that the payments totaling \$359,826.95 are “the
9 expenses that were payable by the Plaintiff.”

10 Following Exhibit D of Mr. Dziubla’s Declaration are copies of bills and
11 invoices as support of some of the amounts listed on Exhibit C. Attached
12 hereto as Schedule 1 is a list of 37 payments totaling \$113,650.73 from
Exhibit C for which I found supporting invoices. I have been unable to
find invoices or other documents as support for the other entries on
Exhibit C.

13 As mentioned above, according to the February 14, 2013 agreement
14 between EB5IA and Front Sight, Front Sight was to pay of fee of \$36,000
15 plus reimburse EB5IA for expenses. Schedule A to the agreement states
“Borrower shall be responsible for payment of lender’s reasonable
expenses.”

16 To support reimbursement of expenses, it is a well-established business
17 practice and custom to maintain and provide support for all reimbursable
18 expenses. Mr. Dziubla claims he has substantial business experience and
should be well familiar with customary expense documentation
requirements.

19 (**Exhibit 4**, pp. 3-4.) With regard to Defendants EB5IA and Dziubla’s duty to retain financial
20 records for Defendant EB5IA, Mr. Winters also references IRS Publication 463, which provides:

21 “Documentary evidence ordinarily will be considered adequate if it shows the
22 amount, date, place, and essential character of the expense.

23 For example, a hotel receipt is enough to support expenses for business travel if it
has all of the following information.

24 The name and location of the hotel.

1 The dates you stayed there.

2 Separate amounts for charges such as lodging, meals, and telephone calls.

3 **A restaurant receipt** is enough to prove an expense for a business meal if it has all
4 of the following information.

4 The name and location of the restaurant.

5 The number of people served.

6 The date and amount of the expense.

7 If a charge is made for items other than food and beverages, the receipt must show
8 that this is the case.

9 Canceled check.

10 A canceled check, together with a bill from the payee, ordinarily establishes the
11 cost. However, **a canceled check by itself doesn't prove a business expense
without other evidence to show that it was for a business purpose.**
(Emphasis in original.)

12 (Exhibit 4, pp. 4-5.)

13 After a brief reference to Mr. Dziubla's evidentiary hearing testimony, Mr. Winters
14 provides the following analysis:

15 In my opinion, EB5IA has produced documents to support \$113,650.73 of
16 expenses.

17 I compared the entries on Exhibit C with the WF statements. Attached hereto as
18 Schedule 2 is a list of over 700 entries totaling \$86,406.71 of withdrawals on the
19 WF bank statements that were not listed on Exhibit C.

20 8. Exhibit D is a list of \$44,300 capital infusion. That bank deposits on
21 Exhibit D also included on the last page of Exhibit C which shows that
22 \$44,500 was deposited into WF and that \$76,850 was paid out, for a net
23 decrease of \$32,550.

24 The \$76,850 was paid to Kenworth Capital \$56,975; Legacy Realty
Capital Inc. \$17,875; and Robert Dziubla \$2,000.

(Exhibit 4, p. 6.)

Finally, Mr. Winters provided the following opinion:

1 EB5IA produced documentation for expenses totaling \$113,650.73. \$105,142.73
2 of that amount was paid out before October 6, 2016. Through that date Front
3 Sight had paid EB5IA \$249,730. The Front Sight payments to EB5IA exceed the
4 documented expenses by \$144,587.27 through October 6, 2016.

5 The accounting prepared by and produced by does not reconcile with the WF
6 bank accounts. The EB5IA accounting of its disbursements on Exhibit C of Mr.
7 Dziubla's accounting totals \$359,826.95. The total deposits and disbursements
8 from the WF accounts total \$482,932.25. The EB5IA accounting of its
9 disbursements differs from the WF bank activity by \$86,408.71 (see Statement 1).
10 The EB5IA accounting of deposits differs from the WF bank deposits by
11 \$130,934.30.

12 It is my opinion that the EB5IA has failed 1) to provide a complete or accurate
13 accounting, 2) to provide documentation for the expenses that it charged Front
14 Sight, and 3) to maintain adequate receipts and other records to support its
15 expenses.

16 (Exhibit 4, pp. 6-7.)

17 As Mr. Winters pointed out, there is a significant question as to the authenticity of the
18 QuickBooks records, as they do not actually appear to be normal QuickBooks records.
19 Additionally, conspicuously absent from the allegedly 'complete accounting' is a Balance Sheet.
20 Finally, at the behest of Mr. Winters, Plaintiff requested the electronic backup to the QuickBooks
21 records so that Plaintiff could verify the records. The following is the request and the response
22 received from Defendant EB5IA:

23 **REQUEST NO. 97:**

24 Please provide an **electronic backup** copy of the QuickBooks attached to
"Updated Declaration of Robert W. Dziubla Re – Accounting" signed on April 3,
2019 (Exhibit 46 to the Evidentiary Hearing).

RESPONSE TO REQUEST NO. 97:

Responding Party objects to this Document Request on grounds that it is
vague and ambiguous as to "backup;" it is **burdensome, oppressive** and only
meant to harass Responding Party because it seeks documents that are already in
possession of Requesting Party; and it purports to require Responding Party to
disclose information that is a **trade secret, confidential, proprietary,**
commercially sensitive, or information that is protected by rights of privacy.

1 (Defendant EB5IA’s Responses to Plaintiff’s Third Set of Requests for Production of
2 Documents, attached hereto as **Exhibit 5** (emphasis added).) The Court will note that these are
3 essentially the same frivolous objections Defendants asserted as to each and every other Request
4 for Production of Documents that has been sent to Defendants. These contradictory objections –
5 *i.e.*, has the information already been provided or will it not be provided because it is proprietary
6 and confidential? – are absurd. And the request is certainly not burdensome or oppressive.
7 Defendant Dziubla should be able to provide that information immediately with the push of a
8 button – unless of course he destroyed that evidence too! The electronic backup to the
9 QuickBooks should be on his computer. But this begs the question: what would the electronic
10 backup show that Defendants do not want the Court or Plaintiff to know? Thus, Defendant
11 EB5IA and Dziubla continue to refuse to provide even the most basic information regarding an
12 accounting. Sanctions are appropriate.

13 **B. DEFENDANT EB5IA’S DISCARDING OF THE DOCUMENTS – ALLEGEDLY**
14 **“IN THE ORDINARY COURSE OF BUSINESS” – WAS NOT ONLY**
15 **INTENTIONAL, BUT IS AGAINST DEFENDANT EB5IA’S CONTRACTUAL**
16 **OBLIGATIONS UNDER THE ENGAGEMENT LETTER, CONTRARY TO**
17 **STATUTE, AND IN VIOLATION OF IRS REGULATIONS AND DEFENDANTS**
18 **EB5IA AND DZIUBLA ARE AT FAULT FOR THE DESTRUCTION OF THE**
19 **EVIDENCE**

20 **1. Defendant Dziubla’s Claim That Defendant EB5IA Had a Company**
21 **Document Destruction Policy Is Bogus**

22 Defendant Dziubla states in his Declaration that he discarded relevant and significant
23 financial records pursuant to company policy. Again, conspicuously absent is a copy of the
24 alleged company “document retention policy.” Plaintiff is hopeful that the Court can understand
that Plaintiff and the Court cannot take Defendant Dziubla’s word that there was indeed such a
policy. Nor can Plaintiff or the Court accept the assertion that any such policy even existed. In
response to direct questioning about the document destruction policy of Defendants LVDF and

1 EB5IC (the regional center), Defendant Dziubla denied that he tossed those entities' records
2 pursuant to a similar policy. (See June 3, 2019 Evid. Hrg. Tr. at p. 50, ls. 23-25; p. 51, l. 1; p. 56,
3 ls. 4-7.) This alleged "policy" was nothing more than Defendant Dziubla's blatant and nefarious
4 decision to destroy the evidence of fraud.

5 **2. Defendants EB5IA and Dziubla Had Multiple Duties – Contractual,**
6 **Common law, Statutory, and Regulatory – to Keep the Records Defendant**
7 **Dziubla Tossed**

8 Defendants EB5IA and Dziubla had a **contractual** duty to keep records of all expenses.
9 The February 14, 2013 engagement letter, which has been admitted as Exhibit 6 during the
10 evidentiary hearing, specifically provides:

11 The Company will pay for or **reimburse** EB5IA, as billed periodically, for its
12 expenses, which are detailed to the extent possible as this time on the attached
13 budget, regardless of whether or not the contemplated Financing is completed. If
14 any of such expenses have not previously been **reimbursed** at the time this
15 Agreement terminates, the Company shall promptly **reimburse** EB5IA for any
16 such expenses incurred or accrued prior to termination.

17 (Exhibit 6 to the Evidentiary Hearing, p. 3 (Bates #0022) (emphases added).) Defendants
18 Dziubla and EB5IA had a **clear contractual duty** to keep those records. Defendants Dziubla
19 and EB5IA repeatedly refused to do so, and repeatedly refused to provide documentation to
20 Plaintiff, despite repeated requests for them to do so. For example:

- 21 • On **July 28, 2015**, Plaintiff, through Mike Meacher, requested information for
22 reimbursement of expenses. (See email correspondence from Mike Meacher to
23 Robert Dziubla, attached hereto as **Exhibit 6**, FS 03698-03700.)
- 24 • On **February 15, 2017**, Plaintiff again requested reports of what Defendants were
actually doing to raise money in China, India, and around the world. Dziubla's
response was "We don't get paid for writing reports, we get paid for sourcing
investors." (Exhibit 19 to the Evidentiary Hearing, 0076.)

1 Plaintiff made multiple verbal requests for documentation as well. Each time Plaintiff
2 requested documentation of how the money was being spent and Defendants refused to comply,
3 Defendants were aware of the possibility of litigation. Further, each time Defendant Dziubla
4 paid himself or Defendant Fleming (or their entities) money, he knew the possibility of litigation
5 existed.

6 Defendants Dziubla and EB5IA had a common law duty to keep the financial records.
7 Defendant EB5IA and Defendant Dziubla assert that “the absolute latest that any documents
8 were disposed of was August 5, 2018[.] This date is prior to the ‘trigger date’ which would
9 impose any obligation to maintain the records.” (Opp., p. 7, ls. 22-24.) This statement is
10 ridiculous, and ignores the contract and the law – something Plaintiff has seen throughout this
11 litigation. But the true, undisputed facts that came from the writings and testimony of Dziubla
12 himself are set forth above and outline all of the duties that required Dziubla and EB5IA to keep
13 the records, and the dates Dziubla, an attorney, knew they could be relevant to litigation in the
14 future.

15 Even though they ignore the contractual duties under the engagement letter, Defendants
16 EB5IA and Dziubla agree that, once they are on notice of a potential claim, they are obligated to
17 keep the records. (Opp., p. 5, ls. 24-27.) Defendant EB5IA and Defendant Dziubla’s argument
18 that the destruction of this key evidence was prior to the “trigger date” is a non-starter. But even
19 if the Court did not find the repeated refusals by Dziubla and EB5IA to provide documentation
20 of expenses under the engagement letter convincing, Defendant Dziubla’s own testimony and
21 documents show he was on notice of the potential for litigation – thereby triggering Defendants’
22 duty to maintain complete and accurate records – long before August 5, 2018. For example:

- 23 • Dziubla sent the first Notice of Default letter on **July 30, 2018**. (Exhibit 20 to the
24 Evidentiary Hearing.)

- 1 • Dziubla breached the CLA and held back loan proceeds because he wanted more
2 documentation from Plaintiff. This was in **early 2018**. (See June 3, 2019 Evid. Hrg.
3 Tr. at p. 157.)
- 4 • In a **June 20, 2016** e-mail, Dziubla makes this statement to Mr. Meacher: “Threats of
5 imminent lawsuits do not help the situation.” (See email correspondence from Robert
6 Dziubla to Mike Meacher, attached hereto as **Exhibit 7**, FS 04629.)
- 7 • Before that, on **June 17, 2016**, Dziubla himself mentions he and Front Sight could be
8 subjected to lawsuits. (See email correspondence from Robert Dziubla to Mike
9 Meacher, attached hereto as **Exhibit 8**, FS 04630.)
- 10 • On **May 12, 2016**, Dziubla sent an e-mail to Plaintiff setting forth three “choices” –
11 one of which was to “part as friends.” That is, Dziubla was looking for a release.
12 (Exhibit 53 to the Evidentiary Hearing.)
- 13 • On **March 1, 2016**, Mike Meacher sent Dziubla and Fleming an e-mail in which he
14 listed all the misrepresentations up to that time. The second paragraph of that e-mail
15 starts: “You are in a dangerous situation.” (Exhibit 16 to the Evidentiary Hearing.)
- 16 • Dziubla should have known all along that litigation was possible, given his repeated
17 lies. (See Chart of Fraudulent Misrepresentations by Dziubla, attached as Exhibit 1 to
18 Plaintiff’s Motion to Extinguish LVDF’s Deed of Trust, or Alternatively to Grant
19 Senior Debt Lender Romspen a First Lien Position, and Motion to Deposit Funds
20 Pursuant to NRCP 67, filed on October 4, 2019.)

21 Defendants Dziubla and EB5IA also had a **statutory** duty to keep accurate records. NRS
22 86.241 relates to requirements of an LLC to keep “[t]rue and . . . complete records regarding the
23 activities and the status of the business and financial condition of the company.” While this
24 provision relates to the right of members to obtain this information, it underscores the duty to

1 keep prudent records. Moreover, NRS 86.343 requires sufficient records to permit the
2 determination of the prudence of distributions upon dissolution of an LLC. NRS 86.505 permits
3 a dissolved LLC to be sued for up to three (3) years after dissolution, thus making it clear that
4 retention of records is necessary. Likewise, NRS 86.521 permits distribution of assets, but the
5 appropriateness of distribution cannot be determined without proper records. Finally, NRS
6 86.541 provides that “The manager or managers. . . in office at the time of dissolution. . . are
7 thereafter trustees of the dissolved company. . .,” with powers to wind up the entity.

8 Finally, Defendants Dziubla and EB5IA had a **regulatory** duty to keep accurate and
9 complete financial records. As explained by Mr. Winters, IRS guidelines required Defendants
10 Dziubla and EB5IA to keep the records they destroyed.

11 As Plaintiff will shown below, Defendants Dziubla and EB5IA intentionally destroyed
12 evidence that goes directly to Plaintiff’s claims of fraud, etc., asserted in the Second Amended
13 Complaint. Defendant EB5IA’s Answer should be stricken, and Plaintiff is also entitled to a
14 presumption under NRS 47.250(3) that “evidence willfully suppressed would be adverse if
15 produced.”

16 **C. DEFENDANTS’ DESTRUCTION OF EVIDENCE WAS KNOWING AND**
17 **WILLFUL, AND DEFENDANTS ARE AT FAULT FOR ITS DESTRUCTION**

18 **1. The Court Should Strike Defendant EB5IA’s Answer Because Defendants**
Dziubla and EB5IA’s Spoliation Was Willful and Knowing

19 In its Motion, Plaintiff painstakingly walks the Court through the considerations set forth
20 in *Young v. Johnny Ribiero*, 106 Nev. 88, 787 P.2d 777 (1990). (Motion, pp. 9-12.) Defendants
21 make no effort whatsoever to address those elements, nor do they try to refute any of the
22 analysis. This, in and of itself, is concession to the granting of the sanction requested. EDCR
23 2.20. But even the cases Defendants cite in their cursory Opposition support precisely the relief
24 Plaintiff seeks.

1 Defendants cite *Marrocco v. General Motors Corp.*, 966 F.2d 220, 224 (7th Cir. 1992) in
2 support of Defendants' concession that "a party is required to keep relevant evidence over which
3 it had control of and reasonably knew or could foresee that it was material to the litigation."
4 (Opp., p. 6, ls. 9-12.) But *Marrocco* goes much further. The court in *Marrocco* upheld a lower
5 court's dismissal of the plaintiff's complaint because of that plaintiff's "contumacious conduct."
6 *Id.* The plaintiff in *Marrocco* had willfully violated a protective order that had been entered in
7 the case; similarly, here, Defendants EB5IA and Dziubla willfully and without excuse violated
8 the various duties set forth above. Defendants EB5IA and Dziubla *willfully and knowingly*
9 violated these duties to the prejudice of Plaintiff.

10 Likewise, a second case cited by Defendants supports Plaintiff's position. Defendants
11 cited *Danis v. USN Communications*, 2000 WL 1694325, at *30, *32 (N.D. Ill. Oct. 20, 2000)
12 for the proposition that Defendants EB5IA and Dziubla were not required to keep "every scrap
13 of paper." (Opp., p. 6, ls. 5-7.) Citing other cases, including *Marrocco, supra*, the court in
14 *Danis* discussed the distinctions between willfulness, bad faith, and fault as follows:

15 Because a default judgment deprives a party of a hearing on the merits, the harsh
16 nature of this sanction should usually be employed only in extreme situations
17 where there is evidence of willfulness, bad faith or fault by the noncomplying
18 party. *Societe Internationale*, 357 U.S. at 212. *See also Marrocco*, 966 F.2d at
19 223 (quoting other cases); *Long v. Steepro*, 213 F.3d 983, 985 (7th Cir. 2000)
20 (citing cases):

21 Although wilfulness and bad faith are associated with conduct that
22 is intentional or reckless, the same is not true for fault. Fault does
23 not speak to the noncomplying party's disposition at all, but rather
24 only describes the reasonableness of the conduct -- or lack thereof
-- which eventually culminated in the violation. Fault, however, is
not a catch-all for any minor blunder that a litigant or his counsel
might make. Fault, in this context, suggests objectively
unreasonable behavior; it does not include conduct that we would
classify as a mere mistake or slight error in judgment.

1 (internal quotations omitted). To justify a dismissal or default judgment, the level
2 of “fault” must reflect “extraordinarily poor judgment,” “gross negligence,” or “a
3 flagrant disregard” of the duty to “preserve and monitor the condition of evidence
4 which could be pivotal in a lawsuit.” *Marrocco*, 966 F.2d at 224.

5 *Danis* at *101-102. And even if destruction not “intentional” as it was in this case, the *Danis*
6 court explained why the destroying party was still at fault:

7 Thus, the Court does not believe there was intentional destruction. But we also
8 believe that more than good intentions were required; those intentions had to be
9 followed up with concrete actions reasonably calculated to ensure that relevant
10 materials would be preserved. We believe that the failure to put into place clear
11 procedures and standards concerning document preservation, and the failure to do
12 any follow-up to see that the general oral directive was broadly disseminated and
13 followed, constitutes fault -- that is, “extraordinarily poor judgment” or “gross
14 negligence.” *Marrocco*, 966 F.2d at 224.

15 *Danis* at *115-16. Finally – and significantly – the *Danis* court noted the personal liability of
16 corporate officers and managers:

17 [C]orporate officers and managers can be held personally responsible for a
18 corporation’s failure to preserve relevant evidence. *See, e.g., In re Prudential Ins.*
19 *Co. of America Sales Practices Litigation*, 169 F.R.D. 598 (1997); *Turner v.*
20 *Hudson Transit Lines, Inc.*, 142 F.R.D. 68, 72 (S.D.N.Y. 1991). *See also National*
21 *Ass’n of Radiation Survivors v. Turnage*, 115 F.R.D. 543, 556 (N.D. Cal. 1987)
22 (same); *Kansas-Nebraska Natural Gas Co. v. Marathon Oil Co.*, 109 F.R.D. 12,
23 18 & n* (D.Neb. 1983) (same).

24 *Danis* at *116-17.

One last case that Defendants cite in passing is *GNLV Corp. v. Service Control Corp.*,
111 Nev. 866, 900 P.2d 323 (1995). That case focused on the at-fault party suffering the
sanction, not the innocent party. In *GNLV Corp.*, one defendant, a hotel, lost a bath mat. A
second defendant, a cleaning service, sought and obtained a dismissal of both the plaintiff’s
claim against it and the contribution claim by the hotel. *Id.* at 867-68. The district court granted
the sanction, dismissing both the plaintiff’s claim against the cleaning service and the hotel’s
contribution cross-claim against the cleaning service. *Id.* at 869. The Nevada Supreme Court
overturned the dismissal of the plaintiff’s case against the cleaning service. *Id.* at 871.

1 Analyzing the eight factors set forth in *Young v. Johnny Ribiero* (as Plaintiff did in its Motion),
2 the Court repeatedly noted that the plaintiff was not at fault, was “entirely uninvolved” in the
3 loss of the bath mat, and had “not engaged in abusive conduct.” *Id.* at 871. The Nevada
4 Supreme Court noted the importance that the party against whom sanctions are awarded must be
5 the party actually responsible for the loss or destruction of the evidence. *Id.*

6 Plaintiff is seeking sanctions against Defendant EB5IA – the party who willfully
7 destroyed the crucial financial evidence. As the Court can see, even the cases cited by
8 Defendants support the requested relief.

9 **2. Alternatively, the Court Should Apply a Negative Inference**

10 Plaintiff believes that striking Defendant EB5IA’s Answer is appropriate. However, if
11 the Court declines to do so, it should apply an adverse inference instruction that the records
12 EB5IA should have retained and produced would support Front Sight’s claims of fraud,
13 misrepresentation, concealment, conversion, breach of contract, and civil conspiracy.

14 *Bass-Davis v. Davis*, 122 Nev. 442, 134 P.3d 103 (2006), applies to this case if the Court
15 disagrees that the destruction of evidence was intentional, and rather was mere negligence. The
16 Nevada Supreme Court made it clear that where evidence is negligently destroyed, an adverse
17 inference instruction is proper. *See id.* at 452.

18 **3. Additionally, if the Court Is Not Inclined to Strike Defendant EB5IA’s**
19 **Answer No Defendant Should Be Able to Present Evidence or Testimony in**
20 **Rebuttal to Mr. Winters’ Report and Conclusions**

21 Plaintiff believes that striking Defendant EB5IA’s Answer is appropriate. However, if
22 the Court declines to do so, in addition to application of a negative inference, the Court should
23 prohibit the presentation of any evidence or testimony by any Defendant to rebut Mr. Winters’
24 report and conclusions. *See, e.g., Banc One Shareholders Sec. Litig.*, NO. 00 C 2100, 2005 WL
3372783, at *14 (N.D. Ill. Dec. 8, 2005) (cited in Opp. at p. 6).

1 **4. The Court Should Impose a Monetary Sanction Against Defendant EB5IA**

2 In addition, the Court should sanction EB5IA in an amount equal to the amount of money
3 Defendant EB5IA took from Plaintiff that Defendant EB5IA cannot prove was used properly to
4 market the Front Sight project. Mr. Winters' report provides a rational number, and that number
5 is **at least \$144,574.27**. That is the amount by which Front Sight's payments to EB5IA between
6 February 2013 and October 6, 2016 exceeded the documented expenses – by Dziubla's own
7 documentation.

8 Defendants EB5IA and Dziubla only address this issue in cursory fashion. The only case
9 they cite is *Nevada Power Co. v. Fluor Illinois*, 108 Nev. 638, 837 P.2d 1354 (1992), and it is for
10 the proposition that awarding all attorneys' fees and costs from the commencement of litigation
11 was improper. (Opp., p. 9.) But – again – this case actually supports Plaintiff's position. The
12 *Nevada Power* case relates to violation of a protective order, which is somewhat different than
13 what is at issue here. However, that case clearly set forth that under NRCP 37(b)(2), a sanction
14 for fees and costs is appropriate, so long as they award relates to "the failure." *Nevada Power* at
15 646. The reason the Supreme Court overturned a sanction of all attorneys' fees and costs was
16 because not all of the attorneys' fees and costs related to the violation of the protective order.

17 It is worth noting that Plaintiff is requesting two monetary sanctions: (1) Plaintiff seeks a
18 sanction in the amount of money Defendant EB5IA took from Plaintiff that Defendant EB5IA
19 cannot prove was used properly to market the Front Sight project – \$144,574.27, and (2) an
20 award of attorneys' fees and costs associated with attempts to obtain the destroyed information.
21 Regarding the latter, as explained previously, once Plaintiff prevails on this motion, it will
22 specify the amount being requested.

23 ///

24 ///

1
2
3 **III.**

4 **CONCLUSION**

5 Based on the foregoing, Defendant EB5IA's Answer should be stricken and Defendant
6 EB5IA should be sanctioned monetarily for intentional and unlawful destruction and spoliation
7 of evidence. Alternatively, Front Sight is entitled to a negative inference instruction that the
8 records EB5IA should have retained and produced in this matter would demonstrate EB5IA used
9 funds received from Front Sight in bad faith, fraudulently, and unlawfully. The Court should
10 also prohibit the presentation of any evidence or testimony by any Defendant to rebut Mr.
11 Winters' report and conclusions, and the Court should impose a monetary sanction against
12 Defendant EB5IA in the amount of **\$144,574.27**.

13 Therefore, Front Sight respectfully requests the Court grant Plaintiff's Motion for
14 Sanctions and further relief this Court deems just and equitable.

15 DATED this 18th day of October, 2019.

16 **ALDRICH LAW FIRM, LTD.**

17 /s/ John P. Aldrich
18 John P. Aldrich, Esq.
19 Nevada Bar No. 6877
20 Catherine Hernandez, Esq.
21 Nevada Bar No. 8410
22 Matthew B. Beckstead, Esq.
23 Nevada Bar No. 14168
24 7866 West Sahara Avenue
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 18th day of October, 2019, I caused the foregoing
3 **PLAINTIFF'S REPLY TO OPPOSITION TO MOTION FOR SANCTIONS** 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
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.
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LLC, EB5IMPACT CAPITAL REGIONAL CENTER LLC,
EB5 IMPACT ADVISORS LLC, ROBERT W. DZIUBLA,
JON FLEMING and LINDA STANWOOD*

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

EXHIBIT 4

EXHIBIT 4

**EXPERT REPORT
DOUGLAS S. WINTERS, CPA
OCTOBER 18, 2019**

**IN THE MATTER OF:
FRONT SIGHT MANAGEMENT, LLC, Plaintiff**

v.

**LAS VEGAS DEVELOPMENT FUND LLC;
EB5 IMPACT ADVISORS, LLC;
ROBERT W. DZIUBLA; et. al.,**

Defendants

**EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA
CASE NO. A-18-7810184-B
DEPARTMENT 16**

**RUBIN BROWN, LLP
5851 W. CHARLESTON BLVD.
LAS VEGAS, NEVADA 89146
(702) 878-9788**



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October 18, 2019

John P. Aldrich, Esq.
Aldrich Law Firm, Ltd.
7866 West Sahara Ave.
Las Vegas, NV 89117

**RE: Front Sight Management, LLC v. Robert Dziubla, EB5 Impact Advisors, LLC, et. al.
Case No. A-18-781084-B (the "Matter")**

Dear Mr. Aldrich:

Aldrich Law Firm, Ltd. retained RubinBrown, LLP on behalf of Front Sight Management, LLC, ("Front Sight", "Plaintiff") to review and analyze the financial records of various entities operated or controlled by Robert Dziubla, including, but not limited to EB5 Impact Advisors, LLC ("EB5IA", and Las Vegas Development Fund, LLC ("LVDF") to evaluate and document certain financial transactions and matters.

I am the expert responsible for this analysis and report and I have prepared the following analysis and opinions.

Background

In a February 14, 2013, engagement letter between EB5IA and Front Sight, EB5IA offered to perform various services. The letter begins "This letter agreement will confirm the discussions that we have had with you and Ignatius Piazza, the owner of Front Sight, over the past few months about our raising \$75 million of debt financing for Front Sight . . ." ¹ As compensation for those services, Front Sight was to "pay EB5IA a total fee of \$36,000 as per the attached budget, which fee will be offset against the first interest payments made on the Financing." ² Regarding the \$36,000 fee, Exhibit A to the letter states, "50% on RC submittal, 50% on FS project submittal, offset against success payment"

¹ February 14, 2013 letter agreement, page 1

² Ibid, page 8

Also, Front Sight was to “pay for or reimburse EB5IA, as billed periodically, for its expenses . . .”³ Schedule A to the letter agreement states “Borrower shall be responsible for payment of lender’s reasonable expenses.”⁴

From February 2013 through October 6, 2016, according to EB5IA’s reports, Front Sight paid EB5IA \$249,730.⁵ After October 6, 2016, through March 2, 2018, Front Sight paid EB5IA \$87,000 for what Mr. Dziubla called “per-investor performance payments and related expenses.”⁶

Front Sight has demanded an accounting from EB5IA.

The Court granted a “Motion for an Accounting as it relates to EB5IA and any funds that entity received for purposes of marketing.”⁷

EB5IA has produced to date the following:

- Bank statements for Wells Fargo Bank accounts ending #1581, #3870, and #4477;
- For Wells Fargo Bank account #1581, copies of some cancelled checks;
- Some printed Quick Books reports;
- Declaration of Robert Dziubla April 3, 2019 (“Accounting Declaration”) with attachments.

EB5IA has not produced:

- An electronic copy of its Quick Books accounting records;
- Balance sheets;
- General ledger reports;
- Cash receipts or disbursement journals;
- All cancelled checks;
- Deposit slips;
- Expense reports or expense reimbursement requests with supporting documentation;

³ Ibid.

⁴ Ibid. Schedule A

⁵ Dziubla Declaration, April 3, 2019

⁶ Ibid.

⁷ Page 3, Renewed Motion for an Accounting Related to Defendants Las Vegas Development Fund LLC, filed November 13, 2018.

- Invoices, receipts, statements, or other documents customarily maintained as support for cash receipts and disbursements.

EB5IA argues that it has produced an accounting. I have been asked to express my opinions, as a CPA, on EB5IA's accounting. Reasonable people might reasonably disagree on what constitutes an accounting. One's experience and knowledge influences their ability and understanding of accounting. EB5 Impact Capital's website provides the following background on Mr. Dziubla:

"Mr. Dziubla is the President & CEO of EB Impact Capital Regional Center, LLC and of Kenworth Capital, Inc. Previously, he was the Vice-Chairman and General Counsel of Guggenheim Sovereign LLC, a joint venture with Guggenheim Partners, a \$170 billion global financial services firm. From 1998 to 2003 he was the CEO and Chief Investment Officer of a private equity fund in Southeast Asia with several operating subsidiaries and over 1300 employees operating four resorts, fifty-five industrial properties and a portfolio of condominiums and serviced apartments. During his legal career, Mr. Dziubla was a partner at the world's two largest law firms (Baker & McKenzie; Jones Day), the founder of his own law firm with offices in the US and China and has handled financing, infrastructure, real estate, M&A, hospitality and corporate transactions well in excess of \$10 billion around the world."

Based upon Mr. Dziubla's claimed business experience, I find that the EB5IA accounting is not reasonable.

Analysis of accounting

Mr. Dziubla, on behalf of EB5IA in a Declaration dated April 3, 2019 regarding the accounting of EB5IA, made various statements regarding the accounting of EB5IA. I have the following observations, comments, and opinions on his Accounting Declaration. For convenience, I use his paragraph numbers:

4. Budget: Mr. Dziubla declares "The Budget contemplated that Plaintiff Front Sight would pay EB5IA a total of \$277,230 to develop, structure and implement an EB5 financing platform."⁸ The \$277,230 Budget includes both the fee that Front Sight agreed to pay and the estimated expenses. The Budget was not a set amount that Front Sight owed EB5IA.
6. Exhibit B is list of funds that EB5IA received from Plaintiff totaling \$336,730. Mr. Dziubla references the Wells Fargo ("WF") bank statements that were produced. I compared Exhibit B with the WF statements and found that the second item on Exhibit B, a deposit dated December 2, 2013 in the amount of \$24,500 is not on the WF statements. The EB5IA production of Wells Fargo ("WF") statements begins with WF(2013)00001 which covers December 1 to December 31, 2013. It is possible that it was deposited into the account in November 2013 and entered into Quick Books in December 2013.

⁸ Declaration, page 1, (EB5IAC)0001

7. Exhibit C is, according to the Declaration, purportedly “a transaction ledger from Quickbooks.” I note that the pages lack headings or footings customarily found on Quick Books reports.

Mr. Dziubla declared that the payments totaling \$359,826.95 are “the expenses that were payable by the Plaintiff.”⁹

Following Exhibit D of Mr. Dziubla’s Declaration are copies of bills and invoices as support of some of the amounts listed on Exhibit C. Attached hereto as Schedule 1 is a list of 37 payments totaling \$113,650.73 from Exhibit C for which I found supporting invoices. I have been unable to find invoices or other documents as support for the other entries on Exhibit C.

As mentioned above, according to the February 14, 2013 agreement between EB5IA and Front Sight, Front Sight was to pay of fee of \$36,000 plus reimburse EB5IA for expenses. Schedule A to the agreement states “Borrower shall be responsible for payment of lender’s reasonable expenses.”

To support reimbursement of expenses, it is a well-established business practice and custom to maintain and provide support for all reimbursable expenses. Mr. Dziubla claims he has substantial business experience and should be well familiar with customary expense documentation requirements.

IRS Publication 463 states:

“Documentary evidence ordinarily will be considered adequate if it shows the amount, date, place, and essential character of the expense.

For example, *a hotel receipt* is enough to support expenses for business travel if it has all of the following information.

The name and location of the hotel.

The dates you stayed there.

Separate amounts for charges such as lodging, meals, and telephone calls.

A restaurant receipt is enough to prove an expense for a business meal if it has all of the following information.

The name and location of the restaurant.

The number of people served.

The date and amount of the expense.

⁹ Ibid., page 2, (EB5IAC)0002

If a charge is made for items other than food and beverages, the receipt must show that this is the case.

Canceled check.

A canceled check, together with a bill from the payee, ordinarily establishes the cost. However, **a canceled check by itself doesn't prove a business expense without other evidence to show that it was for a business purpose.**"

(emphasis added)

During an evidentiary hearing, Mr. Dziubla was asked about support for expenses and the accounting records:

Q: "So you didn't keep the receipt related to the expenses that would show up on the bank statement?"

A: "No."¹⁰

...

Q: "Have you provided every document that you have that relates to that order compelling the accounting?"

A: "Yes."¹¹

Mr. Dziubla further testified:

Q. And did you keep records such as receipts and invoices related to the expenditures of EB-5IA?

A. We had credit card statements, and we kept them for a while. And then we tossed them a few years -- you know, later on after time had passed simply because time had passed and we had bank statements, credit card statements, checks, and, you know, our QuickBooks ledger.

Q. So you're telling me that you tossed the underlying records?

A. Many times we didn't even have the records. We had the bank statements. We had debit cards. We didn't have credit cards. So generally speaking, we put it through the debit card and it showed up on the bank statement.¹²

¹⁰ Transcript of June 3, 2019 Hearing, page 49, lines 2 to 4

¹¹ Id., page 50, lines 4 to 6

...

Q. ...Have you discarded any records related to EB-5IC, the Regional Center?

A. I couldn't say offhand. I don't think so, but I can't say definitively.

Q. Okay. And why would you have kept all the records for the Regional Center but not for EB-5IA?...

A: That's not what I said. What I said is we may have discarded records from the Regional Center. I don't know. Offhand, I don't think so, but we set it up a long time ago, and there was really very little activity per se in the Regional Center.¹³

...

Q. And have you discarded any invoices or receipts related to expenses of Las Vegas Development Fund?

A. Not that I remember.¹⁴

In my opinion, EB5IA has produced documents to support \$113,650.73 of expenses.

I compared the entries on Exhibit C with the WF statements. Attached hereto as Schedule 2 is a list of over 700 entries totaling \$86,406.71 of withdrawals on the WF bank statements that were not listed on Exhibit C.

8. Exhibit D is a list of \$44,300 capital infusion. That bank deposits on Exhibit D also included on the last page of Exhibit C which shows that \$44,500 was deposited into WF and that \$76,850 was paid out, for a net decrease of \$32,550.

The \$76,850 was paid to Kenworth Capital \$56,975; Legacy Realty Capital Inc. \$17,875; and Robert Dziubla \$2,000.

EB5IA produced documentation for expenses totaling \$113,650.73. \$105,142.73 of that amount was paid out before October 6, 2016. Through that date Front Sight had paid EB5IA \$249,730. The Front Sight payments to EB5IA exceed the documented expenses by \$144,587.27 through October 6, 2016.

The accounting prepared by and produced by does not reconcile with the WF bank accounts. The EB5IA accounting of its disbursements on Exhibit C of Mr. Dziubla's accounting totals

¹² Id., page 48, line 12 through page 49, line 1

¹³ Id., page 50, line 23 through page 52, line 9

¹⁴ Id., page 56, lines 4 to 7

\$359,826.95. The total deposits and disbursements from the WF accounts total \$482,932.25. The EB5IA accounting of its disbursements differs from the WF bank activity by \$86,408.71 (see Statement 1). The EB5IA accounting of deposits differs from the WF bank deposits by \$130,934.30.

It is my opinion that the EB5IA has failed 1) to provide a complete or accurate accounting, 2) to provide documentation for the expenses that it charged Front Sight, and 3) to maintain adequate receipts and other records to support its expenses.

Other

Information considered in preparing this report includes the documents listed on the attached schedule.

In addition to the above stated bases and reasons, my opinions are based upon my experience, technical training, and continuing education as a Certified Public Accountant for over thirty years. My opinions are also based upon my examination, consideration, analysis, and review of documents produced by the parties, and upon the analysis of others in my firm who, under my review and supervision, performed analysis, examination, calculations, and review of documents and facts.

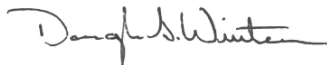
My curriculum vitae is attached. My experience as a CPA includes auditing, analyzing, reviewing and evaluating financial records, reports, and documents.

RubinBrown, LLP is compensated on an hourly basis at rates which range from \$40 per hour to \$360 per hour. My hourly rate is \$360 per hour. Our fees are not contingent on the outcome of this matter.

This report is based on information provided to me through October 18, 2019. As discovery is ongoing, I reserve the right to supplement or revise this report if additional information becomes available. My analysis and opinions are subject to change and revision as additional documents are produced and I review any additional documents.

Very truly yours,

RubinBrown, LLP



Douglas S. Winters, Partner

Information Considered

- 1) March 10, 2019 Declaration of Robert Dziubla with Exhibits
- 2) April 3, 2019 Declaration of Robert Dziubla with Exhibits
- 3) Checks00001 to Checks000092
- 4) TPL(1)0001 to TPL(1)0009
- 5) WF(2013)0001 to WF(2013)0041
- 6) WF(2014)0001 to WF(2014)0060
- 7) WF(2015)0001 to WF(2015)0068
- 8) WF(2016)0001 to WF(2016)0088
- 9) WF(2017)0001 to WF(2017)0078
- 10) WF(2018)0001 to WF(2018)0042
- 11) Contracts(2)0001 to Contracts(2)00063
- 12) Transcripts of Evidentiary Hearing June 3 and July 22, 2019 and Exhibits 5, 33, 34, 36, and 45
- 13) Holmes Expert Witness Report February 21, 2019
- 14) February 14, 2013 engagement letter between EB5IA and Front Sight

Douglas S. Winters, CPA

RubinBrown, LLP

5851 West Charleston Blvd.

Las Vegas, Nevada 89146

(702) 878-9788

PROFESSIONAL PROFILE:

Mr. Winters is a partner in RubinBrown, LLP. He has over thirty-five years experience performing audit, accounting, tax and business consulting services for businesses in a wide range of industries. He has served as a court appointed receiver and special master and has been certified as an expert witness in State of Nevada District Court and U.S. District Court, Clark County, Nevada.

EDUCATION:

Bachelor of Science, Brigham Young University, 1982

Major in accounting, cum laude

Annual continuing education courses

PROFESSIONAL MEMBERSHIPS:

Mr. Winters is a member of both the American Institute of Certified Public Accountants and the Nevada Society of Certified Public Accountants. He is licensed to practice in the states of Nevada and Utah.

He served on the Nevada Society of Certified Public Accountants Audit Accounting Standards Committee for three years including one year as vice-chairman. This committee, under the auspices of the Nevada State Board of Accountancy, reviewed CPA prepared financial statements as part of the State Board's practice monitoring program to test the level of quality control and compliance with generally accepted auditing and accounting standards.

PUBLICATIONS:

None

PREVIOUS COURT EXPERIENCE:

Nevada District Court:

Jackson v. Associated Radiation Oncology (A505809) Contract damages
Klaus Englert ING, v. Equipment Management Technology (A482365), Special Master,
Damages
Realmuto v. Olzaski, (D304048), Marital accounting
Grand Canyon Adventures, (A525921), Receiver
IDC, Ltd. v. Carlson (A529457), Accounting
Jenson Total Services v. Thermal Dynamics (A540910), Damages
Durango Construction, Inc. v. Lakewood Cove Apartments, Inc. (A539546), Damages
Marnell Carrao Associates, Inc. v. Powell Cabinets, Inc. (A-09-595935-B) Construction
accounting
Ben Maese v. Greg J. Paulk (A109630880-B), Loan modification and personal expenses
RFF Family Partnership v. Emagine Networks, LLC (A-15-722136-C) Promissory notes
Vegas Property Services, Inc. v. Mariya Ilieva (A-16-734895-B) Capital contributions
Forum Shops v. Saga Trading (A-16-738925-B), Damages
Ultimate Auto Sales vs. Miramar Corp. (A-13-691149-C), Damages
Diamond Mountain Dist. vs. Calmation Inc. (A-17-755881-C), Accounting

U.S. District Court, Clark County, Nevada:

Cieslar v. Pardee (CV-s-05-1114-DLG-RJJ), Damages
Watec v. John Palmeri and Rock House Products (2:06-CV-00969), Damages

U.S. Bankruptcy Court, District of Nevada:

Carlos Huerta v. Hugo Paulson (10-14804-BAM), Accounting and damages
Peter Eliades v. Dolores Eliades (BK-S-12-11672-mkn), Accounting and damages

Arbitration and Mediation:

The Resort At Summerlin vs. J.A. Jones, Inc., Fraud and damages

**EB5 Impact Advisors
Withdrawals on Dziubla's Exhibit C traced to supporting documents**

WF Acct.	Type	Date	Type	Description	Memo	Bates # of invoice	Withdrawal Amount
WF4477	Check	09/18/2013	1008	Baker & McKenzie	Retainer - Mike Mladka	97	\$ 3,650.00
WF4477	Check	09/19/2013	1007	Dentons	Retainer - Matt Schulz	93	3,500.00
WF - 1581	Check	02/21/2014	2006	Dentons	Inv 1515012	88	5,000.00
WF - 1581	Check	04/04/2014	2009	Dentons	Reimbursement of I-924 Filing Fee	81	6,230.00
WF - 1581	Check	05/15/2014	2010	Baker & McKenzie	Client 6827499 Inv date 03/20/14 & 05/01/14	121?	20,605.00
WF - 1581	Check	05/19/2014	2012	Dentons	Inv 1543827	82	10,000.00
WF - 1581	Check	09/05/2014	Debit	NV Portal Secretary	Check crd purchase 9/03	157	325.00
WF - 1581	Check	09/15/2014	2016	Dentons	Inv 1556555	82	5,000.00
WF - 1581	Check	10/14/2014	2023	Dentons	Inv 1563814	74	10,030.98
WF - 1581	Check	05/19/2015	2028	Dentons	Inv 1632578	71	5,000.00
WF - 1581	Check	06/08/2015	2031	Dentons	Inv 1650952	67	43.19
WF - 1581	Check	06/08/2015	2030	Legacy Productions	1/2 Deposit for Front Sight Video	156	1,550.00
WF - 1581	Check	08/20/2015	2034	Michael Brand Esq.	Initial retainer for prep of Front Sight loan docs	151	5,000.00
WF - 1581	Check	08/24/2015	2060	Legacy Productions	Balance of maketing for Front Sight Productions	156	1,570.00
WF - 1581	Check	09/03/2015	Debit	NV Portal Secretary		166	350.00
WF - 1581	Check	09/15/2015	2036	Baker & McKenzie	Inv #9655083491	122	1,390.00
WF - 1581	Check	09/16/2015	2037	Dentons	Inv #1664927 and Inv #1871650	62	236.09
WF - 1581	Check	09/17/2015	2038	Williams Global Law PLLC	Initial payment for pre-marketing services	169	2,500.00
WF - 1581	Check	10/01/2015	2040	Bring & Co.		195	2,500.00
WF - 1581	Check	10/14/2015	2043	Baker & McKenzie		128	5,629.50
WF - 1581	Check	10/19/2015	Debit	Lin Gang		136	3,977.50
WF - 1581	Check	10/29/2015	2044	Williams Global Law PLLC		169	2,500.00
WF - 1581	Check	11/10/2015	2046	Michael Brand Esq.	Pre-marketing agreement - Brazil / China	151, 204	3,200.87
WF - 1581	Check	11/12/2015	2049	Dentons	Inv 1710088	55	820.50
WF - 1581	Check	12/17/2015	2056	Dentons	Inv 1728592	47	392.00
WF - 1581	Check	12/17/2015	2054	Dentons	Inv 1718620	51	196.00
WF - 1581	Check	02/01/2016	Debit	NV Portal Secretary	Purchase 1/28	160	350.00
WF - 1581	Check	03/11/2016	2080	Dentons	Inv 1748485	39	183.50
WF - 1581	Check	04/18/2016	2088	Dentons	Inv 1741031 and 1758886	38	613.60
WF - 1581	Check	06/06/2016	2093	Dentons	Inv 1769125	33	395.00
WF - 1581	Check	06/23/2016	2095	Dentons	Inv 1778096 and 1785657	29	1,185.00
WF - 1581	Check	08/02/2016	2098	Dentons	Inv 1793439	21	869.00
WF - 1581	Check	08/11/2016	Debit	NV Portal Secretary	Purchase 8/10	163	350.00
WF - 1581	Check	10/18/2016	2105	Michael J Madda Esq.	Inv of Aug 8, 2016	203	3,000.00
WF - 1581	Check	10/18/2016	2102	Michael Brand Esq.	Inv FS 003 and FS 004	151, 204	5,000.00
WF - 1581	Check	10/25/2016	2107	Dentons	Inv 1815721	18	158.00
WF - 1581	Check	01/13/2017	Debit	NV Portal Secretary	Purchase 1/12	162	350.00
							<u>\$ 113,650.73</u>

EB5 Impact Advisors**Withdrawals on Wells Fargo statements not on Dziubla's Exhibit C**

WF Acct.	Type	Date	Type	Description	Withdrawal Amount
WF4477	Check	02/28/2013	Transfer	Savings Account - 5086	\$ 2,500.00
WF4477	Check	03/01/2013	Transfer	Savings Account - 5086	150.00
WF4477	Check	04/01/2013	Transfer	Savings Account - 5086	150.00
WF4477	Check	05/01/2013	Transfer	Savings Account - 5086	150.00
WF4477	Check	06/03/2013	Transfer	Savings Account - 5086	150.00
WF4477	Check	07/01/2013	Transfer	Savings Account - 5086	150.00
WF4477	Check	08/01/2013	Transfer	Savings Account - 5086	150.00
WF4477	Check	08/30/2013	Debit	Wells Fargo	14.00
WF4477	Check	09/03/2013	Transfer	Savings Account - 5086	150.00
WF4477	Check	09/30/2013	Debit	Wells Fargo	14.00
WF4477	Check	10/01/2013	Transfer	Savings Account - 5086	150.00
WF4477	Check	10/31/2013	Debit	Wells Fargo	14.00
WF4477	Check	11/01/2013	Transfer	Savings Account - 5086	150.00
WF4477	Check	11/21/2013	Debit	Withdrawal	6,790.50
WF - 1581	Check	12/18/2013	Debit	Spices Thai Cafe	29.74
WF - 1581	Check	12/23/2013	Debit	Unknown Vendor	7,690.61
WF - 1581	Check	12/23/2013	Debit	Wells Fargo	12.00
WF - 1581	Check	12/31/2013	Wire	Unknown Vendor	45.00
WF - 1581	Check	01/03/2014	Debit	Wells Fargo	15.00
WF - 1581	Check	01/21/2014	Debit	Wells Fargo	5.00
WF - 1581	Check	01/29/2014	Debit	Wells Fargo	45.00
WF - 1581	Check	04/30/2014	Debit	Wells Fargo	14.00
WF - 1581	Check	05/09/2014	Debit	Sunoco	16.81
WF - 1581	Check	05/12/2014	Debit	Metro Parking	4.75
WF - 1581	Check	05/12/2014	Debit	Subway	5.30
WF - 1581	Check	05/14/2014	Debit	Laz Parking	4.00
WF - 1581	Check	06/30/2014	Debit	Unknown Vendor	220.76
WF - 1581	Check	07/16/2014	Debit	Unknown Vendor	76.46
WF - 1581	Check	07/17/2014	Debit	Seasons	62.76
WF - 1581	Check	07/17/2014	Debit	CSD Parking Meters	2.25
WF - 1581	Check	08/07/2014	Debit	Island Prime	67.13
WF - 1581	Check	08/11/2014	Debit	Unknown Vendor	41.69
WF - 1581	Check	08/13/2014	Debit	Arco	39.67
WF - 1581	Check	08/25/2014	Debit	Panya Thai Kitchen	22.17
WF - 1581	Check	08/27/2014	Debit	On The Border	41.83
WF - 1581	Check	09/09/2014	Debit	FedEx	75.56
WF - 1581	Check	09/09/2014	Debit	On The Border	48.46
WF - 1581	Check	09/25/2014	Debit	Adobe Systems	23.88
WF - 1581	Check	09/30/2014	Debit	Wells Fargo	14.00
WF - 1581	Check	10/01/2014	Debit	Islands Restaurant	41.05
WF - 1581	Check	10/03/2014	Debit	Staples	7.01
WF - 1581	Check	10/06/2014	Debit	Staples	20.11

EB5 Impact Advisors**Withdrawals on Wells Fargo statements not on Dziubla's Exhibit C**

WF Acct.	Type	Date	Type	Description	Withdrawal Amount
WF - 1581	Check	10/16/2014	Debit	Hyatt	85.71
WF - 1581	Check	10/17/2014	2019	Bonnie Zito	605.66
WF - 1581	Check	10/21/2014	Debit	Arco	0.36
WF - 1581	Check	10/21/2014	Debit	Arco	40.82
WF - 1581	Check	10/31/2014	Debit	Wells Fargo	14.00
WF - 1581	Check	11/06/2014	Debit	Starbucks	3.50
WF - 1581	Check	11/06/2014	Debit	Ace Parking	22.00
WF - 1581	Check	11/10/2014	Debit	Staples	9.80
WF - 1581	Check	11/28/2014	Debit	Wells Fargo	14.00
WF - 1581	Check	12/08/2014	Debit	8 Elements	23.65
WF - 1581	Check	12/08/2014	Debit	8 Elements	4.00
WF - 1581	Transfer	12/10/2014	Transfer		150.00
WF - 1581	Check	12/11/2014	Debit	RA Sushi	51.87
WF - 1581	Check	12/16/2014	Debit	Spices Thai Cafe	25.49
WF - 1581	Check	12/23/2014	Debit	USA Gasoline	45.21
WF - 1581	Check	12/23/2014	Debit	Shell Station	32.58
WF - 1581	Check	12/24/2014	Debit	Starbucks	2.97
WF - 1581	Check	12/26/2014	Debit	Yard House	46.71
WF - 1581	Check	12/29/2014	Debit	Go Daddy	30.34
WF - 1581	Check	12/31/2014	Debit	Wells Fargo	14.00
WF - 1581	Check	01/08/2015	Debit	Barnes & Noble	30.23
WF - 1581	Check	01/09/2015	2022	Oliva Goddard & Wright	350.00
WF - 1581	Check	01/09/2015	2024	Oliva Goddard & Wright	450.00
WF - 1581	Transfer	01/12/2015	Transfer		150.00
WF - 1581	Check	01/21/2015	Debit	Island Prime	72.32
WF - 1581	Check	01/21/2015	Debit	Shell Station	44.85
WF - 1581	Check	01/22/2015	Debit	Unknown Vendor	38.79
WF - 1581	Check	01/30/2015	Debit	Wells Fargo	14.00
WF - 1581	Check	02/03/2015	Debit	Ace Parking	10.00
WF - 1581	Transfer	02/10/2015	Transfer		150.00
WF - 1581	Check	02/17/2015	Debit	E lance	0.54
WF - 1581	Check	02/17/2015	Debit	E lance	0.69
WF - 1581	Check	02/20/2015	Debit	Rrauchasso	49.00
WF - 1581	Check	03/10/2015	Debit	Port of SD	1.75
WF - 1581	Transfer	03/10/2015	Transfer		150.00
WF - 1581	Check	03/12/2015	Debit	Omni	15.00
WF - 1581	Check	03/19/2015	Debit	Go Daddy	59.88
WF - 1581	Check	03/24/2015	Debit	E lance	59.18
WF - 1581	Check	04/02/2015	Debit	Lazy Dog Restaurant	42.08
WF - 1581	Check	04/02/2015	Debit	Ace Parking	12.00
WF - 1581	Check	04/02/2015	Debit	Ace Parking	10.00
WF - 1581	Transfer	04/10/2015	Transfer		150.00

EB5 Impact Advisors**Withdrawals on Wells Fargo statements not on Dziubla's Exhibit C**

WF Acct.	Type	Date	Type	Description	Withdrawal Amount
WF - 1581	Check	04/13/2015	Debit	Craft Brews	20.68
WF - 1581	Check	04/17/2015	Debit	Panera Bread	8.31
WF - 1581	Check	04/20/2015	Debit	The US Grant Restaurant	14.96
WF - 1581	Check	04/20/2015	Debit	8 Elements	25.65
WF - 1581	Check	05/04/2015	Debit	Unknown Vendor	69.89
WF - 1581	Check	05/06/2015	Debit	Island Prime	51.15
WF - 1581	Transfer	05/11/2015	Transfer		150.00
WF - 1581	Check	05/13/2015	Debit	Unknown Vendor	68.75
WF - 1581	Check	05/14/2015	Debit	Spices Thai Cafe	27.11
WF - 1581	Check	05/15/2015	Debit	Southwest	175.00
WF - 1581	Check	05/22/2015	Debit	Rebel	28.08
WF - 1581	Check	05/26/2015	Debit	Unknown Vendor	69.29
WF - 1581	Check	05/26/2015	Debit	Costco	156.58
WF - 1581	Check	06/01/2015	Debit	QuickBooks	189.95
WF - 1581	Check	06/01/2015	Debit	Seasons	61.79
WF - 1581	Check	06/01/2015	Debit	Target	87.47
WF - 1581	Check	06/10/2015	Debit	Wells Fargo	45.00
WF - 1581	Transfer	06/10/2015	Transfer		150.00
WF - 1581	Check	06/11/2015	Debit	Arco	59.97
WF - 1581	Check	06/15/2015	Debit	Costco Gas	36.53
WF - 1581	Check	06/15/2015	Debit	Shell Station	64.24
WF - 1581	Check	06/19/2015	Debit	Spices Thai Cafe	37.16
WF - 1581	Check	06/25/2015	Debit	Spices Thai Cafe	40.94
WF - 1581	Check	06/29/2015	Debit	Go Daddy	153.41
WF - 1581	Transfer	07/10/2015	Transfer		150.00
WF - 1581	Check	07/20/2015	Debit	Wells Fargo	0.44
WF - 1581	Check	07/24/2015	Debit	Varso Gas	69.24
WF - 1581	Check	08/06/2015	Debit	Varso Gas	64.53
WF - 1581	Transfer	08/10/2015	Transfer		150.00
WF - 1581	Check	08/17/2015	Debit	Unknown Vendor	49.94
WF - 1581	Check	08/17/2015	Debit	Wells Fargo	5.00
WF - 1581	Check	08/19/2015	Debit	Wells Fargo	0.24
WF - 1581	Check	08/24/2015	Debit	Lady Elliott	352.88
WF - 1581	Check	08/24/2015	Debit	Wells Fargo	10.58
WF - 1581	Check	08/24/2015	Debit	Wells Fargo	0.07
WF - 1581	Check	08/24/2015	Debit	Wells Fargo	0.49
WF - 1581	Check	08/25/2015	Debit	Wells Fargo	0.52
WF - 1581	Check	08/25/2015	Debit	Shell Station	81.42
WF - 1581	Check	08/26/2015	Debit	Wells Fargo	0.50
WF - 1581	Check	08/26/2015	Debit	Wells Fargo	0.32
WF - 1581	Check	08/27/2015	Debit	Wells Fargo	0.40
WF - 1581	Check	08/31/2015	Debit	Wells Fargo	0.24

EB5 Impact Advisors**Withdrawals on Wells Fargo statements not on Dziubla's Exhibit C**

WF Acct.	Type	Date	Type	Description	Withdrawal Amount
WF - 1581	Check	08/31/2015	Debit	Wells Fargo	0.09
WF - 1581	Check	08/31/2015	Debit	Wells Fargo	0.27
WF - 1581	Check	08/31/2015	Debit	Wells Fargo	0.08
WF - 1581	Check	08/31/2015	Debit	Wells Fargo	0.22
WF - 1581	Check	08/31/2015	Debit	Wells Fargo	0.16
WF - 1581	Check	08/31/2015	Debit	Wells Fargo	0.32
WF - 1581	Check	09/01/2015	Debit	Wells Fargo	0.51
WF - 1581	Check	09/01/2015	Debit	Wells Fargo	0.30
WF - 1581	Check	09/03/2015	Debit	Pailin Thai Cuisine	23.34
WF - 1581	Check	09/08/2015	Debit	Unknown Vendor	41.43
WF - 1581	Transfer	09/10/2015	Transfer		150.00
WF - 1581	Check	09/10/2015	Debit	Staples	26.61
WF - 1581	Check	09/11/2015	Debit	King's Fish House	68.48
WF - 1581	Check	09/11/2015	Debit	Ballast Point	15.00
WF - 1581	Check	09/11/2015	Debit	Shell Station	45.71
WF - 1581	Check	09/14/2015	Debit	Wells Fargo	5.00
WF - 1581	Check	09/14/2015	Debit	Wells Fargo	5.00
WF - 1581	Check	09/15/2015	Debit	Wells Fargo	0.51
WF - 1581	Check	09/16/2015	Debit	Wells Fargo	0.61
WF - 1581	Check	09/16/2015	Debit	Wells Fargo	1.22
WF - 1581	Check	09/16/2015	Debit	Wells Fargo	3.59
WF - 1581	Check	09/16/2015	Debit	Wells Fargo	5.00
WF - 1581	Check	09/17/2015	Debit	Wells Fargo	1.18
WF - 1581	Check	09/18/2015	Debit	Wells Fargo	41.24
WF - 1581	Check	09/18/2015	Debit	Wells Fargo	0.61
WF - 1581	Check	09/21/2015	Debit	Wells Fargo	25.49
WF - 1581	Check	09/21/2015	Debit	Wells Fargo	26.31
WF - 1581	Check	09/21/2015	Debit	Varso Gas	58.37
WF - 1581	Check	09/23/2015	Debit	Voipo	20.00
WF - 1581	Check	09/23/2015	Debit	Voipo	1.00
WF - 1581	Check	09/23/2015	Debit	Voipo	1.00
WF - 1581	Check	09/25/2015	Debit	Adobe Systems	23.88
WF - 1581	Check	09/28/2015	Debit	Copymat	127.44
WF - 1581	Check	09/28/2015	Debit	Unknown Vendor	42.88
WF - 1581	Check	09/28/2015	Debit	Staples	51.28
WF - 1581	Check	09/30/2015	Debit	Copymat	60.00
WF - 1581	Check	10/05/2015	Debit	Unknown Vendor	44.39
WF - 1581	Check	10/06/2015	Debit	Top Notch	686.25
WF - 1581	Check	10/06/2015	2041	Unknown Vendor	800.00
WF - 1581	Check	10/07/2015	Debit	Copymat	80.00
WF - 1581	Check	10/07/2015	Debit	Sharefile	375.00
WF - 1581	Check	10/09/2015	Debit	USPS	11.00

EB5 Impact Advisors**Withdrawals on Wells Fargo statements not on Dziubla's Exhibit C**

WF Acct.	Type	Date	Type	Description	Withdrawal Amount
WF - 1581	Check	10/13/2015	Debit	Copymat	421.20
WF - 1581	Transfer	10/13/2015	Transfer		150.00
WF - 1581	Check	10/13/2015	Debit	Unknown Vendor	47.34
WF - 1581	Check	10/13/2015	Debit	Tomiki Aikido	44.85
WF - 1581	Check	10/13/2015	Debit	Staples	18.35
WF - 1581	Check	10/13/2015	Debit	Albertsons	33.86
WF - 1581	Check	10/15/2015	Debit	Wells Fargo	45.00
WF - 1581	Check	10/16/2015	Debit	Shell Station	45.16
WF - 1581	Check	10/19/2015	Debit	Wells Fargo	45.00
WF - 1581	Check	10/19/2015	Debit	Wells Fargo	45.00
WF - 1581	Check	10/19/2015	Debit	The Poseidon	87.90
WF - 1581	Check	10/19/2015	Debit	Varso Gas	46.92
WF - 1581	Check	10/20/2015	Debit	Voipo	21.00
WF - 1581	Check	10/23/2015	Debit	Panda Express	8.21
WF - 1581	Check	10/23/2015	Debit	Draft Republic	31.54
WF - 1581	Check	10/23/2015	Debit	Starbucks	5.70
WF - 1581	Check	10/26/2015	Debit	Shell Station	49.39
WF - 1581	Check	10/28/2015	Debit	USPS	161.25
WF - 1581	Check	10/29/2015	Debit	Blue Ocean	40.56
WF - 1581	Check	11/02/2015	Debit	Valero Citracado	54.99
WF - 1581	Check	11/03/2015	Debit	Staples	16.19
WF - 1581	Check	11/05/2015	Debit	8 Elements	41.48
WF - 1581	Check	11/09/2015	Debit	QuickBooks	14.95
WF - 1581	Check	11/09/2015	Debit	Wells Fargo	5.00
WF - 1581	Check	11/09/2015	Debit	Vons Fuel	41.57
WF - 1581	Check	11/10/2015	2048	Oliva Goddard & Wright	2,650.00
WF - 1581	Transfer	11/10/2015	Transfer		150.00
WF - 1581	Check	11/12/2015	Debit	Wells Fargo	5.00
WF - 1581	Check	11/12/2015	Debit	Staples	19.43
WF - 1581	Check	11/16/2015	Debit	Vons Fuel	44.48
WF - 1581	Check	11/16/2015	Debit	Shell Station	35.43
WF - 1581	Check	11/18/2015	Debit	Wells Fargo	45.00
WF - 1581	Check	11/20/2015	Debit	Voipo	21.00
WF - 1581	Check	11/20/2015	Debit	Shell Station	40.02
WF - 1581	Check	11/23/2015	Debit	McDonald's	6.47
WF - 1581	Check	11/25/2015	Debit	Wells Fargo	18.24
WF - 1581	Check	11/27/2015	Debit	Wells Fargo	1.01
WF - 1581	Check	11/27/2015	Debit	Lostabbey	17.00
WF - 1581	Check	11/27/2015	Debit	Wells Fargo	0.41
WF - 1581	Check	11/27/2015	Debit	Wells Fargo	1.09
WF - 1581	Check	11/27/2015	Debit	Wells Fargo	0.13
WF - 1581	Check	11/27/2015	Debit	Wells Fargo	0.30

EB5 Impact Advisors**Withdrawals on Wells Fargo statements not on Dziubla's Exhibit C**

WF Acct.	Type	Date	Type	Description	Withdrawal Amount
WF - 1581	Check	11/27/2015	Debit	Wells Fargo	5.00
WF - 1581	Check	11/30/2015	Debit	Wells Fargo	2.29
WF - 1581	Check	11/30/2015	Debit	Wells Fargo	0.50
WF - 1581	Check	11/30/2015	Debit	Wells Fargo	0.95
WF - 1581	Check	11/30/2015	Debit	Wells Fargo	0.17
WF - 1581	Check	11/30/2015	Debit	Wells Fargo	0.87
WF - 1581	Check	11/30/2015	Debit	Wells Fargo	0.71
WF - 1581	Check	12/01/2015	Debit	Wells Fargo	0.20
WF - 1581	Check	12/01/2015	Debit	Wells Fargo	0.31
WF - 1581	Check	12/01/2015	Debit	Wells Fargo	5.00
WF - 1581	Check	12/02/2015	Debit	Starbucks	4.50
WF - 1581	Check	12/02/2015	Debit	Wells Fargo	5.00
WF - 1581	Check	12/02/2015	Debit	Wells Fargo	0.27
WF - 1581	Check	12/04/2015	Debit	Wells Fargo	1.23
WF - 1581	Check	12/04/2015	Debit	Arco	44.65
WF - 1581	Check	12/07/2015	2052	Waldman Investments Inc	800.00
WF - 1581	Check	12/07/2015	Debit	Seasalt	94.00
WF - 1581	Check	12/07/2015	Debit	Wells Fargo	6.82
WF - 1581	Check	12/08/2015	Debit	QuickBooks	14.95
WF - 1581	Transfer	12/10/2015	Transfer		150.00
WF - 1581	Check	12/10/2015	Debit	Costco Gas	35.76
WF - 1581	Check	12/16/2015	Debit	Arco	38.96
WF - 1581	Check	12/17/2015	Debit	Shell Station	10.55
WF - 1581	Check	12/18/2015	Debit	Varso Gas	41.38
WF - 1581	Check	12/21/2015	Debit	Pacifica Del Mar	72.32
WF - 1581	Check	12/21/2015	Debit	Voipo	21.00
WF - 1581	Check	12/22/2015	Debit	AT&T	435.04
WF - 1581	Check	12/23/2015	Debit	Wells Fargo	45.00
WF - 1581	Check	12/23/2015	Debit	Costco Gas	28.02
WF - 1581	Check	12/28/2015	Debit	BT's Southern BBQ	70.66
WF - 1581	Check	12/29/2015	Debit	Arco	43.20
WF - 1581	Check	12/31/2015	2057	Waldman Investments Inc	800.00
WF - 1581	Check	01/07/2016	Debit	Golden Gate	31.77
WF - 1581	Check	01/11/2016	Debit	QuickBooks	14.95
WF - 1581	Transfer	01/11/2016	Transfer		150.00
WF - 1581	Check	01/11/2016	Debit	FedEx	34.01
WF - 1581	Check	01/12/2016	Debit	Arco	53.35
WF - 1581	Check	01/13/2016	Debit	Shell Station	48.03
WF - 1581	Check	01/19/2016	Debit	George's at the CO	195.70
WF - 1581	Check	01/19/2016	Debit	Laz Parking	9.00
WF - 1581	Check	01/19/2016	Debit	Laz Parking	7.50
WF - 1581	Check	01/19/2016	Debit	Vons Fuel	43.38

EB5 Impact Advisors

Withdrawals on Wells Fargo statements not on Dziubla's Exhibit C

WF Acct.	Type	Date	Type	Description	Withdrawal Amount
WF - 1581	Check	01/20/2016	Debit	The US Grant Restaurant	72.48
WF - 1581	Check	01/20/2016	Debit	Go Daddy	45.96
WF - 1581	Check	01/20/2016	Debit	Go Daddy	22.98
WF - 1581	Check	01/20/2016	Debit	Voipo	21.00
WF - 1581	Check	01/21/2016	Debit	Shell Station	49.93
WF - 1581	Check	01/21/2016	Debit	AT&T	317.86
WF - 1581	Check	01/22/2016	2059	Cal-Sorrento Ltd	650.00
WF - 1581	Check	01/22/2016	Debit	Ballast Point	101.32
WF - 1581	Check	01/22/2016	Debit	Starbucks	25.00
WF - 1581	Check	01/22/2016	Debit	Ace Parking	8.00
WF - 1581	Check	01/25/2016	Debit	Varso Gas	36.29
WF - 1581	Check	01/28/2016	Debit	Costco Gas	23.17
WF - 1581	Check	01/28/2016	Debit	Chevron	50.73
WF - 1581	Check	01/29/2016	Debit	Verizon	164.19
WF - 1581	Check	01/29/2016	Debit	8 Elements	40.80
WF - 1581	Check	02/01/2016	2072	Waldman Investments Inc	800.00
WF - 1581	Check	02/02/2016	Debit	Sharefile	375.00
WF - 1581	Check	02/03/2016	Debit	Shell Station	36.53
WF - 1581	Check	02/04/2016	Debit	Copymat	57.24
WF - 1581	Check	02/05/2016	Debit	China Max	40.58
WF - 1581	Check	02/05/2016	Debit	Chino Hills Oil	30.00
WF - 1581	Check	02/08/2016	Debit	QuickBooks	14.95
WF - 1581	Check	02/08/2016	Debit	Costco Gas	38.72
WF - 1581	Check	02/09/2016	Debit	8 Elements	42.58
WF - 1581	Check	02/10/2016	2070	Cal-Sorrento Ltd	650.00
WF - 1581	Transfer	02/10/2016	Transfer		150.00
WF - 1581	Check	02/11/2016	Debit	Starbucks	4.20
WF - 1581	Check	02/12/2016	Debit	Ace Parking	14.00
WF - 1581	Check	02/12/2016	Debit	Shell Station	47.73
WF - 1581	Check	02/12/2016	Debit	Costco Gas	36.13
WF - 1581	Check	02/16/2016	Debit	Starbucks	3.15
WF - 1581	Check	02/16/2016	Debit	Herringbone	71.56
WF - 1581	Check	02/16/2016	Debit	Dukes	77.80
WF - 1581	Check	02/17/2016	Debit	Varso Gas	26.92
WF - 1581	Check	02/18/2016	Debit	Top Notch	105.00
WF - 1581	Check	02/22/2016	Debit	El Adobe	77.88
WF - 1581	Check	02/22/2016	Debit	Voipo	21.00
WF - 1581	Check	02/22/2016	Debit	Vons Fuel	25.02
WF - 1581	Check	02/22/2016	Debit	Shell Station	44.43
WF - 1581	Check	02/24/2016	Debit	Citysd Parking	1.75
WF - 1581	Check	02/25/2016	Debit	Copymat	216.00
WF - 1581	Check	02/25/2016	Debit	Verizon	168.40

EB5 Impact Advisors**Withdrawals on Wells Fargo statements not on Dziubla's Exhibit C**

WF Acct.	Type	Date	Type	Description	Withdrawal Amount
WF - 1581	Check	02/26/2016	Debit	Panera Bread	9.37
WF - 1581	Check	02/26/2016	Debit	Arco	43.16
WF - 1581	Check	02/29/2016	2079	Waldman Investments Inc	850.00
WF - 1581	Check	03/02/2016	Debit	Miltons	68.24
WF - 1581	Check	03/02/2016	Debit	Shell Station	46.56
WF - 1581	Check	03/03/2016	Debit	Copymat	181.44
WF - 1581	Check	03/03/2016	Debit	AT&T	108.00
WF - 1581	Check	03/04/2016	Debit	USPS	24.24
WF - 1581	Check	03/07/2016	Debit	Rancho Bernardo	78.42
WF - 1581	Check	03/07/2016	Debit	Vons Fuel	39.19
WF - 1581	Check	03/08/2016	Debit	QuickBooks	14.95
WF - 1581	Check	03/09/2016	Debit	Island Prime	158.92
WF - 1581	Check	03/09/2016	Debit	Discount Tire	310.20
WF - 1581	Check	03/10/2016	Debit	Laz Parking	14.00
WF - 1581	Check	03/10/2016	Debit	Stone Brewing	75.64
WF - 1581	Transfer	03/10/2016	Transfer		25.00
WF - 1581	Check	03/10/2016	Debit	Shell Station	52.02
WF - 1581	Check	03/11/2016	2081	Cal-Sorrento Ltd	650.00
WF - 1581	Check	03/14/2016	Debit	Microsoft	69.99
WF - 1581	Check	03/14/2016	Debit	Americana	52.01
WF - 1581	Check	03/15/2016	Debit	Vons Fuel	45.73
WF - 1581	Check	03/15/2016	Debit	Arco	48.15
WF - 1581	Check	03/18/2016	Debit	Usd Dining Service	37.86
WF - 1581	Check	03/18/2016	Debit	Alternative Automobile	326.81
WF - 1581	Check	03/21/2016	Debit	Citysd Parking	3.50
WF - 1581	Check	03/21/2016	Debit	Citysd Parking	1.25
WF - 1581	Check	03/21/2016	Debit	Voipo	21.00
WF - 1581	Check	03/22/2016	Debit	Citysd Parking	2.50
WF - 1581	Check	03/22/2016	Debit	Vons Fuel	46.13
WF - 1581	Check	03/22/2016	Debit	Autozone	21.59
WF - 1581	Check	03/23/2016	Debit	Starbucks	4.40
WF - 1581	Check	03/23/2016	Debit	Shell Station	48.34
WF - 1581	Check	03/28/2016	Debit	Laz Parking	12.00
WF - 1581	Check	03/28/2016	Debit	Verizon	163.77
WF - 1581	Check	03/29/2016	Debit	The Julian Grille	30.92
WF - 1581	Check	03/29/2016	Debit	Julian Cafe	14.95
WF - 1581	Check	03/30/2016	2084	Waldman Investments Inc	850.00
WF - 1581	Check	03/30/2016	Debit	8 Elements	27.20
WF - 1581	Check	03/31/2016	Debit	Varso Gas	40.85
WF - 1581	Check	04/04/2016	Debit	Shell Station	53.03
WF - 1581	Check	04/06/2016	2086	Cal-Sorrento Ltd	650.00
WF - 1581	Check	04/06/2016	Debit	Body Beautiful Car Wash	7.55

EB5 Impact Advisors**Withdrawals on Wells Fargo statements not on Dziubla's Exhibit C**

WF Acct.	Type	Date	Type	Description	Withdrawal Amount
WF - 1581	Check	04/07/2016	Debit	Rancho Bernardo	67.24
WF - 1581	Check	04/08/2016	Debit	QuickBooks	14.95
WF - 1581	Check	04/08/2016	Debit	AT&T	98.30
WF - 1581	Transfer	04/11/2016	Transfer		25.00
WF - 1581	Check	04/11/2016	Debit	Vons Fuel	50.26
WF - 1581	Check	04/12/2016	Debit	Chili's	36.28
WF - 1581	Check	04/12/2016	Debit	Stone Brewing	67.24
WF - 1581	Check	04/12/2016	Debit	Shell Station	53.92
WF - 1581	Check	04/15/2016	Debit	Starbucks	5.90
WF - 1581	Check	04/15/2016	Debit	Circle K	48.48
WF - 1581	Check	04/15/2016	Debit	Varso Gas	45.96
WF - 1581	Check	04/18/2016	Debit	Pechanga	44.07
WF - 1581	Check	04/19/2016	Debit	Arco	35.64
WF - 1581	Check	04/20/2016	Debit	Starbucks	4.40
WF - 1581	Check	04/20/2016	Debit	Voipo	21.00
WF - 1581	Check	04/21/2016	Debit	San Peets	9.55
WF - 1581	Check	04/22/2016	Debit	SouthPoint Gift Shop	10.37
WF - 1581	Check	04/25/2016	Debit	Subway	9.84
WF - 1581	Check	04/25/2016	Debit	Varso Gas	42.14
WF - 1581	Check	04/26/2016	Debit	Shell Station	52.45
WF - 1581	Check	04/27/2016	Debit	Verizon	178.25
WF - 1581	Check	04/28/2016	2090	Waldman Investments Inc	837.60
WF - 1581	Check	04/28/2016	Debit	Starbucks	15.85
WF - 1581	Check	05/02/2016	Debit	Sharefile	375.00
WF - 1581	Check	05/02/2016	Debit	7-Eleven	40.90
WF - 1581	Check	05/04/2016	Debit	8 Elements	40.80
WF - 1581	Check	05/05/2016	Debit	Varso Gas	45.85
WF - 1581	Check	05/05/2016	Debit	Barnes & Noble	6.25
WF - 1581	Check	05/06/2016	Debit	Five Guys	4.96
WF - 1581	Check	05/09/2016	Debit	QuickBooks	14.95
WF - 1581	Check	05/09/2016	Debit	Shell Station	34.76
WF - 1581	Check	05/09/2016	Debit	Target	4.40
WF - 1581	Transfer	05/10/2016	Transfer		25.00
WF - 1581	Check	05/10/2016	Debit	Shell Station	47.12
WF - 1581	Check	05/10/2016	Debit	Circle K	14.93
WF - 1581	Check	05/11/2016	Debit	Ogawashi	44.26
WF - 1581	Check	05/11/2016	Debit	Shell Station	41.06
WF - 1581	Check	05/16/2016	Debit	United	34.82
WF - 1581	Check	05/17/2016	Debit	Chevron	41.66
WF - 1581	Check	05/20/2016	Debit	Einstein Bagels	2.37
WF - 1581	Check	05/20/2016	Debit	Voipo	21.00
WF - 1581	Check	05/23/2016	Debit	Arco	20.97

EB5 Impact Advisors**Withdrawals on Wells Fargo statements not on Dziubla's Exhibit C**

WF Acct.	Type	Date	Type	Description	Withdrawal Amount
WF - 1581	Check	05/23/2016	Debit	Buford Star	24.62
WF - 1581	Check	05/23/2016	Debit	Shell Station	47.49
WF - 1581	Check	05/23/2016	Debit	Costco Gas	49.20
WF - 1581	Check	05/30/2016	2091	Waldman Investments Inc	850.00
WF - 1581	Check	05/31/2016	Debit	Alternative Automobile	65.20
WF - 1581	Check	05/31/2016	Debit	Arco	35.50
WF - 1581	Check	06/01/2016	Debit	Shell Station	47.06
WF - 1581	Check	06/03/2016	Debit	Arco	10.10
WF - 1581	Check	06/06/2016	Debit	Einstein Bagels	5.29
WF - 1581	Check	06/07/2016	Debit	Varso Gas	49.66
WF - 1581	Check	06/08/2016	Debit	QuickBooks	14.95
WF - 1581	Check	06/08/2016	Debit	Shell Station	47.42
WF - 1581	Check	06/10/2016	Debit	Staples	18.33
WF - 1581	Transfer	06/10/2016	Transfer		25.00
WF - 1581	Check	06/10/2016	Debit	Varso Gas	50.42
WF - 1581	Check	06/13/2016	Debit	Capital	44.19
WF - 1581	Check	06/17/2016	Debit	A & R Oil	52.06
WF - 1581	Check	06/17/2016	Debit	Vons Fuel	45.30
WF - 1581	Check	06/17/2016	Debit	Shell Station	20.99
WF - 1581	Check	06/22/2016	Debit	Ace Parking	14.00
WF - 1581	Check	06/22/2016	Debit	Ace Parking	14.00
WF - 1581	Check	06/23/2016	Debit	Costco Gas	37.18
WF - 1581	Check	06/24/2016	Debit	Voipo	21.00
WF - 1581	Check	06/27/2016	Debit	SD Car Care	138.51
WF - 1581	Check	06/27/2016	Debit	Shell Station	57.39
WF - 1581	Check	06/30/2016	2096	Waldman Investments Inc	850.00
WF - 1581	Check	06/30/2016	Debit	Varso Gas	43.95
WF - 1581	Check	07/01/2016	Debit	Staples	9.66
WF - 1581	Check	07/05/2016	Debit	Spices Thai Cafe	47.88
WF - 1581	Check	07/07/2016	Debit	Costco Gas	45.73
WF - 1581	Check	07/07/2016	Debit	Costco	203.95
WF - 1581	Check	07/07/2016	Debit	Food Mart	52.93
WF - 1581	Check	07/11/2016	Debit	QuickBooks	14.95
WF - 1581	Check	07/11/2016	Debit	Starbucks	25.00
WF - 1581	Transfer	07/11/2016	Transfer		25.00
WF - 1581	Check	07/18/2016	Debit	Costco	222.88
WF - 1581	Check	07/18/2016	Debit	Bitdefend	39.95
WF - 1581	Check	07/18/2016	Debit	Varso Gas	46.54
WF - 1581	Check	07/19/2016	Debit	Arco	55.83
WF - 1581	Check	07/20/2016	Debit	Rancho Bernardo	54.36
WF - 1581	Check	07/20/2016	Debit	Voipo	21.00
WF - 1581	Check	07/22/2016	Debit	Spices Thai Cafe	29.81

EB5 Impact Advisors

Withdrawals on Wells Fargo statements not on Dziubla's Exhibit C

WF Acct.	Type	Date	Type	Description	Withdrawal Amount
WF - 1581	Check	07/25/2016	Debit	Vons Fuel	29.26
WF - 1581	Check	07/28/2016	Debit	Shell Station	58.18
WF - 1581	Check	07/29/2016	Debit	Einstein Bagels	2.70
WF - 1581	Check	08/01/2016	Debit	Starbucks	50.00
WF - 1581	Check	08/01/2016	Debit	Verizon	200.00
WF - 1581	Check	08/02/2016	2097	Waldman Investments Inc	800.00
WF - 1581	Check	08/02/2016	Debit	Auto Park Car Wash	43.16
WF - 1581	Check	08/02/2016	Debit	Auto Park Car Wash	22.95
WF - 1581	Check	08/04/2016	Check	Unknown Vendor	571.80
WF - 1581	Transfer	08/10/2016	Transfer		25.00
WF - 1581	Check	08/11/2016	Debit	Henry's Smog	38.20
WF - 1581	Check	08/12/2016	Debit	State of CA DMV	279.00
WF - 1581	Check	08/15/2016	Debit	Arco	45.75
WF - 1581	Check	08/15/2016	Debit	Chevron	50.53
WF - 1581	Check	08/15/2016	Debit	Varso Gas	37.51
WF - 1581	Check	08/15/2016	Debit	Albertsons	4.50
WF - 1581	Check	08/16/2016	Debit	Stone Brewing	122.60
WF - 1581	Check	08/19/2016	Debit	Vons Fuel	37.12
WF - 1581	Check	08/22/2016	Debit	Starbucks	2.95
WF - 1581	Check	08/22/2016	Debit	Starbucks	2.95
WF - 1581	Check	08/22/2016	Debit	Voipo	21.00
WF - 1581	Check	08/22/2016	Debit	Body Beautiful Car Wash	48.50
WF - 1581	Check	08/23/2016	Debit	Varso Gas	48.71
WF - 1581	Check	08/24/2016	Debit	Verizon	221.51
WF - 1581	Check	08/26/2016	Debit	USPS	6.70
WF - 1581	Check	08/29/2016	2100	Waldman Investments Inc	800.00
WF - 1581	Check	08/30/2016	Debit	Vons Fuel	34.75
WF - 1581	Check	08/31/2016	Debit	Body Beautiful Car Wash	47.47
WF - 1581	Check	09/06/2016	Debit	Alternative Automobile	72.04
WF - 1581	Check	09/06/2016	Debit	Fry's	64.79
WF - 1581	Check	09/06/2016	Debit	Vons Fuel	41.49
WF - 1581	Check	09/08/2016	Debit	Adobe Systems	9.99
WF - 1581	Check	09/09/2016	Debit	QuickBooks	14.95
WF - 1581	Check	09/09/2016	Debit	Ace Parking	4.00
WF - 1581	Check	09/09/2016	Debit	Body Beautiful Car Wash	44.09
WF - 1581	Transfer	09/12/2016	Transfer		25.00
WF - 1581	Check	09/12/2016	Debit	Vons Fuel	34.64
WF - 1581	Check	09/13/2016	Debit	Bonnie Zito	678.75
WF - 1581	Check	09/13/2016	Debit	Bonnie Zito	663.75
WF - 1581	Check	09/14/2016	Debit	Citysd Parking	2.00
WF - 1581	Check	09/14/2016	Debit	Port of SD	2.25
WF - 1581	Check	09/14/2016	Debit	Citysd Parking	1.50

EB5 Impact Advisors**Withdrawals on Wells Fargo statements not on Dziubla's Exhibit C**

WF Acct.	Type	Date	Type	Description	Withdrawal Amount
WF - 1581	Check	09/16/2016	Debit	Jake's	74.64
WF - 1581	Check	09/16/2016	Debit	7-Eleven	25.19
WF - 1581	Check	09/19/2016	Debit	Shell Station	49.24
WF - 1581	Check	09/23/2016	Debit	Postal Express	100.00
WF - 1581	Check	09/26/2016	Debit	Shell Station	56.10
WF - 1581	Check	09/27/2016	Debit	Voipo	21.00
WF - 1581	Check	09/28/2016	Debit	Varso Gas	48.38
WF - 1581	Check	09/30/2016	Debit	A & Z Oil	40.00
WF - 1581	Check	10/03/2016	2101	Waldman Investments Inc	800.00
WF - 1581	Check	10/07/2016	Debit	Circle K	50.26
WF - 1581	Check	10/11/2016	Debit	QuickBooks	14.95
WF - 1581	Check	10/11/2016	Debit	Adobe Systems	9.99
WF - 1581	Check	10/11/2016	Debit	Varso Gas	47.24
WF - 1581	Check	10/11/2016	Debit	Rancho Bernardo	220.36
WF - 1581	Transfer	10/11/2016	Transfer		25.00
WF - 1581	Check	10/13/2016	Debit	Alternative Automobile	626.29
WF - 1581	Check	10/14/2016	Debit	Chevron	47.94
WF - 1581	Check	10/17/2016	Debit	Wells Fargo	15.00
WF - 1581	Check	10/17/2016	Debit	Discount Tire	425.86
WF - 1581	Check	10/17/2016	Debit	Varso Gas	40.95
WF - 1581	Check	10/17/2016	Debit	Arco	6.07
WF - 1581	Check	10/18/2016	2106	Oliva Goddard & Wright	1,650.00
WF - 1581	Check	10/20/2016	Debit	Voipo	21.00
WF - 1581	Check	10/20/2016	Debit	Shell Station	30.01
WF - 1581	Check	10/20/2016	Debit	Chevron	50.09
WF - 1581	Check	10/24/2016	Debit	Bankers Hill	24.57
WF - 1581	Check	10/27/2016	Debit	Ace Parking	4.00
WF - 1581	Check	10/27/2016	Debit	Shell Station	51.16
WF - 1581	Check	10/29/2016	2108	Waldman Investments Inc	800.00
WF - 1581	Check	10/31/2016	Debit	Circle K	51.82
WF - 1581	Check	11/01/2016	2109	MG Properties	522.93
WF - 1581	Check	11/01/2016	Debit	AT&T	66.61
WF - 1581	Check	11/01/2016	Debit	Verizon	222.74
WF - 1581	Check	11/02/2016	Debit	Rancho Bernardo	50.58
WF - 1581	Check	11/02/2016	Debit	Staples	142.50
WF - 1581	Check	11/02/2016	Debit	Costco Gas	30.95
WF - 1581	Check	11/02/2016	Debit	Costco	41.01
WF - 1581	Check	11/07/2016	Debit	Arco	43.81
WF - 1581	Check	11/08/2016	Debit	QuickBooks	14.95
WF - 1581	Check	11/08/2016	Debit	Adobe Systems	9.99
WF - 1581	Check	11/10/2016	Debit	8 Elements	33.35
WF - 1581	Transfer	11/10/2016	Transfer		25.00

EB5 Impact Advisors**Withdrawals on Wells Fargo statements not on Dziubla's Exhibit C**

WF Acct.	Type	Date	Type	Description	Withdrawal Amount
WF - 1581	Check	11/10/2016	Debit	Costco Gas	44.95
WF - 1581	Check	11/12/2016	2110	Oliva Goddard & Wright	500.00
WF - 1581	Check	11/14/2016	Debit	Postal Express	100.00
WF - 1581	Check	11/14/2016	Debit	Swell	21.60
WF - 1581	Check	11/14/2016	Debit	Arco	51.29
WF - 1581	Check	11/17/2016	Debit	Hammacher Schlemme	39.95
WF - 1581	Check	11/17/2016	Debit	Vons Fuel	42.99
WF - 1581	Check	11/18/2016	Debit	Srs Clinic	86.00
WF - 1581	Check	11/18/2016	Debit	Srs Clinic	404.00
WF - 1581	Check	11/18/2016	Debit	The Westin	48.50
WF - 1581	Check	11/21/2016	Debit	PF Chang's	39.29
WF - 1581	Check	11/21/2016	Debit	Voipo	21.00
WF - 1581	Check	11/21/2016	Debit	CVS	57.08
WF - 1581	Check	11/22/2016	Debit	AT&T	119.81
WF - 1581	Check	11/22/2016	Debit	Arco	41.42
WF - 1581	Check	11/22/2016	Debit	Vons Fuel	32.05
WF - 1581	Check	11/22/2016	Debit	CVS	147.99
WF - 1581	Check	11/23/2016	Debit	Wells Fargo	15.00
WF - 1581	Check	11/25/2016	Debit	Lodge	25.60
WF - 1581	Check	11/25/2016	Debit	Einstein Bagels	8.29
WF - 1581	Check	11/30/2016	2113	Waldman Investments Inc	800.00
WF - 1581	Check	11/30/2016	Debit	Costco Gas	39.75
WF - 1581	Check	12/01/2016	2114	Paul Marquez	400.00
WF - 1581	Check	12/01/2016	Debit	Costco	90.71
WF - 1581	Check	12/01/2016	Debit	Vons Fuel	20.26
WF - 1581	Check	12/02/2016	Debit	Rancho Bernardo	82.04
WF - 1581	Check	12/02/2016	Debit	Verizon	305.00
WF - 1581	Check	12/02/2016	Debit	Go Daddy	37.98
WF - 1581	Check	12/02/2016	Debit	Arco	44.02
WF - 1581	Check	12/02/2016	Debit	Auto Park Car Wash	31.95
WF - 1581	Check	12/02/2016	Debit	Costco Gas	29.95
WF - 1581	Check	12/05/2016	Debit	Hammacher Schlemme	106.90
WF - 1581	Check	12/07/2016	Debit	Dropbox	9.99
WF - 1581	Check	12/07/2016	Debit	Stone Brewing	54.44
WF - 1581	Check	12/07/2016	Debit	Costco Gas	30.77
WF - 1581	Check	12/08/2016	Debit	QuickBooks	14.95
WF - 1581	Check	12/08/2016	Debit	Adobe Systems	9.99
WF - 1581	Check	12/08/2016	Debit	Staples	22.42
WF - 1581	Check	12/08/2016	Debit	Arco	46.56
WF - 1581	Check	12/09/2016	Debit	Wells Fargo	15.00
WF - 1581	Check	12/09/2016	Debit	Starbucks	25.00
WF - 1581	Check	12/12/2016	Debit	Staples	10.25

EB5 Impact Advisors**Withdrawals on Wells Fargo statements not on Dziubla's Exhibit C**

WF Acct.	Type	Date	Type	Description	Withdrawal Amount
WF - 1581	Transfer	12/12/2016	Transfer		25.00
WF - 1581	Check	12/12/2016	Debit	Vons Fuel	35.49
WF - 1581	Check	12/13/2016	Debit	Golden State Gas	20.97
WF - 1581	Check	12/13/2016	Debit	Chevron	35.93
WF - 1581	Check	12/14/2016	Debit	QuickBooks	264.50
WF - 1581	Check	12/15/2016	Debit	AT&T	258.94
WF - 1581	Check	12/15/2016	Debit	Alternative Automobile	66.64
WF - 1581	Check	12/15/2016	Debit	Costco Gas	43.49
WF - 1581	Check	12/16/2016	Debit	Starbucks	1.95
WF - 1581	Check	12/19/2016	Debit	Copymat	52.92
WF - 1581	Check	12/19/2016	Debit	Sharp Healthcare	101.55
WF - 1581	Check	12/19/2016	Debit	Chevron	40.00
WF - 1581	Check	12/20/2016	Debit	Voipo	21.00
WF - 1581	Check	12/21/2016	Debit	Laz Parking	5.00
WF - 1581	Check	12/22/2016	Debit	FedEx	32.24
WF - 1581	Check	12/27/2016	Debit	Shell Station	45.00
WF - 1581	Check	12/30/2016	Debit	FedEx	8.61
WF - 1581	Check	01/03/2017	Debit	Arco	46.81
WF - 1581	Check	01/04/2017	Debit	Sharp Healthcare	101.55
WF - 1581	Check	01/04/2017	Debit	Go Daddy	15.17
WF - 1581	Check	01/04/2017	Debit	Phillips	24.23
WF - 1581	Check	01/04/2017	Debit	Smith's	31.11
WF - 1581	Check	01/04/2017	Debit	Flying J	36.13
WF - 1581	Check	01/05/2017	Debit	Starbucks	13.59
WF - 1581	Check	01/05/2017	Debit	West Winds Truck	0.03
WF - 1581	Check	01/05/2017	Debit	West Winds Truck	34.03
WF - 1581	Check	01/06/2017	Debit	Best Western	97.64
WF - 1581	Check	01/06/2017	Debit	Postal Express	100.00
WF - 1581	Check	01/09/2017	Debit	Adobe Systems	9.99
WF - 1581	Check	01/09/2017	Debit	Dropbox	9.99
WF - 1581	Check	01/10/2017	Debit	QuickBooks	14.95
WF - 1581	Transfer	01/10/2017	Transfer		25.00
WF - 1581	Check	01/13/2017	Debit	The Ritz Carlton	5.00
WF - 1581	Check	01/13/2017	Debit	Rebel	11.17
WF - 1581	Check	01/17/2017	Debit	Einstein Bagels	2.36
WF - 1581	Check	01/17/2017	Debit	Budget Car	169.66
WF - 1581	Check	01/17/2017	Debit	Ihop	17.36
WF - 1581	Check	01/17/2017	Debit	Hard Rock Hotel	129.44
WF - 1581	Check	01/17/2017	Debit	Bellagio - Palio	4.60
WF - 1581	Check	01/17/2017	Debit	Southwest	163.09
WF - 1581	Check	01/17/2017	Debit	Bellagio - Jpm	17.52
WF - 1581	Check	01/17/2017	Debit	Bellagio Self Park	10.00

EB5 Impact Advisors**Withdrawals on Wells Fargo statements not on Dziubla's Exhibit C**

WF Acct.	Type	Date	Type	Description	Withdrawal Amount
WF - 1581	Check	01/17/2017	Debit	Plus - Aladdin	34.00
WF - 1581	Check	01/17/2017	Debit	Shell Station	52.40
WF - 1581	Check	01/17/2017	Debit	Vons Fuel	37.83
WF - 1581	Check	01/19/2017	Debit	Phil's BBQ	26.58
WF - 1581	Check	01/20/2017	Debit	Go Daddy	29.98
WF - 1581	Check	01/20/2017	Debit	Voipo	21.00
WF - 1581	Check	01/23/2017	Debit	Go Daddy	39.98
WF - 1581	Check	02/02/2017	Debit	Rock Bottom	72.26
WF - 1581	Check	02/02/2017	Debit	Taverna Blu	37.40
WF - 1581	Check	02/03/2017	Debit	Amtrak	159.60
WF - 1581	Check	02/03/2017	Debit	Uber	5.94
WF - 1581	Check	02/03/2017	Debit	Uber	4.00
WF - 1581	Check	02/07/2017	Debit	Dropbox	9.99
WF - 1581	Check	02/08/2017	Debit	QuickBooks	14.95
WF - 1581	Check	02/08/2017	Debit	Adobe Systems	9.99
WF - 1581	Check	02/09/2017	Debit	Uber	7.37
WF - 1581	Transfer	02/10/2017	Transfer		25.00
WF - 1581	Check	02/13/2017	Debit	Costco Gas	45.99
WF - 1581	Check	02/21/2017	Debit	FedEx	8.00
WF - 1581	Check	02/21/2017	Debit	FedEx	7.50
WF - 1581	Check	02/21/2017	Debit	Voipo	21.00
WF - 1581	Check	03/07/2017	Debit	Dropbox	9.99
WF - 1581	Check	03/08/2017	Debit	QuickBooks	14.95
WF - 1581	Check	03/08/2017	Debit	Adobe Systems	9.99
WF - 1581	Check	03/09/2017	Debit	Fastrak	40.00
WF - 1581	Check	03/10/2017	Debit	Postal Express	100.00
WF - 1581	Transfer	03/10/2017	Transfer		25.00
WF - 1581	Check	03/17/2017	Debit	Gordon Biersch	21.04
WF - 1581	Check	03/20/2017	Debit	Go Daddy	95.88
WF - 1581	Check	03/20/2017	Debit	Voipo	21.00
WF - 1581	Check	03/30/2017	Debit	Temecula Creek	120.29
WF - 1581	Check	04/03/2017	Debit	Dropbox	9.99
WF - 1581	Check	04/07/2017	Debit	Dropbox	9.99
WF - 1581	Check	04/07/2017	Debit	Microsoft	69.99
WF - 1581	Check	04/10/2017	Debit	QuickBooks	14.95
WF - 1581	Check	04/10/2017	Debit	Adobe Systems	9.99
WF - 1581	Transfer	04/10/2017	Transfer		25.00
WF - 1581	Check	04/20/2017	Debit	Voipo	21.00
WF - 1581	Check	04/21/2017	Debit	USPS	11.20
WF - 1581	Check	04/25/2017	Debit	Vons Fuel	37.89
WF - 1581	Check	04/26/2017	2115	Las vegas Development Fund	100.00
WF - 1581	Check	04/26/2017	Debit	Fastrak	40.00

EB5 Impact Advisors**Withdrawals on Wells Fargo statements not on Dziubla's Exhibit C**

WF Acct.	Type	Date	Type	Description	Withdrawal Amount
WF - 1581	Check	04/28/2017	Debit	Wells Fargo	14.00
WF - 1581	Check	05/01/2017	Debit	Dropbox	9.99
WF - 1581	Check	05/05/2017	Debit	Postal Express	100.00
WF - 1581	Check	05/08/2017	Debit	QuickBooks	14.95
WF - 1581	Check	05/08/2017	Debit	Costco	39.26
WF - 1581	Check	05/08/2017	Debit	Dropbox	9.99
WF - 1581	Check	05/08/2017	Debit	Adobe Systems	9.99
WF - 1581	Transfer	05/10/2017	Transfer		25.00
WF - 1581	Check	05/16/2017	Debit	Postal Express	100.00
WF - 1581	Check	05/22/2017	Debit	Voipo	21.00
WF - 1581	Check	05/26/2017	Debit	San Diego County	32.00
WF - 1581	Check	05/30/2017	Debit	Starbucks	40.43
WF - 1581	Check	05/31/2017	Debit	Wells Fargo	14.00
WF - 1581	Check	06/01/2017	Debit	Dropbox	9.99
WF - 1581	Check	06/02/2017	Debit	Fastrak	7.61
WF - 1581	Check	06/05/2017	Debit	Fastrak	40.00
WF - 1581	Check	06/07/2017	Debit	Dropbox	9.99
WF - 1581	Check	06/08/2017	Debit	QuickBooks	14.95
WF - 1581	Check	06/08/2017	Debit	Adobe Systems	9.99
WF - 1581	Check	06/12/2017	Debit	Charm Thai Kitchen	36.23
WF - 1581	Transfer	06/12/2017	Transfer		25.00
WF - 1581	Check	06/20/2017	Debit	Voipo	21.00
WF - 1581	Check	06/21/2017	Debit	Arco	42.69
WF - 1581	Check	06/26/2017	Debit	Starbucks	7.85
WF - 1581	Check	06/26/2017	Debit	Temecula Creek	115.67
WF - 1581	Check	06/28/2017	Debit	Arco	40.74
WF - 1581	Check	06/28/2017	Debit	Rite Aid	19.37
WF - 1581	Check	07/03/2017	Debit	Dropbox	9.99
WF - 1581	Check	07/03/2017	Debit	Go Daddy	4.05
WF - 1581	Check	07/07/2017	Debit	Dropbox	9.99
WF - 1581	Check	07/07/2017	Debit	Arco	49.02
WF - 1581	Check	07/10/2017	Debit	Adobe Systems	9.99
WF - 1581	Check	07/10/2017	Debit	Kenworth Capital	239.76
WF - 1581	Transfer	07/10/2017	Transfer		25.00
WF - 1581	Check	07/11/2017	Debit	QuickBooks	14.95
WF - 1581	Check	07/12/2017	Debit	Southwest	223.95
WF - 1581	Check	07/12/2017	Debit	Southwest	15.00
WF - 1581	Check	07/12/2017	Debit	Southwest	15.00
WF - 1581	Check	07/17/2017	Debit	Laz Parking	30.00
WF - 1581	Check	07/17/2017	Debit	The Tin Fish	45.42
WF - 1581	Check	07/17/2017	Debit	Bitdefend	89.95
WF - 1581	Check	07/20/2017	Debit	Globalpoint	323.00

EB5 Impact Advisors**Withdrawals on Wells Fargo statements not on Dziubla's Exhibit C**

WF Acct.	Type	Date	Type	Description	Withdrawal Amount
WF - 1581	Check	07/20/2017	Debit	Voipo	21.00
WF - 1581	Check	07/24/2017	Debit	Ace Parking	8.00
WF - 1581	Check	07/31/2017	Debit	Fastrak	40.00
WF - 1581	Check	08/02/2017	Debit	Dropbox	9.99
WF - 1581	Check	08/03/2017	Debit	Enterprise Rent-A-Car	103.28
WF - 1581	Check	08/03/2017	Debit	San Diego County	32.00
WF - 1581	Check	08/04/2017	Debit	The Marketplace	40.68
WF - 1581	Check	08/04/2017	Debit	Postal Express	100.00
WF - 1581	Check	08/04/2017	Debit	Arco	47.34
WF - 1581	Check	08/07/2017	Debit	Dropbox	9.99
WF - 1581	Check	08/08/2017	Debit	QuickBooks	14.95
WF - 1581	Check	08/08/2017	Debit	Adobe Systems	9.99
WF - 1581	Check	08/09/2017	Debit	Arco	45.35
WF - 1581	Transfer	08/10/2017	Transfer		25.00
WF - 1581	Check	08/16/2017	Debit	Ace Parking	5.00
WF - 1581	Check	08/17/2017	Debit	Arco	43.50
WF - 1581	Check	08/21/2017	Debit	Voipo	21.00
WF - 1581	Check	08/25/2017	Debit	Arco	43.49
WF - 1581	Check	09/01/2017	Debit	Arco	45.08
WF - 1581	Check	09/05/2017	Debit	Dropbox	9.99
WF - 1581	Check	09/07/2017	Debit	Dropbox	9.99
WF - 1581	Check	09/08/2017	Debit	Adobe Systems	9.99
WF - 1581	Check	09/11/2017	Debit	Adobe Systems	14.95
WF - 1581	Transfer	09/11/2017	Transfer		25.00
WF - 1581	Check	09/11/2017	Debit	Arco	50.30
WF - 1581	Check	09/19/2017	Debit	Chevron	55.28
WF - 1581	Check	09/20/2017	Debit	Voipo	21.00
WF - 1581	Check	09/25/2017	Debit	Arco	52.35
WF - 1581	Check	10/02/2017	Debit	Fastrak	40.00
WF - 1581	Check	10/02/2017	Debit	Dropbox	9.99
WF - 1581	Check	10/05/2017	Debit	Arco	45.88
WF - 1581	Check	10/10/2017	Debit	QuickBooks	14.95
WF - 1581	Check	10/10/2017	Debit	Dropbox	9.99
WF - 1581	Check	10/10/2017	Debit	Adobe Systems	9.99
WF - 1581	Check	10/10/2017	Debit	Burger Lounge	27.79
WF - 1581	Transfer	10/10/2017	Transfer		25.00
WF - 1581	Check	10/13/2017	Debit	Charm Thai Kitchen	20.00
WF - 1581	Check	10/16/2017	Debit	Abm Parking	24.00
WF - 1581	Check	10/20/2017	Debit	Taxi Service	31.85
WF - 1581	Check	10/20/2017	Debit	Voipo	21.00
WF - 1581	Check	10/23/2017	Debit	Uber	16.40
WF - 1581	Check	10/25/2017	Debit	Arco	48.67

EB5 Impact Advisors**Withdrawals on Wells Fargo statements not on Dziubla's Exhibit C**

WF Acct.	Type	Date	Type	Description	Withdrawal Amount
WF - 1581	Check	10/30/2017	Debit	Fastrak	40.00
WF - 1581	Check	10/30/2017	Debit	Postal Express	100.00
WF - 1581	Check	11/01/2017	Debit	Dropbox	9.99
WF - 1581	Check	11/06/2017	Debit	Fastrak	7.76
WF - 1581	Check	11/07/2017	Debit	Dropbox	9.99
WF - 1581	Check	11/08/2017	Debit	QuickBooks	14.95
WF - 1581	Check	11/08/2017	Debit	Adobe Systems	9.99
WF - 1581	Transfer	11/10/2017	Transfer		25.00
WF - 1581	Check	11/16/2017	Debit	Arco	45.32
WF - 1581	Check	11/20/2017	Debit	FedEx	17.50
WF - 1581	Check	11/20/2017	Debit	Charm Thai Kitchen	46.16
WF - 1581	Check	11/20/2017	Debit	Voipo	21.00
WF - 1581	Check	11/22/2017	Debit	Wells Fargo	15.00
WF - 1581	Check	12/01/2017	Debit	Dropbox	9.99
WF - 1581	Check	12/04/2017	Debit	Go Daddy	37.98
WF - 1581	Check	12/07/2017	Debit	Dropbox	9.99
WF - 1581	Check	12/08/2017	Debit	QuickBooks	14.95
WF - 1581	Check	12/08/2017	Debit	Adobe Systems	9.99
WF - 1581	Check	12/11/2017	Debit	Fastrak	40.00
WF - 1581	Transfer	12/11/2017	Transfer		25.00
WF - 1581	Check	12/15/2017	Debit	Postal Express	100.00
WF - 1581	Check	12/18/2017	Debit	USPS	69.25
WF - 1581	Check	12/29/2017	Debit	Wells Fargo	15.00
WF - 1581	Check	01/04/2018	Debit	Go Daddy	25.16
WF - 1581	Check	01/08/2018	Debit	Adobe Systems	9.99
WF - 1581	Check	01/08/2018	Debit	USPS	7.15
WF - 1581	Check	01/09/2018	Debit	QuickBooks	14.95
WF - 1581	Transfer	01/10/2018	Transfer		25.00
WF - 1581	Check	01/29/2018	Transfer	Unknown Vendor	1,500.00
WF - 1581	Check	01/31/2018	Debit	Wells Fargo	14.00
WF - 1581	Check	02/08/2018	Debit	QuickBooks	14.95
WF - 1581	Check	02/08/2018	Debit	Adobe Systems	9.99
WF - 1581	Transfer	02/12/2018	Transfer		25.00
WF - 1581	Check	02/28/2018	Debit	Wells Fargo	14.00
WF - 1581	Check	03/02/2018	Debit	Wells Fargo	15.00
WF - 1581	Check	03/02/2018	Debit	Postal Express	100.00
WF - 1581	Check	03/08/2018	Debit	QuickBooks	14.95
WF - 1581	Check	03/08/2018	Debit	Adobe Systems	9.99
WF - 1581	Transfer	03/12/2018	Transfer		25.00
WF - 1581	Check	03/19/2018	Debit	Go Daddy	95.88
WF - 1581	Check	03/30/2018	Debit	Wells Fargo	14.00
WF - 1581	Check	04/09/2018	Debit	QuickBooks	14.95

EB5 Impact Advisors**Withdrawals on Wells Fargo statements not on Dziubla's Exhibit C**

WF Acct.	Type	Date	Type	Description	Withdrawal Amount
WF - 1581	Check	04/09/2018	Debit	Adobe Systems	9.99
WF - 1581	Check	04/09/2018	Debit	Microsoft	69.99
WF - 1581	Transfer	04/10/2018	Transfer		25.00
WF - 1581	Check	04/19/2018	Transfer	Unknown Vendor	570.00
WF - 1581	Check	04/30/2018	Debit	Wells Fargo	14.00
WF - 1581	Check	05/08/2018	Debit	QuickBooks	14.95
WF - 1581	Check	05/08/2018	Debit	Adobe Systems	9.99
WF - 1581	Transfer	05/10/2018	Transfer		25.00
WF - 1581	Check	05/14/2018	Debit	Postal Express	220.00
WF - 1581	Check	05/31/2018	Debit	Wells Fargo	14.00
WF - 1581	Check	06/08/2018	Debit	QuickBooks	14.95
WF - 1581	Check	06/08/2018	Debit	Adobe Systems	9.99
WF - 1581	Transfer	06/11/2018	Transfer		25.00
WF - 1581	Check	06/29/2018	Debit	Wells Fargo	14.00
WF - 1581	Check	07/09/2018	Debit	Adobe Systems	9.99
WF - 1581	Check	07/10/2018	Debit	QuickBooks	14.95
WF - 1581	Transfer	07/10/2018	Transfer		25.00
WF - 1581	Check	07/31/2018	Debit	Wells Fargo	14.00
WF - 1581	Check	08/03/2018	9192	Robert Dziubla	569.68
WF - 1581	Check	08/08/2018	Debit	QuickBooks	14.95
WF - 1581	Check	08/08/2018	Debit	Adobe Systems	9.99
WF - 1581	Transfer	08/10/2018	Transfer		25.00
WF - 3870	Transfer	04/01/2014	Transfer		2,000.00
WF - 3870	Transfer	02/18/2015	Transfer		1,000.00
WF - 3870	Transfer	02/22/2016	Transfer		3,000.00
WF - 3870	Transfer	02/03/2017	Transfer		300.00
WF - 3870	Transfer	11/21/2017	Transfer		200.00
WF - 3870	Transfer	05/10/2018	Transfer		200.00
WF - 3870	Transfer	08/31/2018	Transfer		153.32
Total					\$ 86,408.71

EXHIBIT 5

EXHIBIT 5

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

13 C. Keith Greer, ESQ.
14 Admitted *pro hac vice*
15 keith.greer@greerlaw.biz
16 **GREER AND ASSOCIATES, A PC**
17 17150 Via Del Campo, Suite 100
18 San Diego, CA 92127
19 Telephone: (858) 613-6677
20 Facsimile: (858) 613-6680

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

26 **EIGHTH JUDICIAL DISTRICT COURT**

27 **CLARK COUNTY, NEVADA**

28 FRONT SIGHT MANAGEMENT LLC, a) CASE NO.: A-18-781084-B
Nevada Limited Liability Company,) DEPT NO.: 16
Plaintiff,)
vs.) **DEFENDANT, EB5 IMPACT ADVISORS,**
LAS VEGAS DEVELOPMENT FUND LLC,) **LLC RESPONSES TO PLAINTIFF'S**
et al.,) **THIRD SET OF REQUESTS FOR**
Defendants.) **PRODUCTION OF DOCUMENTS**

29 **PROPOUNDING PARTY: Plaintiff, FRONT SIGHT MANAGEMENT LLC,**
30 **RESPONDING PARTY: Defendant, EB5 IMPACT ADVISORS, LLC**
31 **SET NO: THIRD**

1 **GENERAL OBJECTIONS**

2 Defendant, **EB5 IMPACT ADVISORS, LLC** ("Responding Party" or "Defendant"), makes
3 the following general objections, whether or not separately set forth in response to each document
4 demand, to each and every definition and document demand in the Request for Production of
5 Documents (Set No. One) of Plaintiff ("Propounding party"):

6 1. Responding party objects to the requests generally, and to each and every individual
7 request specifically, to the extent that the requests seek documents not currently in responding party's
8 possession, custody or control, or refers to persons, entities, or events not known to them, on the
9 grounds that such requests seek to require more of this defendant than any obligation imposed by
10 law, would subject responding party to unreasonable and undue annoyance, oppression, burden and
11 expense, and would seek to impose upon responding party an obligation to investigate information
12 or materials from third parties or persons which are equally accessible to propounding party.

13 2. Responding party objects to the requests on the ground that they have not completed
14 investigation of the facts related to this matter, have not completed discovery in this action and have
15 not completed preparation for any trial that may be held in this action. Any responses to the
16 following document demands are based on documents currently known to responding party and are
17 given without prejudice to responding party right to produce evidence of any subsequently
18 discovered documents.

19 3. Responding party objects to the requests generally, and to each and every individual
20 request specifically, to the extent that the requests seek documents or information which would
21 invade the protections afforded Responding party under the attorney-client privilege and/or work
22 product doctrine. Nothing herein is intended to be or should be construed as a waiver of the
23 attorney-client privilege, the work product doctrine, or any other protection. Inadvertent production
24 of such protected information is not intended to be and shall not operate as a waiver of the applicable
25 privilege. Any information withheld on the basis of such privilege will be identified on a privilege
26 log.

27 4. Unless otherwise indicated, Responding Party will produce information regarding the
28 issues of Plaintiff/Counter-Defendant Front Sight Management, LLC's pending Preliminary

1 Injunction Petition. (hereafter "Injunction Issues").

2 5 Responding Party reserves the right to condition the production of documents
3 containing confidential or proprietary information or trade secrets on the Court's issuance of a
4 confidentiality or protective order governing the disclosure of any such information.

5 6. The production of any documents or information by Responding Party is made
6 without waiver, and with preservation, of any privilege or protection against disclosure afforded to
7 documents containing confidential or proprietary information or trade secrets.

8 7. Responding Party objects to the requests to the extent that they would require
9 Responding Party to produce documents or information covered by confidentiality agreements with
10 others, or that would require Responding Party to violate the privacy interests of others.

11 **RESPONSES TO REQUESTS FOR PRODUCTION OF DOCUMENTS**

12 **REQUEST NO. 97:**

13 Please provide an electronic backup copy of the QuickBooks attached to “Updated
14 Declaration of Robert W. Dziubla Re – Accounting” signed on April 3, 2019 (Exhibit 46 to the
15 Evidentiary Hearing).

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1 **RESPONSE TO REQUEST NO. 97:**

2 Responding Party objects to this Document Request on grounds that it is vague and
3 ambiguous as to "backup;" it is burdensome, oppressive and only meant to harass Responding
4 Party because it seeks documents that are already in possession of Requesting Party; and it
5 purports to require Responding Party to disclose information that is a trade secret, confidential,
6 proprietary, commercially sensitive, or information that is protected by rights of privacy.

7
8 DATED: August 14, 2019

FARMER CASE & FEDOR

9
10 /s/ Kathryn Holbert, Esq.

ANTHONY T. CASE, ESQ.

Nevada Bar No. 6589

tcase@farmercase.com

KATHRYN HOLBERT, ESQ.

Nevada Bar No. 10084

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16 C. KEITH GREER, ESQ.

Cal. Bar. No. 135537 (Pro Hac Vice)

Keith.Greer@greerlaw.biz

GREER & ASSOCIATES, A.P.C.

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San Diego, California 92127

Telephone: (858) 613-6677

Facsimile: (858) 613-6680

21 Attorneys for Defendants

LAS VEGAS DEVELOPMENT FUND LLC.

EB5 IMPACT CAPITAL REGIONAL CENTER,

22 LLC, EB6 IMPACT ADVISORS, LLC, ROBERT

23 W. DZIUBLA, JON FLEMING and LINDA

STANWOOD

EXHIBIT 6

EXHIBIT 6

CONFIDENTIAL

From: [Robert Dziubla](#)
To: "Mike Meacher"
Subject: RE: Request for marketing and travel money
Date: Wednesday, July 29, 2015 5:34:26 PM
Attachments: [Front Sight memo re marketing.docx](#)

Mike

Thanks. Here's the Word document. We have thanked Hardy's office and Heller's DC office.

Bob

From: Mike Meacher [mailto:meacher@frontsight.com]
Sent: Wednesday, July 29, 2015 5:13 PM
To: 'Robert Dziubla' <rdziubla@eb5impactcapital.com>
Subject: RE: Request for marketing and travel money

Bob,

I hate to be a technology dolt but I cannot get your attachment to open. I also tried to save it and open it from a saved document and I get a message that indicates it needs to be "converted".

Can you save it as a Word document or a .pdf file and resend please?

I also copied you on a brief thank you email to Heller's office. Since you and Jon did most of the communication with Hardy and his staff, please send a similar thank you to them on my behalf.

Thanks,

Mike

From: Robert Dziubla [mailto:rdziubla@eb5impactcapital.com]
Sent: Wednesday, July 29, 2015 5:04 PM
To: 'Mike Meacher'; 'Jon Fleming'
Subject: RE: Request for marketing and travel money

Dear Mike,

Thanks for your thoughts. We understand your concerns and trust that the attached memo will help you to understand the scope and cost (both monetarily and physically upon Jon and me) of our marketing efforts.

Bob

FS 03698

02900

CONFIDENTIAL

From: Mike Meacher [<mailto:meacher@frontsight.com>]
Sent: Tuesday, July 28, 2015 5:13 PM
To: Robert Dziubla <rdziubla@eb5impactcapital.com>; Jon Fleming <jfleming@EB5impactcapital.com>
Subject: Request for marketing and travel money

Bob and Jon,

Your mention of the multiple other marketing countries to whom you will market the Front Sight EB-5 opportunity is news to us. We have only previously discussed countries other than China in a tangential manner. You have told me that Sinowel has thousands of wealthy clients with whom they have a pre-existing fiduciary relationship. With this relationship, why can't they sell it out quickly? We certainly don't object to other sources for investors. We want it sold out ASAP.

For Naish and I to better understand what you are planning, the costs and the timeline, please get us some detail.

We would like to see from Sinowel (and each of the other marketing entities) a detailed prediction on the timeline to sell investors in this project. What Naish and I really want to understand is how soon will they have the full subscription of 150 investors.

Because of the delays in getting approval from USCIS, all your marketing sources should be ready to go now. We have provided you with still photos, video components for your marketing video and all the other detail you requested.

Help us understand the marketing gameplan, timeline and costs from here to the finish line. After we understand this, Naish and I will arrange a call to discuss the details with you both.

Thanks,

Mike
Meacher@frontsight.com
702-425-6550

From: Robert Dziubla [<mailto:rdziubla@eb5impactcapital.com>]
Sent: Tuesday, July 28, 2015 11:16 AM
To: 'Mike Meacher'; 'Jon Fleming'
Subject: RE: Request for marketing and travel money

Dear Mike,

We really do disagree with you on this point.

We have worked ceaselessly getting to this stage where we have USCIS approval for the Front Sight project and can begin the marketing efforts but are now being told that Front Sight doesn't want to

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CONFIDENTIAL

pay for it. This really is our area of expertise and we know how to do it. But we need the agreed-to resources to do it.

Front Sight contractually committed to pay the expenses that were authorized in the signed engagement letter and budget of February 14, 2013, which also requires that all payments be made promptly upon being invoiced. We expect Front Sight to honor that commitment.

Yes, we will be using Sinowel in China, but **we absolutely will be using other agents in and sourcing investors from China, India, Central & South America, Russia & Ukraine, Africa, and the Middle East.** We (and derivatively Front Sight) would be horribly and tragically remiss if we were to rely only upon Sinowel and only upon the Chinese market. China, like any other country and market, is subject to volatility – and right now the Chinese markets are experiencing severe volatility, with the Shanghai and Shenzhen stock markets declining by 8% yesterday alone. No one can accurately predict all the results of that level of volatility and its potential effect on EB5 financing in China. It may have a positive effect, or it could have a negative effect. At the same time, EB5 has become increasingly popular around the world because the US provides safety and stability to investors from around the world who are beset by the increasing strife and turmoil in so many countries. And our job is to locate those investors worldwide. That is the job that Front Sight engaged us to do, and that is what we have been doing and will continue to do. But Front Sight must honor its commitment to us so that we can do our job.

If you wish to discuss this further on the phone, we are available.

Bob

From: Mike Meacher [<mailto:meacher@frontsight.com>]
Sent: Tuesday, July 28, 2015 10:24 AM
To: Robert Dziubla <rdziubla@eb5impactcapital.com>; Jon Fleming <jfleming@EB5impactcapital.com>
Subject: Request for marketing and travel money

Bob and Jon,

Below you are requesting \$101,000 for International Marketing and Travel. Naish and I have discussed this and this marketing budget was created before you met and contracted with Sinowel. Since Sinowel has the customers and the financial incentive to push them into the Front Sight project, the marketing budget should be next to nil. Regarding travel, Front Sight will promptly reimburse you for any reasonable travel expenses upon submission of receipts for that travel.

Mike
Meacher@frontsight.com
702-425-6550

FS 03700

02902

CONFIDENTIAL

From: Robert Dziubla [mailto:rdziubla@eb5impactcapital.com]
Sent: Monday, July 27, 2015 1:46 PM
To: Mike Meacher
Cc: Jon Fleming
Subject: FW: Approval letters EB-5 Impact Capital RCW1410551734

Mike

As per our t/c just now, here's the APPROVAL! Yay, and thanks for your patience.

We will confer with Sinowel to start the marketing ASAP. Needless to say, Jon and I will be going to China soon for the road show, so we kindly request payment of \$101k under the approved budget line items for International Marketing and for Travel (which totaled \$111k -- \$96k for international marketing and \$15k for travel) less the \$10k that Front Sight already paid and that we applied to the website development and the updated appraisal by Mark Lukens).

Best regards,

Bob

FS 03701

02903

EXHIBIT 7

EXHIBIT 7

CONFIDENTIAL

From: Robert Dziubla
To: Mike Meacher
Cc: Jon Fleming
Subject: Investor update
Date: Monday, June 20, 2016 9:50:25 PM

Dear Mike,

We have two new investors that are processing their paperwork and we hope they will be coming into escrow soon, though of course we cannot finalize that until we have the updated PPM and related documents in place. Jon is working with a third investor for a possible tour to Front Sight this week.

We hope that the lawyers can sort through the loan documents shortly. Threats of imminent lawsuits do not help the situation.

Regards,

Bob

FS 04629

02905

EXHIBIT 8

EXHIBIT 8

CONFIDENTIAL

From: Robert Dziubla
To: "Ignatius Piazza"; "Mike Meacher"; "Jon Fleming"
Subject: RE: Documents ready?
Date: Friday, June 17, 2016 5:34:38 PM

Dear Naish,

The loan agreement must comply with the requirements of the EB5 program so that the investors can get their visas and, therefore, must comply with the documents that Front Sight approved and that we then filed with USCIS for its approval.

Your wholesale elimination of those provisions -- were we to agree with them and simply disburse the money already in escrow -- would subject you and us to lawsuits by the investors, the SEC, USCIS and the Justice Department for securities fraud etc.

We have asked Scott and Letvia to explain to you the process and requirements.

Bob

From: Ignatius Piazza [mailto:ignatius@frontsight.com]
Sent: Friday, June 17, 2016 10:19 AM
To: 'Robert Dziubla' <rdziubla@eb5impactcapital.com>; 'Mike Meacher' <meacher@frontsight.com>; 'Jon Fleming' <jfleming@EB5impactcapital.com>
Subject: RE: Documents ready?

As we said at our face to face meeting, and when Scrott delivered the documents, it is essentially a take it or leave it deal.

If you leave it, we will want the \$8,000 back we recently paid you plus we will want to recover all the other money we have paid toward this EB5 project to date as well as the damages explained in our face to face meeting we have incurred due to the delays and your failure to deliver anything close to what was expected in funding to date.

This is not a threat. It is simply the reality of the situation.

Unless there are minor issues of no consequence to us that benefit both parties, I suggest you take off your "deal killer" hat and put on your "This is fine Naish, thanks for the second chance." hat and approve the documents.

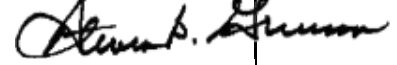
Any potential future issues you may be worried about are nothing compared to the immediate issues that will occur if we don't move this forward this week.

From: Robert Dziubla [mailto:rdziubla@eb5impactcapital.com]
Sent: Friday, June 17, 2016 9:49 AM
To: 'Mike Meacher'; 'Jon Fleming'
Cc: 'Ignatius Piazza'
Subject: RE: Documents ready?

Dear Mike,

FS 04630

02907



1 **RPLY**

2 John P. Aldrich, Esq.
3 Nevada Bar No. 6877
4 Catherine Hernandez, Esq.
5 Nevada Bar No. 8410
6 Matthew B. Beckstead, Esq.
7 Nevada Bar No. 14168

8 **ALDRICH LAW FIRM, LTD.**

9 7866 West Sahara Avenue
10 Las Vegas, Nevada 89117
11 Telephone: (702) 853-5490
12 Facsimile: (702) 227-1975

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

**REPLY TO OPPOSITION TO
MOTION TO COMPEL AND FOR
SANCTIONS**

25 _____
26 AND ALL RELATED COUNTERCLAIMS.
27 _____

28
29 Plaintiff FRONT SIGHT MANAGEMENT LLC (“Plaintiff”) by and through its
30 attorneys, John P. Aldrich, Esq., Catherine Hernandez, Esq. and Matthew B. Beckstead, Esq., of
31 the Aldrich Law Firm, Ltd., hereby files this Reply to Defendants’ Opposition to Plaintiff’s
32 Motion to Compel and for Sanctions.
33
34

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

4 DATED this 18th day of October, 2019.

5 **ALDRICH LAW FIRM, LTD.**

6 /s/ John P. Aldrich
7 John P. Aldrich, Esq.
8 Nevada Bar No. 6877
9 Catherine Hernandez, Esq.
10 Nevada Bar No. 8410
11 Matthew B. Beckstead, Esq.
12 Nevada Bar No. 14168
13 7866 West Sahara Avenue
14 Las Vegas, NV 89117
15 Tel (702) 853-5490
16 Fax (702) 226-1975
17 *Attorneys for Plaintiff/Counterdefendant*

18 **MEMORANDUM OF POINTS AND AUTHORITIES**

19 **I.**

20 **INTRODUCTION**

21 Defendants do not dispute that they failed to properly respond to even one of the almost
22 600 Requests for Production of Documents sent to Defendants from Plaintiff. In their responses
23 to nearly 600 Requests for Production of Documents, Defendants asserted a litany of objections
24 but did not identify nor provide **a single document** specifically in response to any specific
request, nor did they state that responsive documents did not exist. (See Exhibits 7-12 to
Plaintiff's Motion.) Plaintiff immediately began attempting to resolve the discovery dispute,
sending a lengthy and detailed letter setting forth the deficiencies in Defendants' responses. (See

1 Exhibit 1 to Plaintiff’s Motion.) Despite several conversations between Plaintiff’s counsel and
2 Defendants’ counsel – and several extensions to Defendants’ counsel to allow him to supplement
3 the responses – Defendants still have not done so. Defendants’ responses remain woefully
4 inadequate.

5 Defendants’ sole argument is that they produced some documents “as they are kept in the
6 usual course of business,” pursuant to NRCP 34(E), and therefore Defendants should not be
7 compelled to respond to Plaintiff’s Requests for Production of Documents. This argument, as
8 more fully set forth below, is completely without merit. First, it is clear that the documents
9 provided by Defendants as part of their NRCP 16.1 disclosures were not produced “as kept in the
10 ordinary course of business.” For example, the emails provided do not include the attachments
11 referenced in the emails. Additionally, Defendants fail to provide things such as internal emails,
12 emails with vendors, emails with investors, emails with investor’s attorneys, and emails with
13 brokers. Further, Defendants failed to provide a privilege log regarding any allegedly privileged
14 documents. Finally, Defendants have failed and refused to provide any documents related to
15 finances.

16 Even if documents provided by the Defendants were produced “as kept in the ordinary
17 course of business,” Defendants are still required to provide an appropriate index of the
18 documents provided. In the instant matter, Defendants provided an “index” that stated for
19 example, “Fleming emails” and listed more than 4,000 pages of documents. Defendants’
20 “index” provides no specific information and Defendants’ disclosure amounts to nothing more
21 than a document dump. (*See* Defendants and Counterclaimant’s LVD Fund’s First Supplemental
22 Early Case Conference List of Witnesses and Documents, attached hereto as **Exhibit 13**.) As
23 such, Plaintiff’s Motion to Compel should be granted and Defendants should be required to state
24

1 which documents are responsive to which requests. Defendants should also be sanctioned for
2 their conduct.

3 **II.**

4 **LEGAL ARGUMENT**

5 **A. DEFENDANTS HAVE NOT COMPLIED WITH NRCP 34(b)(2)(e), AS THE**
6 **DOCUMENTS CLEARLY WERE NOT PRODUCED AS THEY ARE KEPT IN**
7 **THE ORDINARY COURSE OF BUSINESS**

8 The crux of Defendants' Opposition is that they have complied with NRCP 34(b)(2)(e)
9 because they produced the documents "as kept in the ordinary course of business." However,
10 Defendants make absolutely no showing that the documents were actually produced "as kept in
11 the ordinary course of business." In a case cited by Defendants in their Opposition, *Pass &*
12 *Seymour, Inc. v. Hubell Inc.*, 255 F.R.D. 331, 335 (N.D.N.Y. 2008), it provides that more is
13 required than merely alleging the documents were kept in the ordinary course and states:

14 Under the provisions of Rule 34(b)(2) a responding party clearly controls the
15 manner in which production will occur, and specifically which of the two
16 prescribed methods of production will be employed. *MGP Ingredients, Inc. v.*
17 *Mars, Inc.*, No. 06-2318, 2007 U.S. Dist. LEXIS 76853, 2007 WL 3010343, at *3
18 (D. Kan. Oct. 15, 2007). A party selecting the alternative method of production
19 bears the burden of demonstrating that the documents made available were in fact
20 produced consistent with that mandate. *Johnson*, 236 F.R.D. at 540-41; *Cardenas*,
21 230 F.R.D. at 618. To carry this burden, a party must do more than merely
22 represent to the court and the requesting party that the documents have been
23 produced as they are maintained. *See Johnson*, 236 F.R.D. at 540-41 and
24 *Cardenas*, 230 F.R.D. at 618 (both holding that the mere assertion that documents
were produced as kept in the ordinary course of business is insufficient to fulfill
requirements of the governing rule); *see also GP Indus., LLC v. Bachman*, No.
8:06CV50, 2008 U.S. Dist. LEXIS 90292, 2008 WL 1733606, at *3 (D. Neb. Apr.
10, 2008) (citing *Cardenas*).

P&S contends that it has properly exercised its option of producing the requested
documents in the manner in which they are ordinarily kept, presumably meaning
in the order in which they were stored and retrieved. In support of this assertion,
P&S has offered only an attorney's statement to the effect that the documents
produced have been assembled as they have been maintained in the usual course
of the company's business, without further elaboration. Before Hubbell's motion

1 was filed, P&S had provided literally no additional information regarding its
2 search for the documents, including where the documents produced were
3 maintained, whether they came from a single source or file or from multiple
4 points of origin, the identity of the record custodians, and the manner in which
5 they were organized. Cf. *Johnson*, 236 F.R.D. at 540-41 (concluding that without
6 this information the responding party had failed to carry its burden under
7 *Cardenas*).

8 In the instant matter, Defendants do nothing more than provide a Declaration by
9 Defendants' attorney, Keith Greer. This is exactly what the court in *Pass* found to be
10 insufficient. Defendants have not stated where the documents produced were maintained,
11 whether they came from a single source or from multiple points of origin, the identity of the
12 custodians, and how they were organized.

13 A cursory review of the documents shows that they were not provided as kept in the
14 ordinary course. For example, when Defendants first received the e-mails, it appeared that the e-
15 mails provided do not include the attachments. Consequently, Plaintiff's counsel sent another
16 request for production asking for the attachments. (See Defendant Dziubla's and Defendant
17 Fleming's Responses to Plaintiff's Fourth Sets of Requests for Production of Documents,
18 attached hereto as **Exhibits 14 and 15**, respectively.) Defendants objected to the request, but
19 also agreed to provide those documents. As of the filing of this Reply, those supplemental
20 responses have not been received.

21 Additionally, there is no order to the documents whatsoever. Courts have found, ". . .
22 producing large amount of documents in no apparent order does not comply with a party's
23 obligation under Rule 34." *Residential Constructors, LLC v. Ace Prop. & Cas. Ins. Co.*, 2006
24 U.S. Dist. LEXIS 36943 citing *Stiller v. Arnold*, 167 F.R.D. 68, 70-71 (N.D. Ind. 1996);
T.N.Taube Corp. v. Marine Midland Mort. Corp., 136 F. R.D. 449, 456 (W.D.N.C. 1991). In

1 *Residential Constructors, LLC v. Ace Prop. & Cas. Ins. Co.*, 2006 U.S. Dist. LEXIS 36943,
2 citing *In re Aldephoa Communcations Corp.*, 338 B.R. 546 (S.D.N.Y. 2005), the court found:

3 The purpose behind the 1980 Amendment that added the “usual course of
4 business” language to Rule 34(b) was to allow the discovering party access to
5 business records in the manner documents were normally maintained by the
6 producing party to prevent deliberate “shifting of the materials from the sequence
7 which they were ordinarily kept to somewhere else. . .” 8A Charles Alan Wright
8 & Arthur R. Miller, *Federal Practice and Procedure* § 2213. The solution
9 proposed by the 1980 Amendment was obviously intended to include all business
10 forms, and as a logical extension documents stored as a matter of course or by
11 official, i.e. corporate or governmental, directive would have to be included
12 within the “usual course of business” rubric. The Court qualifies its ruling by
13 explicitly stating that in order to satisfy the requirements of Rule 34(b) any
14 archived documents produced must be thoroughly indexed, the boxes accurately
15 labeled and the depository kept in good order. The Court does not endorse a
16 method of document production that merely gives the requesting party access to a
17 “document dump,” see *Hagemeyer North America v. Gateway Data Sciences*
18 *Corp.*, 222 F.R.D. 594, 598 (E.D.Wis.2004), with an instruction to the party to
19 “go fish,” see *Doe v. Nat’l Hemophilia Foundation*, 194 F.R.D. 516, 518
20 (D.Md.2000).

21 In the instant matter, Defendants have done nothing more than dump documents and ask
22 Plaintiff to “go fish.” The index provided by Defendants provides no information. Defendants
23 cannot index over 6,000 pages of documents by stating nothing more than “Dziubla emails” and
24 “Fleming emails.” (Exhibit 13.) It is akin to providing no index at all. Further, the index
provides no order whatsoever to the documents. The documents start with a document from
2012 and jump to documents from 2017 and back to documents from 2015. There is no rhyme
or reason for the order of the documents. Additionally, Defendants simply did not provide all
records kept in the ordinary course of business. Defendants did not provide any internal emails,
any emails with investors or brokers, or attorneys for the investors. Defendants also failed to
provide a privilege log. Clearly, Defendants have not complied with the requirements of NRC
34(b)(2)(e).

1 To date, Defendants have not provided a single proper response to Plaintiff's Requests
2 for Production of Documents. Defendants should be required to respond to Plaintiff's Requests
3 for Production of Documents. In *Queensridge Towers, LLC v Allianz Global Risks US Ins. Co.*,
4 2014 U.S. Dist. LEXIS 14167, 2014 WL 496952, the court found a party is entitled answers
5 which specify which documents are responsive to which requests. Similarly, Plaintiff is entitled
6 to know which documents are responsive to which requests and which requests Defendants are
7 alleging that they did not have any responsive documents. As such, Plaintiff's Motion to
8 Compel should be granted.

9 **B. PLAINTIFF PROPERLY SEEKS TO IMPOSE THE REQUIREMENTS OF**
10 **NRCP 34 ON DEFENDANTS**

11 Defendants argue that Plaintiff seeks to improperly impose the requirements of NRCP 33
12 related to Interrogatories for Requests related to NRCP 34. This argument is nonsensical and
13 meritless. The case cited by Defendants, *Donell v. Fid. Nat'l Title Agency of Nev., Inc.*, 2012
14 U.S. Dist LEXIS 46598, 2012 WL 1118944, states:

15 Plaintiff did not produce or identify documents already produced in response to
16 the RPDs. Instead, he directed Defendant Flood to look through eight hundred
boxes of documents without specification or categorization of where the
responsive documents could be found.

17 Defendant Flood asserted Rule 34(b)(2)(E) requires either a party produce
18 documents as they are kept in the ordinary course of business or label them to
correspond to categories in the request. Plaintiff's responses did not comport with
19 either of these requirements. The court agreed, and directed the Plaintiff to
supplement his responses to Plaintiff's requests for production.

20 Clearly, *Donell* sets forth that a party must comply with Rule 34 and cannot simply ask a
21 party to sift through thousands of pages of documents. Plaintiff is not and has not sought to
22 impose the requirements of NRCP 33 related to Interrogatories on Defendants in regard to their
23 inadequate responses to the Requests for Production of Documents.
24

1 **C. REQUIRING DEFENDANTS TO RESPOND TO PLAINTIFF’S REQUESTS FOR**
2 **PRODUCTION OF DOCUMENTS DOES NOT INVADE ATTORNEY WORK**
3 **PRODUCT**

4 Defendants inexplicably argue that requiring Defendants to respond to Plaintiff’s
5 Requests for Production of Documents as required by NRCP 34 invades attorney work product.
6 This argument flies in the face of NRCP 34 and the above-cited case law. Defendants are
7 absolutely required to appropriately identify the documents responsive to Plaintiff’s Requests for
8 Production of Documents and the doctrine of attorney work product is not applicable.

9 **D. THE BURDEN OF IDENTIFYING THE DOCUMENTS IS ON DEFENDANTS**

10 Defendants attempt to shift the responsibility placed on Defendants from NRCP 34 to
11 identify the documents produced to Plaintiff. This argument is flawed first because it relies on
12 an incorrect fact, namely that Defendants produced the documents as kept in the ordinary course.
13 As set forth above, Defendants have failed to properly produce the documents and are required to
14 identify which requests the documents are responsive to.

15 As such, Plaintiff now moves the Court for an Order compelling Defendants to provide
16 supplemental responses to Plaintiff’s Requests for Production of Documents to all Defendants, as
17 well as properly provide the documents requested.

18 **E. SANCTIONS ARE WARRANTED**

19 An aggrieved party may move for appropriate sanctions for the failure to make
20 disclosures as required by the Nevada Rules of Civil Procedure. NRCP 37(a)(2)(A). NRCP
21 37(a)(3) further provides that “an evasive or incomplete disclosure, answer or response is to be
22 treated as a failure to disclose, answer or respond.” NRCP 37(c)(1) states that:

23 **[a] party that without substantial justification fails to disclose information**
24 **required by Rule 16.1 or 26(e)(1), or to amend a prior response to discovery as**
required by Rule 26(e)(2), is not, unless such failure is harmless, permitted to
use as evidence at a trial, at a hearing, or on a motion any witness or information

1 not so disclosed. In addition to or in lieu of this sanction, the court, on motion and
2 after affording an opportunity to be heard, may impose other appropriate
3 sanctions. In addition to requiring payment of reasonable expenses, including
4 attorney's fees, caused by the failure, these sanctions may include any of the
actions authorized under Rule 37(b)(2)(A), (B), and (C) and **may include
informing the jury of the failure to make the disclosure.**

5 (Emphasis added.)

6 Under NRCP 37(b)(2), the following sanctions are permitted:

- 7 (A) An order that the matters regarding which the order was made or any other
designated facts shall be taken to be established for the purposes of the
8 action in accordance with the claim of the party obtaining the order;
9 (B) An order refusing to allow the disobedient party to support or oppose
designated claims or defenses, or prohibiting that party from introducing
10 designated matters in evidence;
11 (C) An order striking out pleadings or parts thereof, or staying further
proceedings until the order is obeyed, or dismissing the action or
proceeding or any part thereof, or rendering a judgment by default against
the disobedient party;....

12 The district court has broad discretion in fashioning a remedy for violation of a discovery
13 statute. *Evans v. State*, 117 Nev. 609, 638, 28 P.3d 498, 518 (2001) (citing *Langford v. State*, 95
14 Nev. 631, 635, 600 P.2d 231, 234-35 (1979)).

15 Rule 37 mandates an award of attorneys' fees and other reasonable expenses related to
16 the motion to compel:

17 If the motion is granted or if the disclosure or requested discovery is provided
18 after the motion was filed, the court shall, after affording an opportunity to be
19 heard, require the party or deponent whose conduct necessitated the motion or the
party or attorney advising such conduct or both of them to pay to the moving
20 party the reasonable expenses incurred in making the motion, including attorney's
21 fees, unless the court finds that the motion was filed without the movant's first
making a good faith effort to obtain the disclosure or discovery without court
22 action, or that the opposing party's nondisclosure, response or objection was
substantially justified, or that other circumstances make an award of expenses
unjust.

23 *Id.* at 37(a)(4)(A); *Nevada Power Co. v. Fluor Illinois*, 108 Nev. 638, 646, 837 P.2d 1354, 1360
24 (1992).

1 Here, an award of attorneys' fees and costs is appropriate. Notably, Defendants have no
2 excuse for failing to provide supplemental responses to Plaintiff's First Sets of Requests for
3 Production of Documents.

4 As of the date of this filing, Defendants have had over 90 days to gather and produce the
5 required records. Defendants' delays in this action have delayed Plaintiff's ability to present
6 evidence at the evidentiary hearing regarding Plaintiff's Motion for Preliminary Injunction.

7 If Plaintiff's request for attorneys' fees and costs is granted, Plaintiff's counsel will
8 provide additional briefing and request a specific amount.

9 **III.**

10 **CONCLUSION**

11 Based on the foregoing, Plaintiff respectfully requests that the Court grant its Motion to
12 Compel and for Sanctions.

13 DATED this 18th day of October, 2019.

14 **ALDRICH LAW FIRM, LTD.**

15 /s/ John P. Aldrich
16 John P. Aldrich, Esq.
Nevada Bar No. 6877
17 Catherine Hernandez, Esq.
Nevada Bar No. 8410
18 Matthew B. Beckstead, Esq.
Nevada Bar No. 14168
7866 West Sahara Avenue
19 Las Vegas, NV 89117
20 Tel (702) 853-5490
Fax (702) 226-1975
21 *Attorneys for Plaintiff/Counterdefendant*

1 **CERTIFICATE OF SERVICE**

2 I HEREBY CERTIFY that on the 18th day of October, 2019, I caused the foregoing
3 **REPLY TO OPPOSITION TO MOTION TO COMPEL AND FOR SANCTIONS** 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
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*

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

EXHIBIT 13

EXHIBIT 13

1 **LTWT- 1ST SUPP**
ANTHONY T. CASE, ESQ.
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12 Attorneys for Defendants
LAS VEGAS DEVELOPMENT FUND LLC, EB5
13 IMPACT CAPITAL REGIONAL CENTER LLC,
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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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):

DEFENDANTS AND COUNTER-CLAIMANT'S LVD FUND'S FIRST SUPPLEMENTAL EARLY CASE CONFERENCE LIST OF WITNESSES AND DOCUMENTS NRCP RULES 16 AND 16.1

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

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

By:

- ELECTRONIC SERVICE: Said document(s) was served electronically upon all eligible electronic recipients pursuant to the electronic filing and service order of the Court (NECRF 9).
- U.S. MAIL: I deposited a true and correct copy of said document(s) in a sealed, postage prepaid envelope, in the United States Mail, to those parties and/or above named individuals which were not on the Court's electronic service list.
- FACSIMILE: I caused said document(s) to be transmitted by facsimile transmission. The sending facsimile machine properly issued a transmission report confirming that the transmission was complete and without error.

Dated: August 19, 2019

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

EXHIBIT 14

EXHIBIT 14

1 **GENERAL OBJECTIONS**

2 Defendant, **ROBERT W. DZIUBLA** ("Responding Party" or "Defendant"), makes the
3 following general objections, whether or not separately set forth in response to each document
4 demand, to each and every definition and document demand in the Request for Production of
5 Documents (Set No. One) of Plaintiff ("Propounding party"):

6 1. Responding party objects to the requests generally, and to each and every individual
7 request specifically, to the extent that the requests seek documents not currently in responding party's
8 possession, custody or control, or refers to persons, entities, or events not known to them, on the
9 grounds that such requests seek to require more of this defendant than any obligation imposed by
10 law, would subject responding party to unreasonable and undue annoyance, oppression, burden and
11 expense, and would seek to impose upon responding party an obligation to investigate information
12 or materials from third parties or persons which are equally accessible to propounding party.

13 2. Responding party objects to the requests on the ground that they have not completed
14 investigation of the facts related to this matter, have not completed discovery in this action and have
15 not completed preparation for any trial that may be held in this action. Any responses to the
16 following document demands are based on documents currently known to responding party and are
17 given without prejudice to responding party right to produce evidence of any subsequently
18 discovered documents.

19 3. Responding party objects to the requests generally, and to each and every individual
20 request specifically, to the extent that the requests seek documents or information which would
21 invade the protections afforded Responding party under the attorney-client privilege and/or work
22 product doctrine. Nothing herein is intended to be or should be construed as a waiver of the
23 attorney-client privilege, the work product doctrine, or any other protection. Inadvertent production
24 of such protected information is not intended to be and shall not operate as a waiver of the applicable
25 privilege. Any information withheld on the basis of such privilege will be identified on a privilege
26 log.

27 4. Unless otherwise indicated, Responding Party will produce information regarding the
28 issues of Plaintiff/Counter-Defendant Front Sight Management, LLC's pending Preliminary

1 Injunction Petition. (hereafter "Injunction Issues").

2 5 Responding Party reserves the right to condition the production of documents
3 containing confidential or proprietary information or trade secrets on the Court's issuance of a
4 confidentiality or protective order governing the disclosure of any such information.

5 6. The production of any documents or information by Responding Party is made
6 without waiver, and with preservation, of any privilege or protection against disclosure afforded to
7 documents containing confidential or proprietary information or trade secrets.

8 7. Responding Party objects to the requests to the extent that they would require
9 Responding Party to produce documents or information covered by confidentiality agreements with
10 others, or that would require Responding Party to violate the privacy interests of others.

11 **RESPONSES TO REQUESTS FOR PRODUCTION OF DOCUMENTS**

12 **REQUEST NO. 100:**

13 In Defendants' and Counterclaimant's LVD Fund's First Supplemental Early Case
14 Conference List of Witnesses and Documents [sic] NRCR Rules 16 and 16.1, you identified the
15 category "Robert Dziubla Emails," along with corresponding documents Bates-labeled A-
16 006139-008769. Please provide each of those e-mails including any and all attachments to those
17 e-mails.

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1 **RESPONSE TO REQUEST NO. 100:**

2 Responding Party objects to this Document Request on grounds that it is over
3 burdensome, oppressive and harassing because it seeks the information that has already been
4 provided to Requesting Party. Subject to and without waiving said objections, Responding Party
5 will again produce the requested documents, but in an alternate format.

6
7 DATED: October 3, 2019

FARMER CASE & FEDOR

8 /s/ Kathryn Holbert

9 ANTHONY T. CASE, ESQ.

Nevada Bar No. 6589

10 tcase@farmercase.com

KATHRYN HOLBERT, ESQ.

11 Nevada Bar No. 10084

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12 FARMER CASE & FEDOR

2190 E. Pebble Rd., Suite #205

13 Las Vegas, NV 89123

14 Telephone: (702) 579-3900

Facsimile: (702) 739-3001

15 C. KEITH GREER, ESQ.

16 Cal. Bar. No. 135537 (Pro Hac Vice)

Keith.Greer@greerlaw.biz

17 GREER & ASSOCIATES, A.P.C.

16855 West Bernardo Dr., STE 255

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Telephone: (858) 613-6677

19 Facsimile: (858) 613-6680

20 Attorneys for Defendants

LAS VEGAS DEVELOPMENT FUND LLC.

21 EB5 IMPACT CAPITAL REGIONAL CENTER,

22 LLC, EB6 IMPACT ADVISORS, LLC, ROBERT

W. DZIUBLA, JON FLEMING and LINDA

23 STANWOOD

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28 **CERTIFICATE OF SERVICE and/or MAILING**

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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, ROBERT DZIUBLA RESPONSES TO PLAINTIFF’S FOURTH SET OF 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).

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: October 3, 2019

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

EXHIBIT 15

EXHIBIT 15

1 **RRFP**
2 ANTHONY T. CASE, ESQ.
3 Nevada Bar No. 6589
4 tcase@farmercase.com
5 KATHRYN HOLBERT, ESQ.
6 Nevada Bar No. 10084
7 kholbert@farmercase.com
8 **FARMER CASE & FEDOR**
9 2190 E. Pebble Rd., Suite #205
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13 C. Keith Greer, ESQ.
14 Admitted *pro hac vice*
15 keith.greer@greerlaw.biz
16 **GREER AND ASSOCIATES, A PC**
17 17150 Via Del Campo, Suite 100
18 San Diego, CA 92127
19 Telephone: (858) 613-6677
20 Facsimile: (858) 613-6680

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

26 **EIGHTH JUDICIAL DISTRICT COURT**

27 **CLARK COUNTY, NEVADA**

28 FRONT SIGHT MANAGEMENT LLC, a) CASE NO.: A-18-781084-B
Nevada Limited Liability Company,) DEPT NO.: 16
Plaintiff,)
vs.) **DEFENDANT JON FLEMING 'S**
LAS VEGAS DEVELOPMENT FUND LLC,) **RESPONSES TO PLAINTIFF'S FOURTH**
et al.,) **SET OF REQUESTS FOR PRODUCTION**
Defendants.) **OF DOCUMENTS**

29 **PROPOUNDING PARTY: Plaintiff, FRONT SIGHT MANAGEMENT LLC,**
30 **RESPONDING PARTY: Defendant, JON FLEMING**
31 **SET NO: FOUR**

1 **GENERAL OBJECTIONS**

2 Defendant, **JON FLEMING** ("Responding party" or "Defendant"), makes the following
3 general objections, whether or not separately set forth in response to each document demand, to each
4 and every definition and document demand in the Request for Production of Documents (Set No.
5 One) of Plaintiff ("Propounding party"):

6 1. Responding party objects to the requests generally, and to each and every individual
7 request specifically, to the extent that the requests seek documents not currently in responding party's
8 possession, custody or control, or refers to persons, entities, or events not known to them, on the
9 grounds that such requests seek to require more of this defendant than any obligation imposed by
10 law, would subject responding party to unreasonable and undue annoyance, oppression, burden and
11 expense, and would seek to impose upon responding party an obligation to investigate information
12 or materials from third parties or persons which are equally accessible to propounding party.

13 2. Responding party objects to the requests on the ground that they have not completed
14 investigation of the facts related to this matter, have not completed discovery in this action and have
15 not completed preparation for any trial that may be held in this action. Any responses to the
16 following document demands are based on documents currently known to responding party and are
17 given without prejudice to responding party right to produce evidence of any subsequently
18 discovered documents.

19 3. Responding party objects to the requests generally, and to each and every individual
20 request specifically, to the extent that the requests seek documents or information which would
21 invade the protections afforded Responding party under the attorney-client privilege and/or work
22 product doctrine. Nothing herein is intended to be or should be construed as a waiver of the
23 attorney-client privilege, the work product doctrine, or any other protection. Inadvertent production
24 of such protected information is not intended to be and shall not operate as a waiver of the applicable
25 privilege. Any information withheld on the basis of such privilege will be identified on a privilege
26 log.

27 4. Responding Party reserves the right to condition the production of documents
28 containing confidential or proprietary information or trade secrets on the Court's issuance of a

1 confidentiality or protective order governing the disclosure of any such information.

2 5. The production of any documents or information by Responding Party is made
3 without waiver, and with preservation, of any privilege or protection against disclosure afforded to
4 documents containing confidential or proprietary information or trade secrets.

5 6. Responding Party objects to the requests to the extent that they would require
6 Responding Party to produce documents or information covered by confidentiality agreements with
7 others, or that would require Responding Party to violate the privacy interests of others.

8 **RESPONSES TO REQUESTS FOR PRODUCTION OF DOCUMENTS**

9 **REQUEST NO. 94:**

10 In Defendants' and Counterclaimant's LVD Fund's First Supplemental Early Case
11 Conference List of Witnesses and Documents [sic] NRCP Rules 16 and 16.1, you identified the
12 category "John [sic] Fleming Email," along with corresponding documents Bates-labeled A-
13 001918-006138. Please provide each of those e-mails including any and all attachments to those
14 e-mails.

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1 **RESPONSE TO REQUEST NO. 94:**

2 Responding Party objects to this Document Request on grounds that it is over
3 burdensome, oppressive and harassing because it seeks the information that has already been
4 provided to Requesting Party. Subject to and without waiving said objections, Responding Party
5 will again produce the requested documents, but in an alternate format.

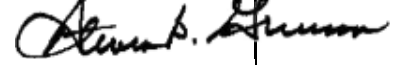
6
7 DATED: October 3, 2019

FARMER CASE & FEDOR

8
9 /s/ Kathryn Holbert, Esq.
KATHRYN HOLBERT, ESQ.
Nevada Bar No. 10084
10 kholbert@farmercase.com
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11 2190 E. Pebble Rd., Suite #205
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13
14 C. KEITH GREER, ESQ.
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18 Attorneys for Defendants
19 LAS VEGAS DEVELOPMENT FUND LLC.
20 EB5 IMPACT CAPITAL REGIONAL CENTER,
21 LLC, EB6 IMPACT ADVISORS, LLC, ROBERT
22 W. DZIUBLA, JON FLEMING and LINDA
23 STANWOOD
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1 **RPLY**

2 John P. Aldrich, Esq.
3 Nevada Bar No. 6877
4 Catherine Hernandez, Esq.
5 Nevada Bar No. 8410
6 Matthew B. Beckstead, Esq.
7 Nevada Bar No. 14168

8 **ALDRICH LAW FIRM, LTD.**

9 7866 West Sahara Avenue
10 Las Vegas, NV 89117
11 Telephone: (702) 853-5490
12 Facsimile: (702) 227-1975

13 *Attorneys for Plaintiff/Counterdefendants*

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

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

18 Plaintiff,

19 vs.

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

22 Defendants.

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

25 **PLAINTIFF’S REPLY TO**
26 **OPPOSITION TO 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

29 AND ALL RELATED COUNTERCLAIMS.

30
31 COMES NOW Plaintiff FRONT SIGHT MANAGEMENT LLC (“Plaintiff”), by and
32 through its attorneys, John P. Aldrich, Esq., Catherine Hernandez, Esq., and Matthew B.
33 Beckstead, Esq., of the Aldrich Law Firm, Ltd., and hereby files this Reply to Opposition to
34 Motion to Extinguish LVDF’s Deed of Trust, or Alternatively to Grant Senior Debt Lender
35 Romспен a First Lien Position, and Motion to Deposit Funds Pursuant to NRCP 67.

36 ///

37 ///

38 ///

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

4 DATED this 18th day of October, 2019.

5 **ALDRICH LAW FIRM, LTD.**

6 /s/ John P. Aldrich

7 John P. Aldrich, Esq.

8 Nevada Bar No. 6877

9 Catherine Hernandez, Esq.

10 Nevada Bar No. 8410

11 Matthew B. Beckstead, Esq.

12 Nevada Bar No. 14168

13 7866 West Sahara Avenue

14 Las Vegas, Nevada 89117

15 Telephone: (702) 853-5490

16 Facsimile: (702) 227-1975

17 *Attorneys for Plaintiff/Counterdefendants*

18 **REPLY MEMORANDUM OF POINTS AND AUTHORITIES**

19 **I.**

20 **INTRODUCTION**

21 Front Sight invites the Court to re-read Plaintiff's Motion to Extinguish LVDF's Deed of
22 Trust, or Alternatively to Grant Senior Debt Lender Romspen a First Lien Position, and Motion
23 to Deposit Funds Pursuant to NRCP 67 ("Motion") after reading LVDF's response to the
24 Motion. LVDF's response mischaracterizes what relief Plaintiff is seeking. Upon seeing
25 Defendants' Opposition, Plaintiff's counsel has noticed a typo in the opening portion of the
26 Motion; Plaintiff does not seek summary judgment, but a declaration from the Court including
27 the following:

28 Front Sight is entitled to a Rule 67 deposit order authorizing it to deposit \$7,000,000 with
the Clerk of the Court or into an appropriate interest-bearing, blocked account. Alternatively,

1 Front Sight is entitled to declaratory relief stating that (1) Front Sight has full legal authority to
2 repay the Loan Proceeds to LVDF under § 1.3; (2) authorizing it to prepay the \$6,375,000 in
3 Loan proceeds to LVDF; and (3) that LVDF must accept tender of the outstanding Loan
4 Proceeds from Front Sight if and when presented in negotiable form (e.g., cash, cashier's check,
5 etc.). The remaining \$625,000 will remain with Romspen or with the Clerk of the Court to
6 secure LVDF's claims until such time as they are fully adjudicated.

7
8 Front Sight also seeks entry of a declaration from the Court ordering that once the Court
9 issues a Rule 67 deposit order and Front Sight has deposited the \$6,375,000 in Loan proceeds
10 with the Clerk of the Court or into an approved interest-bearing account pursuant to NRCPC 67, or
11 once Front Sight has tendered payment to LVDF, LVDF must execute a substitution of trustee
12 and reconveyance of the entire beneficial interest LVDF currently holds to Front Sight, as to both
13 LVDF's Deed of Trust #1 and LVDF's Deed of Trust #2.

14 The Court should also enter a declaration that, effective immediately, the Romspen loan
15 is senior to the Amended Deed of Trust and any and all other encumbrances for which LVDF or
16 its successor in interest, if any arises, is the beneficiary of record. The CLA gives Front Sight
17 express authorization to seek additional financing that would be senior in right to the Deed of
18 Trust, and now Front Sight has obtained such financing.

19
20 The Court should also enter a declaration that the ongoing sale proceeding under the
21 Amended Deed of Trust is null and void based on the defect in the Notice of Default recorded on
22 January 18, 2019, as Doc. #905512.

23
24 **II.**

25 **DEFENDANTS HAVE NOT CONTESTED THE VALIDITY OF THE JOBS REPORTS**

26 Significantly, as the Court is aware, Front Sight has provided a jobs report from David
27 Evans that shows that the Front Sight project has produced well above the required 130 jobs (10
28

1 per immigrant investor) to allow each of the immigrant investors (Front Sight estimates there are
2 13) to submit their I-829 petitions. Mr. Evans has provided a supplement to his prior reports.
3 That supplement contains new information related to expenses related to the Front Sight project
4 and notes that since 2013 (when the engagement letter between Front Sight and Defendant
5 EB5IA was entered into), the Front Sight project has created 254.5 new jobs. (See Supplemental
6 Report of Dave Evans dated October 4, 2019, attached to Plaintiff’s Motion as **Exhibit 5**.) But
7 even if the effective date were October 2016 (when the CLA was entered), the Front Sight
8 project has still exceeded the required number of jobs.
9

10 Mr. Evans is one of the premier experts on jobs creation under the EB-5 program. (See
11 Declaration of Catherine Holmes, attached to Plaintiff’s Motion as **Exhibit 6**.) At the hearing on
12 September 20, 2019, Defendants strongly objected to Mr. Evans’ report. This is baffling – at
13 least it would be if Defendants’ purposes truly were to help the immigrant investors to obtain
14 permanent residency in the United States rather than to collect interest payments.
15

16 Looking at Mr. Evans’ report, the Court can see that between February 2013 and October
17 2016, the Front Sight project created 254.5 new jobs. (See **Exhibit 5** to Plaintiff’s Motion.) It is
18 undisputed that Defendant LVDF provided \$2,625,000 in loan proceeds between October 2016
19 and June 30, 2017 – well over **two years ago** (and actually **three years ago** for some). (See
20 Evid. Hrg. Exhibit 47, p. 7.) Likewise, it is undisputed that between July 1, 2017 and June 30,
21 2018, Defendant LVDF provided \$3,750,000 in loan proceeds. (See Evid. Hrg. Exhibit 49, p. 2.)
22 All of those investors tendered their money nearly two years ago, and some **more than two**
23 **years ago**. The jobs report from Mr. Evans is uncontroverted.
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III.

PLAINTIFF’S MOTION SHOULD BE GRANTED

Defendants’ Opposition fails to raise any issues that preclude the relief Front Sight seeks. Rather, when the Court considers the true facts and the actual language of the CLA, as well as Defendants’ failure to recognize that all the necessary jobs had been created for the investors’ I-829 petitions to be submitted, it becomes obvious that Plaintiff is entitled to the relief it seeks.

Plaintiff will address each item addressed by Defendants, in the order they addressed them.

A. Plaintiff’s Motion Is Not a Motion for Summary Judgment

The relief sought in Plaintiff’s Motion is clear. It seeks judicial declarations regarding several issues. Defendants’ sole complaint in this section of their brief is that “Plaintiff’s oft repeated and still unproven allegations of its complaint and a recitation of Plaintiff’s claimed litany of wrongdoings by Defendants” is objectionable. Defendants claim the facts asserted by Plaintiff “is not supported by ANY competent evidence.” (Opposition, pp. 9-10) (emphasis in original). Plaintiff can understand why Defendants want the Court to ignore the lengthy recitation of facts – but it is not because they are not supported by competent facts. Defendants want the Court to ignore the lengthy recitation of fraud because it is supported either by (1) Dziubla’s own admissions during the evidentiary hearing, or (2) uncontroverted testimony of experts. Despite the fact that this case is over a year old, Defendants have been unable to locate any expert to refute what Plaintiff’s experts have said.

B. Significantly, Front Sight Does Not Actually Have to Obtain “an Actual Construction Loan”

Defendants assert that Plaintiff has not shown that it has obtained an actual loan, and consequently, Plaintiff cannot obtain the relief it seeks. (Opposition, p. 10.) This is incorrect.

The Romspen Commitment Letter’s first page literally says, “Romspen Investment

1 Corporation, (the ‘Lender’) hereby submits to you this offer of financing (‘Commitment’) in
2 connection with the property above mentioned and more fully described in Section 3 below,” and
3 gives a deadline that Front Sight met for acceptance of “no later than three (3) business days
4 following the date of this Commitment.” (Romspen Commitment Letter, at 1.) The Romspen
5 Letter expressly states that “The approved loan amount is \$30,000,000,” further countering
6 LVDF’s assertion that the Romspen Commitment Letter is not in fact a loan agreement.

7
8 But there is a significant issue that Defendant LVDF misses: whether the Romspen loan
9 comes to fruition or some other loan were to materialize, the declaration Plaintiff seeks is the
10 same. Plaintiff seeks a declaration that the Senior Debt lender will have a first lien position once
11 the money is loaned.

12 **C. Defendant LVDF Must Allow Romspen – Or Any Lender – to Have a First Lien**
13 **Position**

14 Defendants now seem to concede that Plaintiff was not required to obtain Senior Debt.
15 Rather, the definition of “Senior Debt” in the CLA provides that “Borrower will use it [sic] best
16 efforts” to obtain an additional loan. (*See* Evid. Hrg. Exhibit 33, p. 0203.) Additionally,
17 paragraph 5.7(v) of the CLA, related to obtaining Senior Debt, begins: “In the event that that
18 [sic] Borrower obtains any Senior Debt. . . .” (*See* Evid. Hrg. Exhibit 33, p. 0224.)

19
20 Instead of claiming that Plaintiff was required to obtain Senior Debt, Defendants now
21 claim that Plaintiff has failed to meet the requirements of the CLA and Deed of Trust because (1)
22 the deadline to obtain Senior Debt expired on July 30, 2018 and (2) Front Sight is in default.
23 (Opposition, pp. 10-11.)

24 Plaintiff set forth the facts in great detail in its Motion. Those facts include not only
25 Defendants’ continuing fraud, but the many breaches of the CLA by Defendants. Those facts
26 have not been substantively contested by Defendants in their Opposition. But as stated
27 numerous times before, given Defendants’ admitted breaches of the CLA, Defendants’
28

1 arguments fail. Plaintiff's Motion addresses the doctrine of promissory estoppel; Defendants
2 have not refuted Plaintiff's position. (See Plaintiff's Motion, pp. 12-13.)

3 **D. Front Sight Has a Right to Prepay the Loan**

4 Defendants claim Front Sight cannot prepay the loan for three reasons: (1) because Front
5 Sight is not making a "valid tender of payment," (2) because Front Sight is in default and the
6 time has expired to cure, and (3) the CLA and Deed of Trust do not allow for prepayment until
7 the investors' I-829 petitions have been adjudicated. (Opposition, pp. 11-14.)

8
9 As already addressed in Plaintiff's Motion and above, Front Sight is making a valid
10 tender of payment; but even if not, Plaintiff is still entitled to the declaration that a senior lender
11 would be granted a first lien position. Second, Plaintiff is not in default (addressed above and in
12 Plaintiff's Motion). But this claim includes an additional claim – that the time to cure has
13 expired. This is incorrect. The current Notice of Default, filed in January 2019, is procedurally
14 defective (Kathryn Holbert was not the Trustee under the Amended Deed of Trust when she
15 recorded the current Notice of Default) – LVDF does not dispute this fact! The time to cure the
16 alleged defaults necessarily remains open, as a matter of law, because there is no duly recorded
17 notice of default and election to sell recorded pursuant to NRS Chapter 107. NRS 107.080 gives
18 Front Sight 35 days to cure any default described in a notice of default and election to sell. If
19 and when LVDF records a legitimate notice of default and election to sell, Front Sight will have
20 35 days from whenever that happens to cure any alleged defaults by paying the amount allegedly
21 owed.¹ It may then, of course, seek to recoup that money later pursuant to the two exceptions to
22 the Voluntary Payment Doctrine already referenced in the Motion, namely the business-necessity
23 exception and the defense-of-property exception. Additionally, a Temporary Restraining Order
24
25

26 _____
27 ¹ It is worth noting that, despite many repeated requests for documentation related to Defendants' claims for
28 attorneys' fees and costs as a result of the alleged breaches, Defendants continue to fail and refuse to provide any
such documentation. Perhaps no such documentation exists pursuant to a company-wide document destruction
policy.

1 was granted, and the TRO and this litigation tolls the running of the alleged time period while
2 this Court determines the validity of the alleged Notice of Default.

3 The third argument Defendants raise is that the loan cannot be prepaid until the investors'
4 I-829 petitions have been adjudicated. This also fails. As set forth in Plaintiff's Motion, Section
5 1.3 of the CLA, entitled "Prepayment," states:

6 Subject to the following sentence, **Borrower may prepay the Loan**, in whole or
7 in part, **without any prepayment penalty or premium, at any time during**
8 **either the Initial Term or the Extension Term**. Notwithstanding the foregoing,
9 Borrower shall not repay any portion of the Loan corresponding to that portion of
10 an Advance made by Lender to Borrower with the funds received from a Class B
11 member of the Lender until such time as said **Class B member of Lender**
12 **[LVDF]** shall have received final adjudication of his or her I-829 petition
13 removing conditions for permanent residency in the United States.

14 (Evid. Hrg. Exhibit 33, § 1.3, p. 14 (emphases added).) Plaintiff is entitled to prepay the loan
15 unless there are investors whose I-829 petitions have not been adjudicated. But as of now,
16 Defendants have provided *exactly zero evidence* that there are any investors, let alone that there
17 are any investors whose I-829 petitions have not been finally adjudicated. Without such a
18 showing by Defendants, Defendants' arguments fail and Plaintiff is entitled to pay off the LVDF
19 loan.

20 Additionally, Defendants have a duty to act in good faith, and to the extent there are
21 investors whose I-829 petitions have not been submitted when they should have, it is
22 Defendants' burden to show they have acted appropriately with regard to the I-829s. Despite
23 repeated requests for such documentation, Defendants have failed and refused to provide it.

24 Finally, the jobs requirement has been more than met. Prepayment of the loan has no
25 negative consequence to LVDF or the immigrant investors – other than Defendants LVDF and
26 Dziubla does not get to collect interest payments anymore.

27 **E. A Rule 67 Deposit Is Proper**

28 Regarding its Rule 67 Motion, Plaintiff has already addressed this issue in its Motion and

1 Defendants' brief does nothing to defeat Plaintiff's analysis. However, Front Sight takes the
2 opportunity to clarify that, although it quoted the entire text of Rule 67 in its Motion for the
3 Court's convenience and for clarity, it seeks to deposit funds with the Court pursuant to NRC
4 67(a)(1), not NRC 67(a)(2). The totality of the circumstances in this case make this plainly
5 self-evident to LVDF that this was so, because Front Sight has battled LVDF for over a year on
6 this point, maintaining that there have been no administrative defaults. Finally, LVDF's citation
7 to *Peke Resources* is unconvincing because its entire analysis pertains to the language contained
8 in NRC 67(a)(2) (under an older version of the current Rule 67), but Front Sight is specifically
9 seeking relief under Rule 67(a)(1).
10

11 **IV.**

12 **MR. GREER CANNOT AUTHENTICATE THE DOCUMENTS HE CLAIMS TO**
13 **AUTHENTICATE**

14 Mr. Greer provided a Declaration with two exhibits. However, he cannot authenticate
15 those exhibits. He did not create them nor receive them. They are inadmissible hearsay. NRS
16 51.065.

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V.

CONCLUSION

Based on the foregoing, Plaintiff's Motion to Extinguish LVDF's Deed of Trust, or Alternatively to Grant Senior Debt Lender Romspen a First Lien Position, and Motion to Deposit Funds Pursuant to NRCP 67 should be granted.

DATED this 18th day of October, 2019.

ALDRICH LAW FIRM, LTD.

/s/ John P. Aldrich

John P. Aldrich, Esq.

Nevada Bar No. 6877

Catherine Hernandez, Esq.

Nevada Bar No. 8410

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Attorneys for Plaintiff/Counterdefendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 18th day of October, 2019, I caused the foregoing **PLAINTIFF’S REPLY TO OPPOSITION TO MOTION TO EXTINGUISH LVDF’S DEED OF TRUST, OR ALTERNATIVELY TO GRANT SENIOR DEBT LENDER ROMSPEN A FIRST LIEN POSITION, AND MOTION TO DEPOSIT FUNDS PURSUANT TO NRCP 67** to be electronically filed and served with the Clerk of the Court using Wiznet which will send notification of such filing to the email addresses denoted on the Electronic Mail Notice List, or by U.S. mail, postage prepaid, if not included on the Electronic Mail Notice List, to the following parties:

Anthony T. Case, Esq.
Kathryn Holbert, Esq.
FARMER CASE & FEDOR
2190 E. Pebble Rd., Suite #205
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*

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EB5 IMPACT ADVISORS LLC, ROBERT W. DZIUBLA,
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/s/ T. Bixenmann
An employee of ALDRICH LAW FIRM, LTD.

Plaintiff Front Sight Management LLC

John P. Aldrich
Retained
702-863-5490(W)

Trustee Piazza, Ignatius

John P. Aldrich
Retained
702-863-5490(W)

Trustee Piazza, Jennifer

John P. Aldrich
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EVENTS & ORDERS OF THE COURT

10/23/2019 **All Pending Motions** (9:00 AM) (Judicial Officer Williams, Timothy C.)

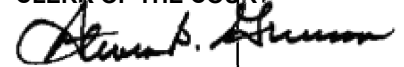
Minutes

10/23/2019 9:00 AM

- APPEARANCES CONTINUED: Michael Meacher, representative of Front Sight, also present. PLAINTIFF'S MOTION TO EXTINGUISH LVDF'S DEED OF TRUST, OR ALTERNATIVELY TO GRANT SENIOR DEBT LENDER ROMSPEN A FIRST LIEN POSITION, AND MOTION TO DEPOSIT FUNDS PURSUANT TO NRCP 67...MOTION TO COMPEL AND FOR SANCTIONS Colloquy regarding whether matters may be heard later same day. There being agreement, Court stated matters to be called on or around 12:45 p.m. MATTER RECALLED. Mr. Greer advised issues with items with respect to supplemental objection from Mr. Aldrich. Arguments by Mr. Aldrich and Mr. Greer regarding Motion to Extinguish and Motion to Compel. Colloquy regarding future production of documents and coordinating inspection in this case. Colloquy regarding scheduling continuance of today's matters due to time limitations today. There being agreement, COURT ORDERED, all pending matters including Preliminary Injunction Hearing CONTINUED to 11/20/19 at 11:00 a.m. and 11/21/19 at 1:00 p.m. CONTINUED TO: 11/20/19 11:00 AM PLAINTIFF'S MOTION TO EXTINGUISH LVDF'S DEED OF TRUST, OR ALTERNATIVELY TO GRANT SENIOR DEBT LENDER ROMSPEN A FIRST LIEN POSITION, AND MOTION TO DEPOSIT FUNDS PURSUANT TO NRCP 67...MOTION TO COMPEL AND FOR SANCTIONS...PLAINTIFF'S MOTION FOR SANCTIONS...LVD FUND'S MOTION TO DISSOLVE TEMPORARY RESTRAINING ORDER AND TO APPOINT A RECEIVER...STATUS CHECK: SETTING CONTINUED PRELIMINARY INJUNCTION HEARING AND MOTION FOR PROTECTIVE ORDER...PRELIMINARY INJUNCTION HEARING 11/21/19 1:15 PM (MATTERS CONTINUED FROM 11/20/19)

Parties Present

[Return to Register of Actions](#)



1 **MOT**
2 John P. Aldrich, Esq.
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4 Catherine Hernandez, Esq.
5 Nevada Bar No. 8410
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13 *Attorneys for Plaintiff/Counterdefendants*

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

11 FRONT SIGHT MANAGEMENT LLC, a
12 Nevada Limited Liability Company,

13 Plaintiff,

14 vs.

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

17 Defendants.

18 AND ALL RELATED COUNTERCLAIMS.
19

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

PLAINTIFF'S MOTION TO QUASH
SUBPOENAS

HEARING REQUESTED

20 COMES NOW Plaintiff FRONT SIGHT MANAGEMENT LLC ("Plaintiff"), by and
21 through his attorneys, John P. Aldrich, Esq., Catherine Hernandez, Esq., and Matthew B.
22 Beckstead, Esq., of the Aldrich Law Firm, Ltd., and hereby moves the Court for an order
23 quashing Defendants' Subpoenas to Bank of America, N.A. and Lucas Horsfall, Murphy &
24 Pindroh, LLP (collectively referred to hereinafter as "Deponents").

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26 ///


27 ///

28 ///

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

4 DATED this 29th day of October, 2019.

5 **ALDRICH LAW FIRM, LTD.**

6 
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18 **MEMORANDUM OF POINTS AND AUTHORITIES**

19 **I.**

20 **INTRODUCTION**

21 On October 22, 2019, Defendants LVDF, EB5IC, EB5IA, Dziubla, Fleming, and
22 Stanwood (collectively referred to in this paper as “Defendants”) e-served to Front Sight two
23 Notices of Intent to Issue Subpoena. One of those Notices pertained to Bank of America, N.A.,
24 the other one pertained to Lucas, Horsfall, Murphy & Pindroh, LLP (“Lucas Horsfall”). Each of
25 these subpoenas has a return date of November 22, 2019, directing the responsive documents to
26 be returned to Defendants’ counsel’s office by that date.

27 Defendants have no need for the documents they seek, given that their requests seek
28 information that is either irrelevant to Defendants’ claims and defenses or are protected from
disclosure under Nevada law. Their claims for breach of contract and breach of the implied
covenant of good faith and fair dealing have been dismissed under the One Action Rule. Their
nonjudicial foreclosure and judicial foreclosure proceedings arise out of defaults that preceded
their July 2019 letter to Front Sight. It follows, then, that Defendants issued these subpoenas

1 solely to harass Front Sight and multiply these proceedings.

2 The attorneys for Plaintiff and Defendants held a meet and confer to discuss this
3 discovery dispute. That meet and confer occurred in the afternoon of October 29, 2019. Mr.
4 Aldrich and Ms. Holbert spoke about each of the items sought in the two subpoenas. The parties
5 could not reach a resolution as to either subpoena, and this Motion is necessary. A brief email
6 confirming that telephonic meet and confer is attached hereto as **Exhibit 1**.

7 **II.**

8 **LEGAL ARGUMENT**

9 **1. LEGAL STANDARD**

10 A party who seeks to challenge a subpoena that is issued to a third party has options,
11 including objecting under Rule 45(a)(4)(B) and seeking a Rule 26(c) motion for protective order,
12 or a motion to quash under Rule 45(c)(3) (for subpoenas that seek disclosure of protected
13 matters) and/or under Rule 26(c) (for subpoenas that seek irrelevant information and are,
14 therefore, unduly burdensome because they are overly broad).

15 A party has standing under the new version of NRCP 45 to object to a subpoena that is
16 issued to a third party. *See* NRCP 45(a)(4)(B)(i)-(ii) & (iv) (entitled “Party Objections”).
17 Specifically, this rule states:

18 (i) A party who receives notice under Rule 45(a)(4)(A) that another party intends
19 to serve a subpoena duces tecum on a third party that will require disclosure of
20 privileged, confidential[,] or other protected matter, to which no exception or
waiver applies, may object to the subpoena by filing and serving written
objections to the subpoena and a motion for a protective order.

21 (ii) To invoke the protections of this rule, the objecting party must file and serve
22 written objections to the subpoena and a motion for a protective order under Rule
23 26(c) within 7 days after being served with notice and a copy of the subpoena
under Rule 45(a)(4)(A).

24 ...
25 (iv) If the party objects based upon privilege, confidentiality, or other protection
26 and timely files and serves objections and a motion for a protective order, the
subpoena may not be served, unless revised to eliminate the objected-to
commands, until the court that issued the subpoena has ruled on the objections
and motion.

27 A party may, either separately or coupled with Rule 45(a)(4)(B) objections, bring a
28 motion for protective order under Rule 26(c), which states, in part, “The court may, for good

1 cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or
2 **undue burden** or expense.” NRCPP 26(c)(1) (emphasis added). Like its federal counterpart,
3 upon which Nevada’s newly minted version is based, Nevada’s Rule 26 limits the scope of
4 discovery to “any nonprivileged matter that is relevant to any party’s claims or defenses and
5 proportional to the needs of the case”; it also lists a number of factors for consideration when
6 analyzing what constitutes “proportional to the needs of the case.” See NRCPP 26(b)(1).

7 A subpoena that seeks information that is irrelevant to the case qualifies as unduly
8 burdensome and is necessarily subject to a court order quashing it pursuant to NRCPP 26(c)(1).
9 The case law quoted below demonstrates this very point, using published case law from two
10 different, foreign jurisdictions. This is persuasive primary authority which this court is fully
11 within its discretion to consider and notice under Nevada law.

12 Nevada case law has repeatedly held that federal case law to is strongly persuasive
13 authority when analyzing Nevada’s version of the same rule. See, e.g., *Nelson v. Heer*, 121 Nev.
14 832, 835, 122 P.3d 1252, 1253 (Nev. 2005) (“We have previously recognized that federal
15 decisions involving the Federal Rules of Civil Procedure provide persuasive authority when this
16 court examines its rules.” (citing *Executive Mgmt., Ltd. v. Ticor Title Ins. Co.*, 118 Nev. 46, 53,
17 38 P.3d 872, 877 (Nev. 2002) (“Federal cases interpreting the Federal Rules of Civil Procedure
18 ‘are strong persuasive authority, because the Nevada Rules of Civil Procedure are based in large
19 part upon their federal counterparts.’” (citation omitted)))).

20 The federal district court for the Eastern District of Virginia conducted a detailed analysis
21 regarding motions to quash, examining the distinct bases for quashing subpoenas under, and the
22 interplay between, Rules 26(c) and 45(c)(3)(A), in *Singletary v. Sterling Transport Co., Inc.* 289
23 F.R.D. 237, 240 (E.D. Va. 2012). See also *Blotzer v. L-3 Comm’ns Corp.*, 287 F.R.D. 507, 509
24 (D. Ariz. 2012).

25 The *Singletary* decision’s analysis regarding overly broad subpoenas duces tecum for
26 employment records is thorough and instructive:

27 Rule 45 does not list irrelevance or overbreadth as reasons for quashing a
28 subpoena. However, the scope of discovery allowed under a subpoena is the same
as the scope of discovery allowed under Rule 26. Cook v. Howard, No. 11-1601,

1 484 Fed. Appx. 805, 2012 U.S. App. LEXIS 18053, 2012 WL 3634451, at *6 (4th
2 Cir. Aug. 24, 2012) (per curiam) (“Although Rule 45(c) sets forth additional
3 grounds on which a subpoena against a third party may be quashed ... those
4 factors are co-extensive with the general rules governing all discovery that are set
5 forth in Rule 26.”); see also Barrington, 2007 U.S. Dist. LEXIS 90555, 2007 WL
6 4370647, at *3 (collecting cases). **Thus, regardless of whether the Court
7 considers Plaintiffs Motion under Rule 45 or Rule 26, the Court must review
8 Defendant's subpoenas under the relevancy standards set forth in Rule 26(b).**

9 Rule 26(b) limits the scope of discovery to those materials that are “relevant to
10 any party's claim or defense.” Fed. R. Civ. P. 26(b)(1). . . . Notably, the Court
11 “must limit the frequency or extent of discovery” if “the burden or expense of the
12 proposed discovery outweighs its likely benefit, considering the needs of the case,
13 the amount in controversy, the parties’ resources, the importance of the issues at
14 stake in the action, and the importance of the discovery in resolving the issues.”
15 *Id.* at 26(b)(2)(C). **As such, the Court may quash a subpoena duces tecum as
16 overbroad if it “does not limit the [documents] requested to those containing
17 subject matter relevant to the underlying action.”** In re Subpoena Duces
18 Tecum to AOL, LLC, 550 F. Supp. 2d 606, 612 (E.D. Va. 2008); see also Sirpal,
19 2012 U.S. Dist. LEXIS 97145, 2012 WL 2880565, at *5.

20 Further, the Court “may, for good cause, issue an order to protect a party or
21 person from annoyance, embarrassment, oppression, or undue burden or expense”
22 by forbidding the disclosure or discovery of the material at issue. Fed. R. Civ. P.
23 26(c)(1). Likewise, Rule 45(c)(3) requires the Court to quash a subpoena that
24 “subjects a person to an undue burden.” Fed. R. Civ. P. 45(c)(3); see also Cook,
25 2012 U.S. App. LEXIS 18053, 2012 WL 3634451, at *6 n.7. This undue burden
26 category “encompasses situations where the subpoena seeks information
27 irrelevant to the case.” Cook, 2012 U.S. App. LEXIS 18053, 2012 WL 3634451,
28 at *6 n.7. Moreover, “[a] subpoena imposes an undue burden on a party when [it]
is overbroad.” In re Subpoena Duces Tecum, 550 F. Supp. 2d at 612.

17 *Singletary*, 289 F.R.D. at 240-41 (emphases added).

18 Similarly, a federal district court in Arizona analyzed the same exact issue in a similar
19 manner:

20 **Under Rule 45(c)(3)(A)**, Fed.R.Civ.P., a party may move to quash or modify a
21 subpoena if it requires the disclosure of “privileged or other protected matter, if
22 no exception or waiver applies.” **A party has standing to challenge a subpoena
23 served on another entity** only if the party can show it has a personal right or
24 privilege regarding the subject matter of the subpoena. *See Delta Mechanical,
25 Inc. v. Garden City Group, Inc.*, 2010 U.S. Dist. LEXIS 75551, 2010 WL
26 2609057, *2 (D. Ariz. 2010). **Pursuant to Rule 26(c)(1)(B)**, Fed.R.Civ.P., a
27 party may move for an order to protect itself from “annoyance, embarrassment,
28 oppression, or undue burden or expense.”

25 *Blotzer v. L-3 Comm’ns Corp.*, 287 F.R.D. 507, 509 (D. Ariz. 2012) (emphases added).

26 Under Nevada law, “tax returns must be relevant to be discoverable, and **may not be
27 discoverable in the absence of a showing that the information is otherwise unobtainable.**”

28 *McNair v. Eighth Judicial Dist. Court*, 110 Nev. 1285, 1290, 885 P.2d 576, 579 (Nev. 1994)

1 (emphases added). Also, communications between an entity and its accountant may be privileged
2 under Nevada law, and any such communications between an entity and its accountant should be
3 analyzed under Nevada law to see if they are privileged. *See* NRS 49.135, 185.

4 2. ARGUMENT

5 Defendants' requests in their two subpoenas to Deponents seek information that is
6 duplicative because what Defendant is entitled to has already been provided, and every single
7 request is overly broad and includes irrelevant information within its scope. Defendant LVDF
8 already has the Bank of America documents they need, with Front Sight's accountant providing
9 a 23.6-lb. box of documents near the end of the 2018 fiscal year. (*See* Sobol Letter to LVDF
10 dated June 20, 2018, a copy of which is attached hereto as **Exhibit 2**; see also Exhibit 20 to
11 Evidentiary Hearing, at p. 0081.)

12 The record in this matter also shows that Defendants already have the tax returns they
13 need, and their duplicative requests should be quashed as unnecessary and overbroad. (*See*
14 Declaration of Robert W. Dziubla in Support of Las Vegas Development Fund LLC's Motion for
15 Appointment of a Receiver filed Feb. 6, 2019, at Exhibits 6 & 7.)

16 a. The Banking Records should be quashed pursuant to NRCP 26(c)(1)

17 Defendants' subpoena to Bank of America, N.A., contains four requests that are all
18 overly broad because they seek irrelevant documents, and their overly broad nature subjects them
19 to an order quashing the Bank of America subpoena under Rule 26(c)(1) for being unduly
20 burdensome.

21 The first three requests seek "all of FRONT SIGHT's bank statements" for the fiscal
22 years 2016, 2017, and 2018. But Front Sight's bank statements are only relevant (thus only
23 discoverable) to the extent they reflect "expenditures on the project," (CLA § 5.10), and not for
24 any other purpose. *See* NRCP 26(b). Yet, Defendants seek an astonishingly broad array of
25 documents from Bank of America that will contain information that is neither relevant nor
26 proportional to the needs of this case. Only an order quashing the subpoena will correct this
27 procedural defect to the requests, because there seems to be no way to modify the subpoena in a
28 way that Bank of America could reasonably interpret it yet still be responsive. To the extent the

1 Court disagrees that quashing is the only appropriate remedy here, Front Sight seeks an order
2 modifying the Bank of America subpoena to limit its scope to only those records reflecting
3 “expenditures on the project,” as stated in CLA § 5.10.

4 The fourth request seeks “all of FRONT SIGHT’s bank statements for the time period of
5 January 1, 2019 to October 31, 2019.” In addition to the rationale and relief sought for the first
6 three requests, which also apply here, the fourth request should be quashed because seeks
7 documents pertaining to the time period *after* LVDF initially declared Front Sight to be in
8 default under the CLA and other Loan Documents. This is primarily, but not solely, because
9 LVDF’s counterclaims for breach of contract and breach of the implied covenant of good faith
10 and fair dealing have been dismissed, as LVDF is pursuing nonjudicial and judicial foreclosure
11 based on the alleged defaults set forth in its July 2018 letter to Front Sight. To the extent the
12 Court disagrees that quashing is the only appropriate remedy here, Front Sight seeks an order
13 modifying the Bank of America subpoena to limit its scope to only those records reflecting
14 “expenditures on the project,” as stated in CLA § 5.10.

15 b. The Subpoena for Front Sight’s Tax Returns and Related Accounting Records
16 should be quashed pursuant to NRCP 45(c)(3)(A)(iii) and 26(c)(1)

17 Defendants’ subpoena to Front Sight’s accounting firm, namely Lucas Horsfall, should
18 be quashed entirely pursuant to NRCP 26(c)(1) and 45(c)(3). With little exception, tax returns
19 are protected against disclosure under Nevada law. Moreover, the supporting documents
20 Defendants seek in Request No. 4 are neither relevant nor proportional to the needs of this case.

21 Requests 1 – 3 ask Front Sight’s accounting firm to “produce FRONT SIGHT’s complete
22 tax return” for the years 2016, 2017, and 2018. It bears repeating that under Nevada law, “tax
23 returns must be relevant to be discoverable, and **may not be discoverable in the absence of a**
24 **showing that the information is otherwise unobtainable.”** *McNair v. Eighth Judicial Dist.*
25 *Court*, 110 Nev. 1285, 1290, 885 P.2d 576, 579 (Nev. 1994) (emphases added). The documents
26 used by an accounting firm in preparing and completing a tax return are subject to the same legal
27 protection against general discoverability. *Cf. id.* Nonetheless, the record in this matter also
28 shows that Defendants already have the tax returns they need, and their duplicative requests

1 should be quashed as unnecessary and overbroad. (See Declaration of Robert W. Dziubla in
2 Support of Las Vegas Development Fund LLC's Motion for Appointment of a Receiver filed
3 Feb. 6, 2019, at Exhibits 6 & 7.)

4 There is zero language from the CLA that might tether Request No. 4 to the needs of this
5 case. The language of the CLA does not permit disclosure of all underlying documents relied
6 upon to prepare the tax returns. Request No. 4 is clearly a fishing expedition, even more so than
7 the other requests, seeking "ALL DOCUMENTS used by YOU [Lucas Horsfall] that RELATE
8 to the preparation and completion of FRONT SIGHT's tax returns for the years 2016, 2017, and
9 2018." Request No. 4 should be quashed for being overly broad because it seeks irrelevant
10 information that does not pertain to any party's claims or information that LVDF already
11 possesses under the CLA's reporting requirements in the CLA § 5.10.

12 c. LVDF cannot enforce the CLA or other Loan Documents because it was the first
13 party to breach the agreement

14 LVDF abandoned the contract in 2018 (capped off with EB5IA's dissolution in August
15 2018), prior to any alleged breach from Front Sight described in LVDF's July 2018 letter to
16 Front Sight. This means Front Sight is no longer even subject to the CLA's reporting
17 requirements which serve as a purported basis for the Bank of America and Lucas Horsfall
18 subpoenas. These alleged breaches serve as the basis for LVDF's nonjudicial and judicial
19 foreclosure. LVDF has no need, therefore, for further performance from Front Sight under the
20 CLA and other Loan Documents. Its claims for breach of contract and breach of the implied
21 covenant of good faith and fair dealing are gone already.

22 Front Sight has no further contractual duty under the CLA anyway, because Defendant
23 Dziubla has admitted the following blatant breaches of the Construction Loan Agreement:

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

- 1 b. Dziubla testified that Defendant LVDF took over the marketing of the Front
2 Sight project when the CLA was signed. (See June 3, 2019 Evid. Hrg. Tr., p.
3 135, ls. 21-25). But again, Defendants were not marketing after 2017, even
4 though they were receiving money from Front Sight specifically for marketing
5 purposes.
- 6 c. Dziubla claimed that the engagement letter with EB5IA was extended on a
7 “gentlemen’s basis” before Defendant LVDF took over. (See June 3, 2019
8 Evid. Hrg. Tr., p. 136).
- 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 a. Dziubla testified he held back \$1 million - \$1.5 million a month or longer
16 before he even alleged Front Sight was in default. (See June 3, 2019 Evid.
17 Hrg. Tr., pp. 156-57).
- 18 b. Dziubla claimed he did not provide the money because of lack of information,
19 and because Front Sight had not provided a draw request. Dziubla and LVDF
20 had never required a draw request before. (See June 3, 2019 Evid. Hrg. Tr., p.
21 157).
- 22 c. This failure to notify constituted a material breach of LVDF’s obligations
23 under the CLA that resulted in \$1 – \$1.5 million less being loaned to Front
24 Sight more than a year before the Completion Date pertaining to the Project as
25 set forth in the CLA.
- 26 3. Dziubla has not facilitated the filing of the I-829 petitions by the immigrant
27 investors. If Dziubla had truly been trying to help the immigrant investors and/or
28 to protect their money, he would have honestly evaluated the Front Sight project,

1 hired an economist who knew what he was doing, and advised the immigrant
2 investors almost immediately that they should submit their I-829 petitions to the
3 USCIS for approval. Front Sight had already created plenty of jobs when the first
4 money came in between October 2016 and June 30, 2017. Each of those investors
5 could have submitted their I-829 petitions long ago, had Dziubla so advised them.
6 If Dziubla had done so, as each I-829 petition was approved, Front Sight would
7 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
9 particularly Dziubla – failed to do so. They failed to do so in order to allow
10 Defendant LVDF – run by Dziubla – to collect \$36,000 per month in interest
11 payments. And all of this while Dziubla and Defendant EB5IA were accepting
12 marketing payments from Front Sight even though they had stopped marketing
13 the project.

14 “If there is anything well settled, it is that the party who commits the first breach of the
15 contract cannot maintain an action against the other for a subsequent failure to perform.” *Bradley*
16 *v. Nevada C. O. R. Ry.*, 42 Nev. 411, 421 178 P. 906, 908 (1919)(citation omitted). *Accord*
17 *Crockett & Myers, Ltd. v. Napier, Fitzgerald & Kirby, LLP*, 440 F. Supp. 2d 1184 (D. Nev.
18 2006) (a material breach by one party to a contract may excuse further performance by another
19 party to the contract. The party who commits the first breach of a contract cannot maintain an
20 action against the other for a subsequent failure to perform); *Las Vegas Sands Corp. v. ACE*
21 *Gaming, LLC*, 713 F. Supp. 2d 427 (D. Nev. 2010) (same); *Young Elec. Sign Co. v. Fohrman*, 86
22 Nev. 185, 188, 466 P.2d 846 (1970) (stating that one party's material breach excuses the other
23 party's further performance under the contract).

24 Though LVDF is angling to try to establish new breaches and continue its fishing
25 expedition in support of its attempted hostile corporate takeover of Front Sight, any documents
26 LVDF seeks from August 1, 2018, to the present time are not relevant to any claims in this action
27 whatsoever.

28 ///

1 d. Defendants cannot serve the Bank of America and Lucas Horsfall subpoenas until
2 this Court has effectively ruled on the objections and motions to quash

3 Front Sight's objections and motions to quash automatically prevent service of
4 Defendants' subpoenas until such time as this Court has entered a final, written order. *See* NRC
5 45(a)(4)(B)(iv) (stating, in part, "the subpoena may not be served . . . until the court that issued
6 the subpoena has ruled on the objections and motion").

7 **III.**

8 **CONCLUSION**

9 Based on the foregoing, Plaintiff respectfully requests that the Court grant this Motion to
10 Quash by forbidding entirely the discovery sought, pursuant to NRC 26(c)(1) or, if the Court is
11 not inclined to grant that relief, then limiting the discovery to the requests described hereinabove.

12 DATED this 29th day of October, 2019.

13 **ALDRICH LAW FIRM, LTD.**

14 

15 John P. Aldrich, Esq.

16 Nevada Bar No. 6877

17 Catherine Hernandez, Esq.

18 Nevada Bar No. 8410

19 Matthew B. Beckstead, Esq.

20 Nevada Bar No. 14168

21 7866 West Sahara Avenue

22 Las Vegas, Nevada 89117

23 Telephone: (702) 853-5490

24 Facsimile: (702) 227-1975

25 *Attorneys for Plaintiff/Counterdefendants*

1 **CERTIFICATE OF SERVICE**

2 I HEREBY CERTIFY that on the 29th day of October, 2019, I caused the foregoing
3 **PLAINTIFF'S MOTION TO QUASH SUBPOENAS** to be electronically filed and served
4 with the Clerk of the Court using Wiznet which will send notification of such filing to the email
5 addresses denoted on the Electronic Mail Notice List, or by U.S. mail, postage prepaid, if not
6 included on the Electronic Mail Notice List, to the following parties:

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

15 C. Keith Greer, Esq.
16 16855 West Bernardo Drive, Suite 255
17 San Diego, CA 92127
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19 EB5 IMPACT ADVISORS LLC, ROBERT W. DZIUBLA,
20 JON FLEMING and LINDA STANWOOD*

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22
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25
26
27
28

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

EXHIBIT 1

EXHIBIT 1

Traci Bixenmann

From: Kathryn Holbert <kholbert@farmercase.com>
Sent: Tuesday, October 29, 2019 4:50 PM
To: John Aldrich; keith.greer@greerlaw.biz
Cc: traci@johnaldrichlawfirm.com; 'Cathy Hernandez'; mbeckstead@johnaldrichlawfirm.com
Subject: RE: Meet and confer today?

John-

Yes- we did discuss but were not able to reach a resolution. We would request that your Motions to Quash be filed and heard as soon as possible.

Thank you,

Kathryn

From: John Aldrich
Sent: Tuesday, October 29, 2019 4:13 PM
To: Kathryn Holbert <kholbert@farmercase.com>; keith.greer@greerlaw.biz
Cc: traci@johnaldrichlawfirm.com; 'Cathy Hernandez' <chernandez@johnaldrichlawfirm.com>; mbeckstead@johnaldrichlawfirm.com
Subject: RE: Meet and confer today?

Kathryn,

Thank you for taking the time to speak with me this afternoon about the Notices of Intent to Issue Subpoenas to Bank of America and Lucas Horsfall, et al. This e-mail will briefly confirm our approximately 10-12 minute conversation.

We specifically discussed the items sought in the subpoena to Bank of America. We discussed our respective positions, and we ultimately did not agree to a resolution.

We also specifically discussed the items sought in the subpoena to Lucas Horsfall, et al. We again discussed our respective positions, but we did not resolve the dispute.

I advised that our office will be filing a Motion to Quash.

Thanks again for speaking with me today.

John P. Aldrich, Esq.
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From: Kathryn Holbert [<mailto:kholtbert@farmercase.com>]
Sent: Tuesday, October 29, 2019 3:03 PM
To: John Aldrich; keith.greer@greerlaw.biz
Cc: traci@johnaldrichlawfirm.com; 'Cathy Hernandez'; mbeckstead@johnaldrichlawfirm.com
Subject: RE: Meet and confer today?

John-

I am available for a meet and confer this afternoon. Please call at your convenience.

Thanks

Kathryn
702-579-3900

From: John Aldrich
Sent: Tuesday, October 29, 2019 1:48 PM
To: keith.greer@greerlaw.biz; Kathryn Holbert <kholtbert@farmercase.com>
Cc: traci@johnaldrichlawfirm.com; 'Cathy Hernandez' <chernandez@johnaldrichlawfirm.com>; mbeckstead@johnaldrichlawfirm.com
Subject: Meet and confer today?

Keith and Kathryn,

Are either of you available today between 3:30 and 5:00 p.m. for a telephonic meet and confer relating to the Notices of Intent to Issue Subpoenas to Bank of America and Lucas Horsfall, et al.? If so, please let me know what time works for you.

Please advise as soon as possible. Thanks.

John P. Aldrich, Esq.
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EXHIBIT 2

EXHIBIT 2

June 20, 2018

Mr. Dziubla
Las Vegas Development Fund, LLC
916 Southwood Boulevard, Ste 1G
P.O. Box 3003
Incline Village, NV 89450

RE FrontSight Management

Dear Mr. Dziubla,

Enclosed please find the following documents which the Management of Frontsight (FSM) believes will be considered a valid use of funds from EB-5 Investors. FSM's management identified expenses which are "includable as inputs to demonstrate job creation" as specified by FSM's legal counsel for purposes of USCIS. The expenses have been summarized in the *Vendor Report* and *Account Report*. Payroll is summarized separately, by year.

FSM maintains its books and records on Quickbooks software. Accordingly, FSM's management identified specific vendors and specific expense categories, on a cash basis, after June 27, 2015.

Included in the package are the following:

1. Transaction Detail by Account – Sorted by vendor name
2. Transaction Detail by Account – Sorted by General Ledger category

Key terms

Type = method of payment

Date = Date of payment

Number = Check number

Name = Vendor name

Class = FSM identified the expense as includable

Split = Account from which the expense was paid.

Credit Cards

American Express

Visa City National Bank

Bank accounts

BOA Bank of America

American First National

FS 01159

02969

Original amount = payment amount

As FSM's management has represented to you, many of the original documents were destroyed when the facility at which they were stored burned to the ground. When possible, the material vendors were contacted and have provided copies of the original invoices. Home depo charges are reflected on the enclosed credit card statements.

When the payment method is credit card, the "split" will indicate whether the expense documentation is found on the Visa card statement or the American Express statement, both of which are include in date order as supporting documentation.

FSM's payroll processor is Paychex. Annual, quarterly federal tax filings are included as is detail annual employee earnings reports supporting the history of employment.

We believe that the information has been presented in such a way that you can easily test supporting documentation to verify that the summary reports are an accurate representation of the expenditures for the period June 27, 2015 to December 31, 2017.

I prepared the enclosed reports at the written request of my client FrontSight Management. As is normal in this type of professional service, I was not hired to perform and did not perform audit or other types of verification of the information. As you know, a credit granting decision should be based on a lender's exercise of due diligence in considering many factors. Your use of this letter from me, and the enclosed documentation in the exercise of your due diligence is solely a matter of your responsibly and judgment. This letter is not intended to establish a client relationship with you but is in response to a request from my client.

Sincerely,

Leslie S. Sobol
Certified Public Accountant

FS 01160

02970